



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.09.2018
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP (MD) No.1521 of 2016 (NPD)
and
CMP (MD) No.7429 of 2016

Justus Daniel ... 2nd Petitioner/2nd Respondent/Petitioner
Vs.

1.C.Leela Bai ...Petitioner/Appellant/Respondent No.1

Sundara Bai (died)

2.C.Lalitha Bai

(Victor Daniel (died)

3.C.Belsi Rugmoni Bai

4.C.Prema Selva Bai

5.P.S.Geetha

6.P.S.Prabhar

7.P.S.Thilaha

8.P.S.Jawahar

9.Latha Veena Kumari @ Christy Latha

10.Ashy V.Daniel

11.Bino V.Daniel

12.Cino V.Daniel ... Respondents/Respondents/Respondents

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order and decretal order dated 23.02.2016 of the learned Subordinate Judge, Padmanabhapuram made in I.A No.121 of 2014 in CMA SR No.5056 of 2014.

For Petitioner : Mr.K.N.Thampi
For Respondents : Mr.M.P.Senthil for R1

**ORDER**

The first respondent herein filed O.S No.264 of 1999 on the file of the District Munsif Court, Padmanabhapuram seeking the relief of partition. The said suit was dismissed for default. To restore the same, she filed I.A No.146 of 2003. The same was also dismissed for default. Thereafter, she filed I.A No.220 of 2004 to restore the earlier I.A. This was also dismissed.

2.Questioning the dismissal of I.A No.220 of 2004, the first respondent filed CMA SR.5056 of 2014. There was a delay of 3541 days in filing the said CMA. To condone the said delay, the first respondent filed I.A No.121 of 2014. The learned Sub Judge, Padmanabhapuram while closing the said I.A No.121 of 2014, granted liberty to the first respondent/plaintiff to file a comprehensive suit to settle her substantial issues in respect of the suit claim. Aggrieved by the grant of such liberty, this civil revision petition has been filed.

3.Heard the learned counsel appearing for the revision petitioner as well as the learned counsel appearing for the respondents.

4.This Court is of the view that the question of granting such liberty does not arise. If the plaintiff is having a right in law, she is always at liberty to workout her rights in the manner known to law. If he is not having such a right, the court cannot confer one. In these circumstances, this Court is of the view that the grant of such liberty is absolutely superfluous. Therefore, the order impugned in this civil revision petition is set aside.

5.This civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Subordinate Judge, Padmanabhapuram.

+1CC to Mr.K.N.Thampi, Advocate, SR.No.84289

+1CC to Mr.M.P.Senthil, Advocate, SR.No.84463

+1CC to Mr.R.Joseph Thangaraj, Advocate, SR.No.84229

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