

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.776 of 2015
& M.P.No.1 of 2015

1.Subbammal
2.Ruthsavithri
3.Anburaj

.. Petitioners

Vs.

1.Pottiammal (deceased)
2.Sowdamani

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.08.2014 made in I.A.No.1591 of 2013 in O.S.No.168 of 1993 on the file of the District Munsif Court, Thiruvallur.

For Petitioners : Mr.R.Karthikeyan

For R1 : Died

For R2 : Mr.M.S.Subramanian

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 13.08.2014 made in I.A.No.1591 of 2013 in O.S.No.168 of 1993 on the file of the District Munsif Court, Thiruvallur.

2.The petitioners are the defendants and respondents are the plaintiffs in O.S.No.168 of 1993 on the file of the District Munsif Court, Thiruvallur. Initially the first respondent filed the said suit against the petitioners for declaration and permanent injunction, restraining the petitioners from interfering with her peaceful possession and enjoyment of the suit property. After the death of the first respondent, 2nd respondent was impleaded as 2nd plaintiff vide order dated 01.03.2002 made in I.A.No.215 of 2002. The first petitioner filed written statement on 17.11.1993 and additional written statement on 18.07.2002. The second respondent filed I.A.No.1591 of 2013 under Order VI Rule 17 of C.P.C to amend the plaint to include the relief of declaration that settlement deed dated 19.09.2006 executed by the first petitioner in favour of the second petitioner is not binding on the second respondent. According to the second respondent, she came to know about the settlement only when she verified the Encumbrance certificate in the month of October 2013 on the file of Sub-Registrar, Perumbakkam. The first petitioner has executed the settlement deed in favour of the second petitioner which causes a cloud on the title of the second respondent. In the circumstances, the relief of declaration now sought for is necessary.

3.The third petitioner filed counter affidavit which was adopted by the petitioners 1 and 2, wherein they have denied all the allegations made by the second respondent. According to the petitioners, on the date of execution of settlement, the suit was not pending. The suit was dismissed for default on 31.07.2006. The first petitioner executed the settlement deed on 19.09.2006. The second respondent on 09.03.2007 filed I.A.No.388 of 2007 to condone the delay in filing the petition to restore the suit and the said application was allowed on 25.02.2011. Thereafter, the second respondent filed I.A.No.302 of 2011 to restore the suit and the said application was allowed on 24.08.2012 and suit was restored to file. The second respondent already filed O.S.No.31 of 2009 on the file of the District Munsif Court, Tiruvallore, claiming very same relief that settlement deed is null and void and prayed for dismissal of the application.

4.The learned Judge, considering the averments in the affidavit, counter affidavit and judgments relied on by the parties, allowed the application taking into consideration the suit is filed for declaration of title and first petitioner executed the settlement deed subsequent to the suit and whether the relief of declaration is necessary or not can be decided only after conclusion of trial.

5. Against the order dated 13.08.2014 made in I.A.No.1591 of 2013 in O.S.No.168 of 1993, the present Civil Revision Petition is filed by the petitioners.

6. Heard the learned counsel for the petitioners as well as the second respondent and perused the materials available on record.

7. The respondents have filed the suit for declaration and permanent injunction in the year 1993. The first petitioner executed settlement deed in favour of the second petitioner on 19.09.2006. The said settlement deed is subsequent to filing of the suit. According to the second respondent, the settlement deed was executed pending suit, whereas according to the petitioners, on the date of execution of settlement deed, the suit was not pending and the same was dismissed for default on 31.07.2006. This contention is without merits for the reason that the suit was restored to file on 24.08.2012. Once the suit is restored to file, it is deemed to be pending from the date of filing of the suit. In the counter filed by the petitioners in the application before the trial Court, they have stated that for the very same relief of declaration now sought for by amendment, the second respondent has filed O.S.No.31 of 2009 on

the file of District Munsif Court, Thiruvallur. But the petitioners have not filed the said plaint before the learned Judge as well as before this Court.

8. In the grounds of revision, the petitioners have stated that second respondent has mentioned about the settlement deed in the plaint in O.S.No.31 of 2009 filed by her and the present application is liable to be dismissed on the ground of delay. This Court on 05.01.2018, directed the counsel for the petitioners to produce the copy of the plaint in O.S.No.31 of 2009. The learned counsel appearing for the respondents filed typed set of papers enclosing copy of the plaint in O.S.No.31 of 2009. A perusal of the plaint shows that the second respondent has claimed relief of declaration, consequential injunction, permanent injunction and mandatory injunction. The said relief is with regard to different property under different title and they have not stated about the settlement deed in the averments in the plaint. In the circumstances, the contention of the petitioners have no merits.

9. Considering the fact that suit is for declaration of title of the respondents and the settlement deed is subsequent to filing of the

suit, the amendment sought for by the respondents will be necessary to decide the issue in the suit completely and to avoid multiplicity of proceedings. The learned Judge has considered all the above facts and allowed the application. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 13.08.2014 made in I.A.No.1591 of 2013 in O.S.No.168 of 1993.

10.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index :: Yes/No
Internet :: Yes/No

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12.01.2018

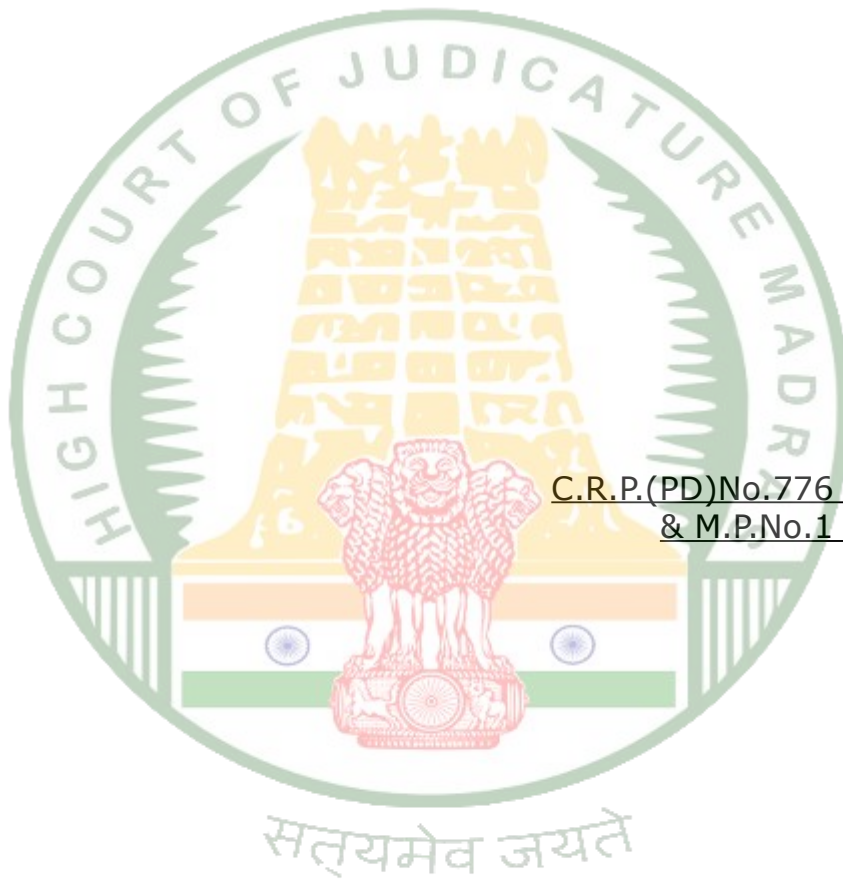
To

The District Munsif,
Thiruvallur.

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V.M.VELUMANI,J.

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