

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(PD).No.457 of 2018
and CMP.No.2412 of 2018

Parthiban

.. Petitioner

Vs

1.Vijaya
2.Valliammal
3.Natarajan
4.Krishnamurthy
5.Rukmani
6.Jothi

.. Respondents

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal orders dated 28.11.2017 passed in IA.No.182 of 2017 in OS.No.268 of 2003 on the file of District Munsif's Court, Panruti.

For Petitioner : M/s.R.Meenal

ORDER

According to the revision petitioner, the revision petitioner has filed a suit in OS.No.268 of 2003 before the District Munsif Court,

Panruti against the respondents and the revision petitioner's father, Pandurangan for permanent injunction restraining them from interfering with the peaceful possession of the suit property. When the case was posted for trial on 04.03.2017, the then counsel suggested the revision petitioner to file an application to withdraw the suit with liberty to file a fresh suit with regard to the same subject property since the present plaint was of technical defects. Hence, the revision petitioner has filed an application in IA.No.182 of 2017 under Order 23 Rule 1 of the Civil Procedure Code to permit the revision petition to withdraw the suit with liberty to file a fresh suit on the same cause of action. The said application was dismissed. Therefore, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that the revision petitioner is entitled to 1/3 share in the suit property on the basis of oral partition. Hence, the revision petitioner filed the instant application. Further, the present suit has been filed for permanent injunction without seeking the prayer of declaration. Therefore, the instant application has been filed by the revision petitioner for withdrawal of the suit with liberty. But without considering the above contentions, the said application has been

dismissed by the court below. Hence, the order passed by the court below is liable to be set aside.

3. Heard the learned counsel for the revision petitioner and perused the materials available on record.

4. The revision petitioner has filed the instant application seeking permission to withdraw the said suit with liberty to file a fresh suit for the same cause of action on basis of oral partition, that too, after lapse of 15 years, which is barred by limitation.

5. It is useful to extract the decision of the Hon'ble Supreme Court in the case of *L.C.Hanumanthappa Vs. H.B.Shivakumar* reported in 2015 (6) CTC 562, wherein it has been held as follows:

"29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original Written Statement itself dated 16th May 1990, the Defendant had clearly put the Plaintiff on Notice that it had

*denied the Plaintiff's title to the Suit property. A reading of an isolated Para in the Written Statement, namely, Para 2 by the Trial Court on the facts of this case has been correctly commented upon adversely by the High Court in the Judgment under Appeal. The original Written Statement read as a whole unmistakably indicates that the Defendant had not accepted the Plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier Judgment dated 28th March 2002 had expressly remanded the matter to the Trial Court, allowing the Defendant to raise the plea of limitation. There can be no doubt that on an Application of **Khatri Hotels Private limited** (supra), the right to sue for declaration of title first arose on the facts of the present case on 16th May 1990 when the original Written Statement clearly denied the Plaintiff's title. By 16th May 1993, therefore, a Suit based on declaration of title would have become time-barred. It is clear that the Doctrine of Relation Back would not apply to the facts of this case for the reason that*

the Court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the Doctrine of Relation Back applying so that a legal right that had accrued in favour of the Defendant should be taken away. This being so, we find no infirmity in the impugned Judgment of the High Court. The present Appeal is accordingly dismissed."

In the light of the Judgment of the Hon'ble Supreme Court in the case of 2006 (6) SCC 562, wherein the Hon'ble Supreme Court has held that *in the amendment application to amend the prayer for declaration of title cannot be entertained as declaration of title become time barred.*

6. Therefore, in the light of the decision cited supra, the revision petitioner has not satisfied the ingredients under Order 23 Rule 1 of the Civil Procedure Code. Hence, there is no error or illegality in the order passed by the court below and hence, the Civil Revision Petition is liable to be dismissed.

