



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

C.R.P. (MD) .Nos.987 & 988 of 2018 and
C.M.P. (MD) Nos.4325 & 4326 of 2018

C.R.P. (MD) No.987 of 2018

Veluthangam ... Petitioner/1st Respondent/
1st Defendant

Vs.

1. Ponmani ... Respondent/Petitioner/
3rd Defendant

2. Darmalingam ... Respondent/2nd Respondent/
2nd Defendant

3. Nadachi Thangam ... Respondent/3rd Respondent/
Plaintiff

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision petition and set aside the fair and decreetal order passed by the learned I Additional Subordinate Judge, Nagercoil, in I.A.No.193 of 2015 in O.S.No.105 of 2012, dated 03.11.2017.

C.R.P. (MD) No.988 of 2018

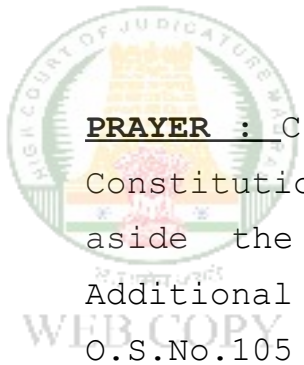
Veluthangam ... Petitioner/2nd Respondent/
1st Defendant

Vs.

1. Ponmani ... Respondent/Petitioner/
3rd Defendant

2. Darmalingam ... Respondent/3rd Respondent/
2nd Defendant

3. Nadachi Thangam ... Respondent/1st Respondent/
Plaintiff



PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision petition and set aside the fair and decreetal order passed by the learned I Additional Subordinate Judge, Nagercoil, in I.A.No.144 of 2017 in O.S.No.105 of 2012, dated 03.11.2017.

(in both petitions)

For Petitioner : Mr.N.Dilip Kumar

For Respondent : Mr.Meenakshi Sundaram,
No.1 for Mr.R.Murugan

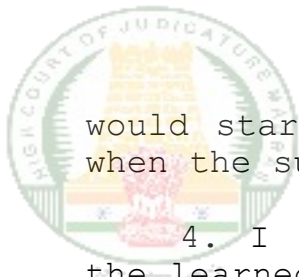
For R-2 & R-3 : No appearance.

COMMON ORDER

O.S.No.105 of 2012 is a suit for partition which was instituted by one Nadachi Thangam against her two brothers and younger sister.

2. During the pendency of the suit, the plaintiff filed a memo dated 23.09.2015 praying for withdrawal of the suit. The Court below did not pass any order thereon immediately. The memo was kept pending. The younger sister, namely, the third defendant upon coming into known about the proposal for withdrawal of the suit, filed I.A.No.193 of 2015 for transposing herself as plaintiff in the suit. The third defendant in her written statement supported the case of the plaintiff for partition. In fact the third defendant as well as the plaintiff were on the same page as regards claim for entitlement of their respective shares in the suit property. But then, the third respondent did not pay any Court fee. Now that she wanted to transpose herself as plaintiff, she filed I.A.No.144 of 2017 seeking extension of time for payment of Court fee. By order dated 03.11.2017 both Interlocutory applications were allowed. But the Court below also rejected the memo of withdrawal filed by the original plaintiff. Aggrieved by the orders dated 03.11.2017 allowing I.A.No.193 of 2015 and I.A.No.144 of 2017, the contesting defendant filed these two Civil Revision petitions.

3. The learned counsel for the Revision petitioner raised a technical contention. He pointed out that unless the original plaintiff was allowed to withdraw, the third defendant could not have been permitted to transpose herself as the plaintiff. In this regard, he placed reliance on the decision of the Kerala High Court reported in 2016 (4) K.L.J. 780. He also pointed out that Section 21 (1) of the Limitation Act 1963 will not apply to a case where the defendant is made as a plaintiff. In this case, the suit was instituted by the original plaintiff on 13.06.2012. The third defendant applied for transposing herself as plaintiff only on 06.10.2015. Therefore, the limitation for the transposed plaintiff



would start running only from the said date and not from the date when the suit was originally instituted.

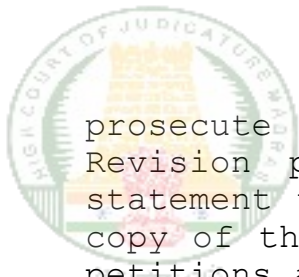
4. I am in full agreement with all the contentions raised by the learned counsel for the Revision petitioner. At this stage, the learned counsel for the respondents pointed out that this being the suit for partition, this Court should adopt an equitable approach to render substantial justice.

5. It is true that the order passed by the Court below rejecting the memo of withdrawal would certainly act an impediment for the transposition of the third defendant as plaintiff. In this regard, the learned counsel brought to the notice of this Court, a decision reported in 2018 (12) S.C.C. 584 (Anil Kumar Singh V. Vijay Pal Singh). The Honourable Supreme Court has specifically held that when the plaintiff files an application under Order 23 Rule 1 (1) of C.P.C., to withdraw the suit, whether in full or part, he is always at liberty to do so and in such case, the defendant has no right to raise any objection to such prayer being made by the plaintiff except to ask for payment of costs to him by the plaintiff.

6. Therefore, I am of the view that the Court below was clearly wrong in rejecting the memo of withdrawal filed by the plaintiff. I am exercising supervisory jurisdiction under Article 227 of the Constitution of India and the entire proceedings as a whole are before me. Therefore, I suo motu set aside the order dated 03.11.2017, rejecting the memo of withdrawal dated 23.09.2015 filed by the plaintiff. The suit is allowed to be withdrawn as far as the original plaintiff is concerned.

7. This Court cannot lose sight of the fact that two sisters are ranged against two brothers. Therefore, in the very nature of things, the original plaintiff cannot go out of the arena. She had also paid the Court fee for her share in the suit property. Therefore, the original plaintiff is transposed to the array of the defendants and the third defendant is transposed as the plaintiff. However, as rightly pointed out by the learned counsel for the Revision petitioner, the transposed plaintiff cannot claim the benefit of limitation from the date of institution of the original suit. The third defendant who has transposed herself as a plaintiff only by filing I.A.No.193 of 2015 on 06.10.2015. The limitation would start running for the transposed plaintiff from the said date. As regards extension of time for payment of Court fee, it is purely a discretionary order which does not call for any interference.

8. In this view of the matter and with clarification regarding limitation, the orders passed by the learned I Additional Subordinate Judge, Nagercoil, in I.A.No.193 of 2015 and I.A.No.144 of 2017, dated 03.11.2017 are sustained. The Civil Revision petitions stand dismissed, accordingly. It is further clarified that the third defendant who filed the written statement is entitled to



prosecute the suit on the strength of the original pleadings. The Revision petitioner is permitted to file an additional written statement within a period of four weeks from the date receipt of a copy of this order. No costs. Consequently, connected Miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The I Additional Subordinate Judge,
Nagercoil.

2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. **(2 copies)**

+1CC to Mr.N.Dilip Kumar, Advocate, SR.No.79854

+1CC to Mr.R.Murugan, Advocate, SR.No.79745

C.R.P.(MD).Nos.987 & 988 of 2018 and

C.M.P.(MD)Nos.4325 & 4326 of 2018

21.08.2018

PMU

ES/SV/SAR 2/03.10.2018/4P/6C