

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3096 of 2013
& C.M.P.No.1181 of 2018

Gummi Ifzur Rahman (deceased)

2.Amaajan

3.Saleema

4.Babu

5.Mannaa

6.Mohammad Bilal

.. Petitioners

(Petitioners 2 to 6 brought on
records as legal heirs of deceased
1st petitioner vide order of Court dated
07.06.2017 made in CMP.No.7634 of 2017
in C.R.P.(PD)No.3096 of 2013)

Vs.

T.Anwar

.. Respondent

Civil Revision Petition filed under Article 227 of the
Constitution of India, against the fair and decretal order dated
25.06.2013 made in I.A.No.276 of 2013 in O.S.No.50 of 2012 on
the file of the District Munsif Court, Gudiyatham, Vellore District.

For Petitioners : M/S.Aswini

For Respondent : Mr.P.K.Harinath Babu
for Mr.R.Karthikeyan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 25.06.2013 made in I.A.No.276 of 2013 in O.S.No.50 of 2012 on the file of the District Munsif Court, Gudiyatham, Vellore District.

2.The first petitioner is plaintiff and respondent is defendant in O.S.No.50 of 2012 on the file of the District Munsif Court, Gudiyatham, Vellore District. The first petitioner filed the said suit for permanent injunction against the respondent. The respondent filed written statement on 09.06.2012 and denied the title of the first petitioner. The respondent has also stated that necessary parties are not impleaded in the suit and suit is bad for non-joinder of necessary parties. The suit was posted for trial and at that time, the first petitioner filed present application I.A.No.276 of 2013 under Order XXIII Rule 3(b) and Section 151 C.P.C. for permission to withdraw the suit with liberty to institute a fresh suit on the very same cause of action against the respondent.

3.According to the first petitioner, the respondent has denied the first petitioner's right over the suit property and contended that

the suit is bad for non joinder of parties. In view of such stand taken by the respondent, first petitioner intends to file a comprehensive suit for declaration to impleading all the parties. A formal defect has crept in in the plaint and prayed for permission to withdraw the present suit with liberty to file a fresh suit on the same cause of action.

4.The respondent filed counter affidavit and contended that the suit was posted for trial on 03.09.2012 and from that date onwards, the first petitioner took adjournments. The respondent was present for all the hearings, but the first petitioner has not appeared to give evidence except on 11.12.2012. Due to non-appearance of the first petitioner, suit was dismissed for default on 23.01.2013. On application filed by the first petitioner in I.A.No.86 of 2013, the suit was restored to file on payment of costs. Again the first petitioner has started taking adjournments, he changed his counsel and has come out with the present application seeking liberty to file a fresh suit on the same cause of action with bald allegations and only to drag on the proceedings. There is no formal defects in the suit and prayed for dismissal of the application.

5.The learned Judge considering the averments made in the affidavit, counter affidavit and the fact that the first petitioner has taken number of adjournments, when the suit was posted for trial and once suit was dismissed for default, the first petitioner could have filed application immediately to include the relief of declaration and petition for impleading necessary parties, after filing written statement on 09.06.2012, dismissed the application.

6.Against the said order of dismissal dated 25.06.2013 made in I.A.No.276 of 2013 in O.S.No.50 of 2012, the present Civil Revision Petition is filed by the first petitioner/plaintiff.

7.During pendency of the Civil Revision Petition, the first petitioner died and his legal heirs were impleaded as petitioners 2 to 6 vide order of this Court dated 07.06.2017 made in C.M.P.No.7634 of 2017.

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

9. From the materials available on record and impugned order of the learned Judge, it is seen that the first petitioner has sought for permission to withdraw the present suit with liberty to file a fresh suit on the same cause of action on the ground that the respondent has denied the title of the first petitioner in the written statement and taken a stand that necessary parties are not impleaded in the suit and the suit is bad for non-joinder of necessary parties. The written statement was filed by the respondent on 09.06.2012, but the first petitioner has filed present application only after one year and after taking number of adjournments, when the suit was posted for trial in the list. Further, the first petitioner seeks to file a comprehensive suit to include the relief of declaration of title and implead all the necessary parties. The learned Judge has rejected the contention of the first petitioner and observed that the first petitioner could have filed applications for amendment and for impleading necessary parties and present application is filed belatedly. In the circumstances, there is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 25.06.2013.

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

08.03.2018

Index : Yes/No
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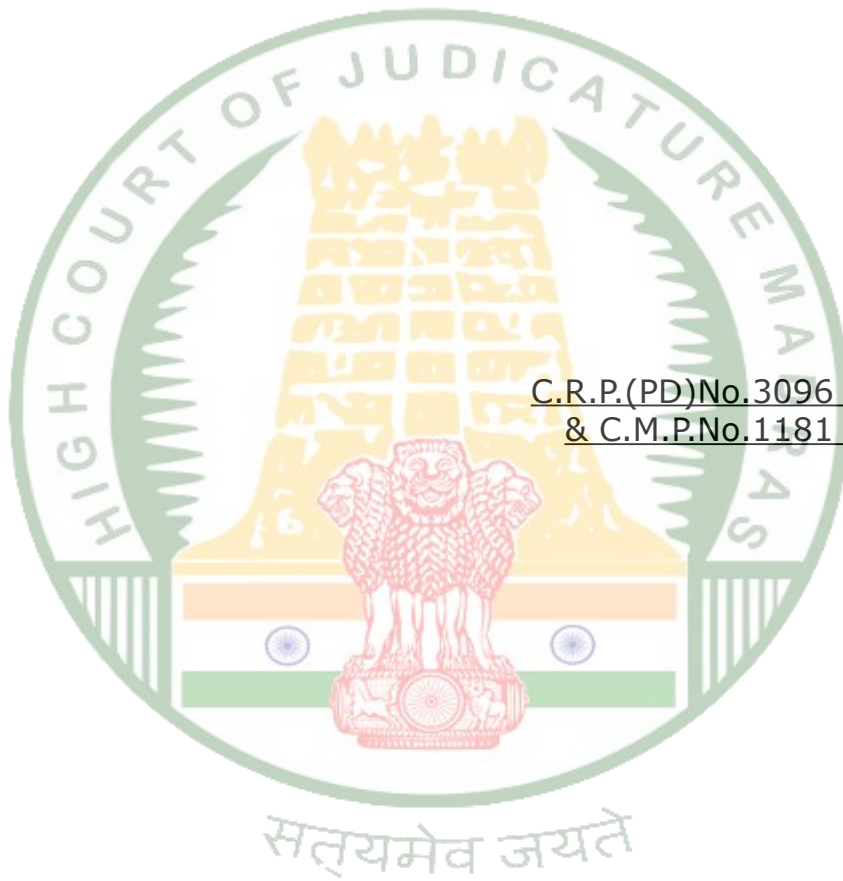
The District Munsif, Gudiyatham, Vellore District.



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V.M.VELUMANI, J.

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