



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.02.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.122 of 2018

and

C.M.P. (MD) No.535 of 2018

WEB COPY

1.D.Saravanan
2.Murugan
3.Dhanushkodi

... Petitioners / Petitioners / Plaintiffs
vs.

1.P.Rajendran
2.Sathiyamoorthy
3.Balamurugan
4.Kaleeswari
5.Shanmugapriya
6.Periyasamy

... Respondents / Respondents /
Defendants

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 01.11.2017 passed in I.A.No.597 of 2017 in O.S.No.184 of 2007 on the file of the District Munsif Court, Nilakottai and to allow this Civil Revision Petition.

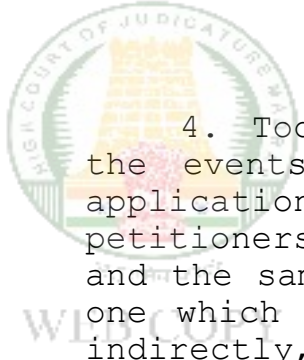
For Petitioners : Mr.C.Jeyaprakash

ORDER

Challenging the order passed by the learned District Munsif, Nilakottai in I.A.No.597 of 2017 in O.S.No.184 of 2007 dated 01.11.2017, the present civil revision petition came to be filed.

2. The facts of the case are that the petitioners herein, as plaintiffs, have instituted a suit in O.S.No.184 of 2007 seeking the relief of declaration and injunction against the respondents herein/defendants, with respect to the suit properties. It is the case of the petitioners/plaintiffs that they came to know about the Will of their father after the institution as well as commencement of trial and therefore, they had filed an interlocutory application in I.A.No.597 of 2017, seeking to withdraw the suit with liberty to file a fresh suit, so as to incorporate the exact factum of properties. The Court below, after hearing both the sides, has dismissed the petition and aggrieved thereby, the present petition came to be filed.

3. The respondents/defendants, before the Court below, by means of their counter, strongly opposed the said interlocutory application, since issues were already framed and trial has also been commenced. Only with an intention to cause damages to their rights, the petitioners/plaintiffs have come with this petition. Moreover, the respondents/defendants have put a specific question as to the so called Will was in whose possession till filing of the said interlocutory application.



4. Today, the learned Counsel for the petitioners, narrating the events that took place, would submit that their withdrawal application has been dismissed by the Court below, stating that the petitioners/plaintiffs have earlier filed an amendment application and the same was dismissed on merits. Therefore, on the ground that one which is not able to be achieved directly cannot be achieved indirectly, the said application came to be dismissed.

5. It is the specific contention of the learned Counsel for the petitioners that they have not filed any amendment application and what they have filed is only an impleading application in I.A.No.139 of 2015, which was dismissed by the Court below. The learned Judge, without any application of mind, has erroneously dismissed the present application for withdrawal and he prays for allowing the present revision petition.

6. Heard the learned Counsel for the petitioners and perused the documents placed on record. Notice to the respondents is dispensed with.

7. Perusal of the interlocutory application in I.A.No.139 of 2015 would show that the said I.A., was filed for impleading certain parties. The contention of the learned Counsel for the petitioners is that the trial Judge, having misconstrued the said I.A.No.139 of 2015 as an application for amendment, has dismissed the present withdrawal application. Since the very ground for the dismissal of the interlocutory application in I.A.No.597 of 2017 itself is disputed by the learned Counsel for the petitioners, this Court is of the view that the matter has to be remanded for fresh consideration.

8. In result, this Civil Revision Petition is allowed. The impugned order dated 01.11.2017, is set aside and the matter is remitted back to the learned District Munsif, Nilakottai for fresh consideration, who shall dispose of the interlocutory application in I.A.No.597 of 2017 within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

The District Munsif, Nilakottai.

+One cc to M/s.C.Jeyaprakash, Advocate, SR.No.47768

gk

RL/3C/2P/KK/SAR1/22/2/2018

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