7. The Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

07.02.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

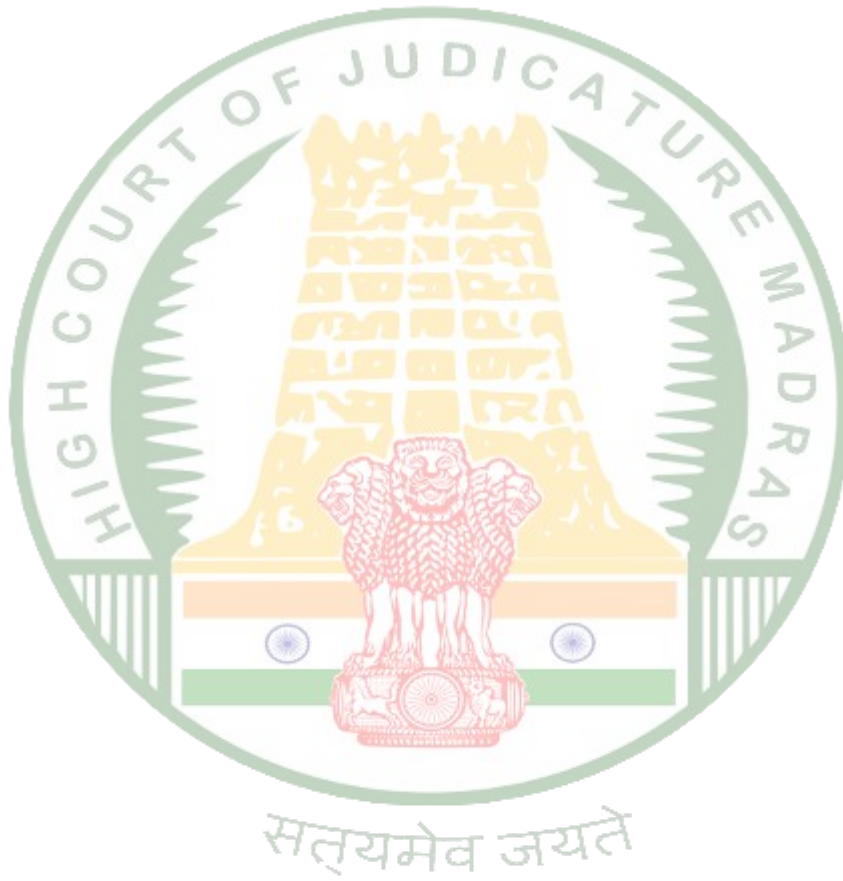
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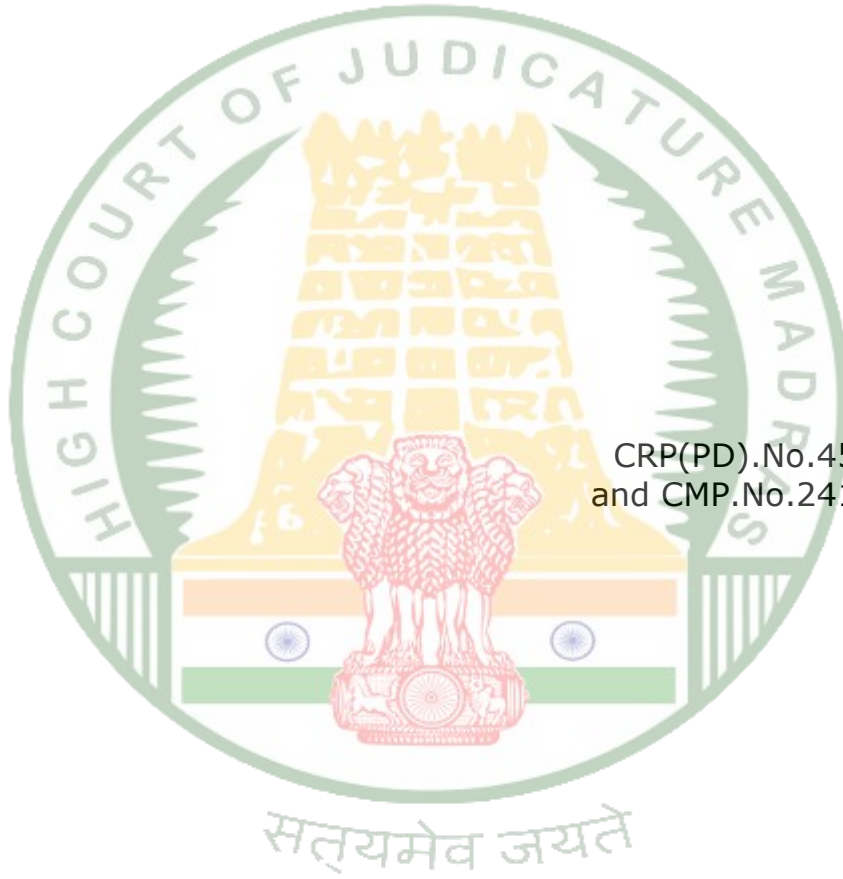
The District Munsif's Court,
Panruti.



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D. KRISHNAKUMAR J.,

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