

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(NPD).No.92 of 2016

Muthulakshmi

.. Petitioner

Vs.

Muthukumarapa @ Muthukumar

.. Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 26.11.2014 made in I.A.No.36 of 2013 in O.S.No.13 of 2008, on the file of the District Judge, Nagapattinam.

For Petitioner : Mr.R.Bharanidharan

For Respondent : Mr.S.Sounthar

ORDER

According to the revision petitioner, the revision petitioner has filed a suit in OS.No.13 of 2008 before the District Judge, Nagapattinam for partition and separate possession. In the aforesaid suit, the respondent has filed a written statement on 06.08.2008. The petitioner has filed an application in IA.No.34 of 2012 in O.S.No.13 of 2008 on 14.02.2012 to amend the averments in the plaint. The said application was allowed on 26.11.2014. Thereafter, the petitioner has filed the instant application in IA.No.36 of 2013 in O.S.No.13 of

2008 under Order XXIII Rule 1 and Section 151 of Code of Civil Procedure to withdraw the suit in OS.NO.13 of 2008 with liberty to file a fresh suit under the same cause of action.

2. The petitioner has contended in the said application, she has to amend the averments in the plaint, by stating that some of the properties stand in the name of the father and some of the properties stand in the name of the mother of the petitioner and some of the ancestral properties have been sold.

3. The Court below has considered the said application and permitted the petitioner to withdraw the suit but, has rejected the claim of the petitioner to file a fresh suit in the same cause of action. Challenging the same this Civil Revision Petition has been filed by the petitioner.

4. According to the learned counsel for the petitioner, the Court below has totally lost sight by considering one of the prayers ie., allowed to withdraw the suit but refused to grant permission to file a fresh suit in the same cause of action. Therefore, the order of the Court below is liable to be set aside.

5. However, it has been submitted by the learned counsel for the respondent that the petitioner has filed IA.No.34 of 2012 for amendment of the averments in the plaint and the said application was allowed. Therefore, the petitioner can very well proceed with the suit. It has been further submitted by the learned counsel for the respondent that the petitioner has not satisfied the requirement under Order XXIII Rule 1 of Code of Civil Procedure for withdrawal of the said suit and also for allowing the amendment application in the said suit.

6. In view of the submissions made on either side and in view of the fact that the learned counsel for the petitioner also fairly agrees that the petitioner will not prosecute the said application, but request the Court, liberty may be granted to file an application for amendment, if necessary at later stage. Hence, order of the Court below is liable to be set aside and to dispose the Civil Revision Petition that Revision petitioner is not pressing the I.A.No.34 of 2012 in the aforesaid suit with liberty to file amendment application.

7. Considering the aforesaid facts and the claim of the parties, this Court is inclined to set aside the order passed by the Court below in IA.No.36

of 2013. By the consent of the parties and in the interest of justice this Court pass the following orders:

1. The impugned order passed by the the District Judge, Nagapattinam in I.A.No.36 of 2013 in O.S.No.13 of 2008 is set aside and consequently the application in IA.No.36 of 2013 in O.S.No.13 of 2008 is dismissed.
2. Liberty is granted to the petitioner to file an amendment application, if necessary at the later stage.
8. With the above observations, this Civil Revision Petition is allowed.

No costs.

23.02.2018

dsa

Speaking/Non-Speaking order

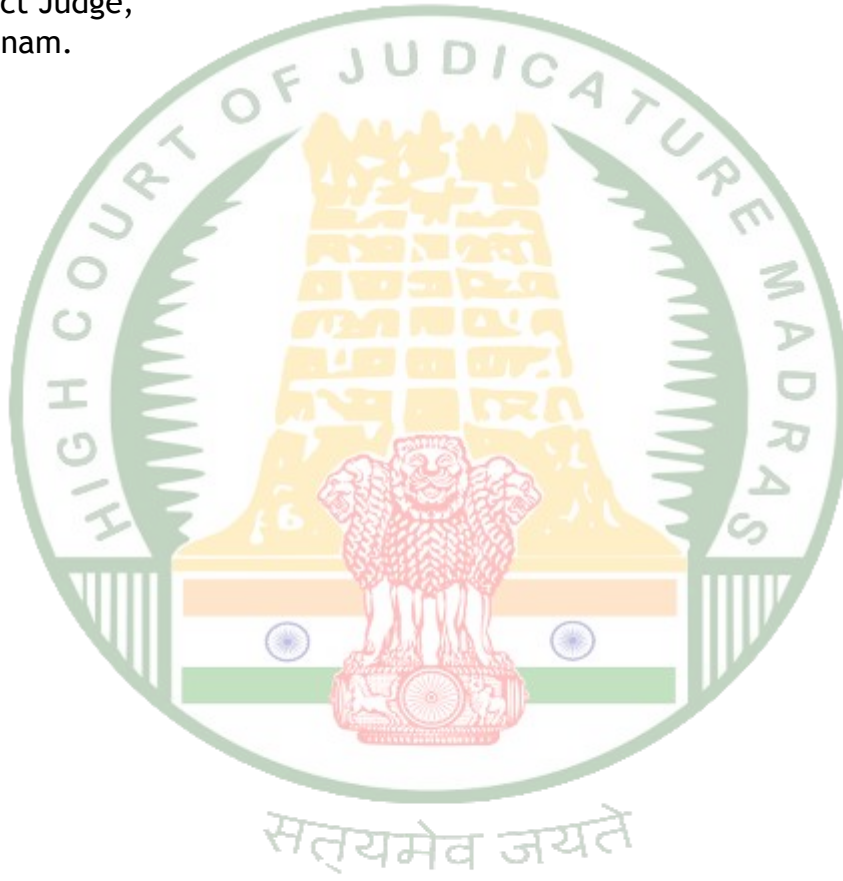
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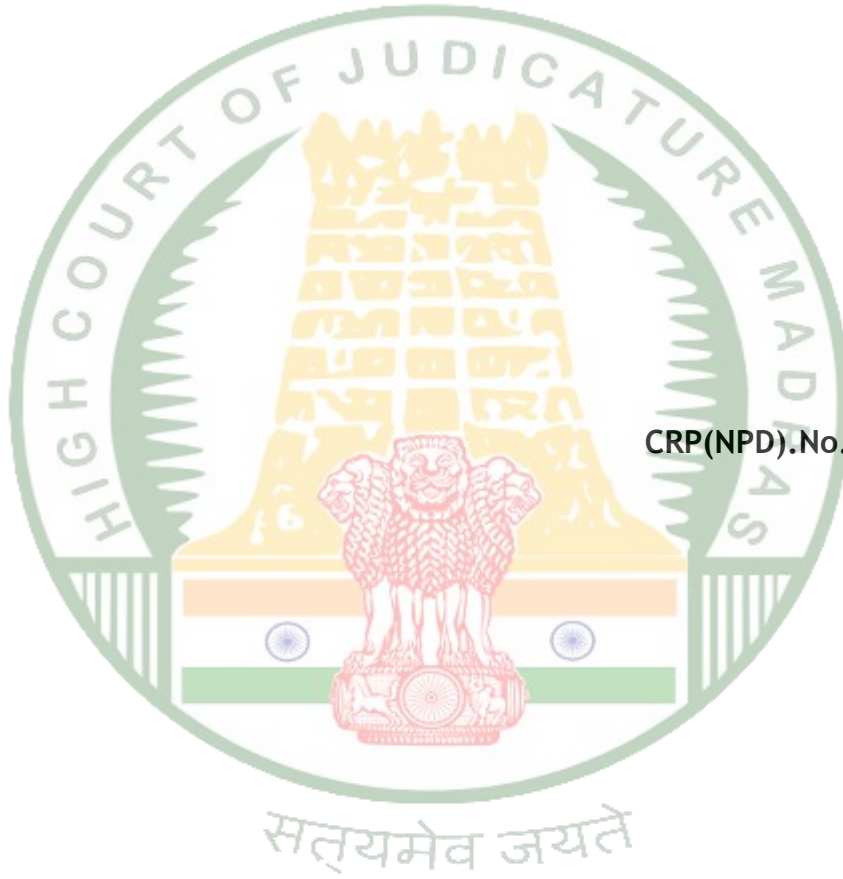
The District Judge,
Nagapattinam.



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D. KRISHNAKUMAR J.,

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