

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.10.2019

Coram:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(PD)No.2422 of 2014
and M.P.No.1 of 2014

1.T.Subramanian Reddy
2.Gopal

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Petitioners /
Defendant Nos.1 & 4

versus

1.Kuppusamy Reddy (Died)
2.Loganathan
3.Vasudevan
4.Kothandan
5.Gajalakshmi
6.Mohana
7.Kamalakannan

..

Respondents /
Plaintiffs

[Respondent Nos.2 to 4 and 7 are recorded as LR's of the deceased first respondent viz. Kuppusamy Reddy vide Court Order dated 25.09.2019 made in C.R.P.(PD)No.2422 of 2014 and as per memo dated 24.09.2019.]

8.Manoharan
9.Devendran

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Respondents /
Defendants 2 & 3

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order dated 07.08.2012 made in I.A.No.175 of 2012 and to restore I.A.No.326 of 2011 in O.S.No.32 of 2011 on the file of the Sub Court, Tiruvallur.

For Petitioner : Mr.T.P.Kathiravan
For Respondent No.1 : Died
For Respondent Nos.2 to 7 : Mr.R.Narendran
For Respondent No.8 : M/s.S.Priyanka
for Mr.K.Balaji
For Respondent No.9 : No Appearance

ORDER

Aggrieved over the order dated 07.08.2012 made in I.A.No.175 of 2012 in I.A.No.326 of 2011 in O.S.No.32 of 2011 passed by the learned Subordinate Judge, Tiruvallur, the petitioners, who are the defendants 1 and 4 in the above referred suit had preferred this Civil Revision Petition.

2. Before the trial Court, the respondents 1 to 7 / plaintiffs had filed a suit in O.S.No.32 of 2011, as against the petitioners and respondents 8 & 9 herein, for the relief of partition and separate possession.

3. During the pendency of trial proceedings, the petitioners had filed an Interim Application in I.A.No.326 of 2011 under Order VII Rule 11(a) of the Code of Civil Procedure and prayed to reject the plaint i.e. O.S.No.32 of 2011 as there was no cause of action. When the said application was posted for enquiry on 10.04.2012, there was no representation on behalf of the

petitioners and hence, the learned Subordinate Judge, Tiruvallur, by an order dated 10.04.2011, dismissed the application for non-prosecution. Subsequently, the petitioners have filed another application in I.A.No.175 of 2012 under Order 9 Rule 7 CPC, seeking to set aside the dismissal order and to restore the same on merits.

4. The learned Subordinate Judge, Tiruvallur, after affording an opportunity to the respondents, in its order dated 07.08.2012, dismissed the application filed by the petitioners. As per the impugned order, after filing the said application, the petitioners are not co-operated for enquiry despite repeated adjournments granted by the trial Court and hence, without any alternative, the learned Subordinate Judge, Tiruvallur, dismissed the application.

5. Being aggrieved over the same, the petitioners are before this Court with the present Civil Revision Petition.

6. Today when the petition is taken up for hearing, the learned counsel appearing for the petitioners would contend that, only because of the reason that the learned counsel for the petitioners has engaged in Madras High

Court, he could not represent on the date, on which, the dismissal order was passed. Further, he would contend that the petitioners are senior citizens, having right over the subject matter of the property.

7. On the other hand, the learned counsel appearing on behalf of the respondents 2 to 8 would contend that in the grounds of memorandum, the petitioners have not stated any specific reason in respect to the non-appearance before the trial Court. According to them, engaging in other Court is not a ground to set aside the dismissal order.

8. Heard the rival submissions made by the learned counsel appearing on either side.

9. Since the suit is filed for the relief of partition and separate possession, elaborate enquiry is necessary to determine the rights of the parties for disposing of the said suit. However, before the Court below, the petitioners had filed an application only to reject the plaint by saying as there was no cause of action and that has also been decided after hearing the arguments advanced by both sides.

10. Though the reason stated by the learned counsel for the petitioners is not having any valid ground to set aside the dismissal order, considering the fact that the petitioners have filed the said application, within a period of limitation and also for the reason that the petitioners being senior citizens, I am inclined to allow this petition after imposing some costs, which is payable by the petitioners to the respondents 2 to 7 (plaintiffs).

11. In view of the above discussion, the order dated 07.08.2012 made in I.A.No.175 of 2012 passed by the learned Subordinate Judge, Thiruvallur, is hereby set aside and the application in I.A.No.326 of 2011 in O.S.No.32 of 2011 on the file of the learned Subordinate Judge, Thiruvallur is restored. The learned Subordinate Judge, Thiruvallur, is directed to dispose of the application in I.A.No.326 of 2011 filed for the rejection of plaint, within a period of one month from the date of restoration of the application.

12. In the result, this Civil Revision Petition stands allowed, subject to the condition that the petitioners are directed to pay a sum of Rs.2,000/- each (totally Rs.12,000/-) to the respondents 2 to 7 (plaintiffs)

within a period of two weeks from the date of receipt of a copy of this order.

Consequently, connected Miscellaneous Petition is closed.

22.10.2019

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes

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To

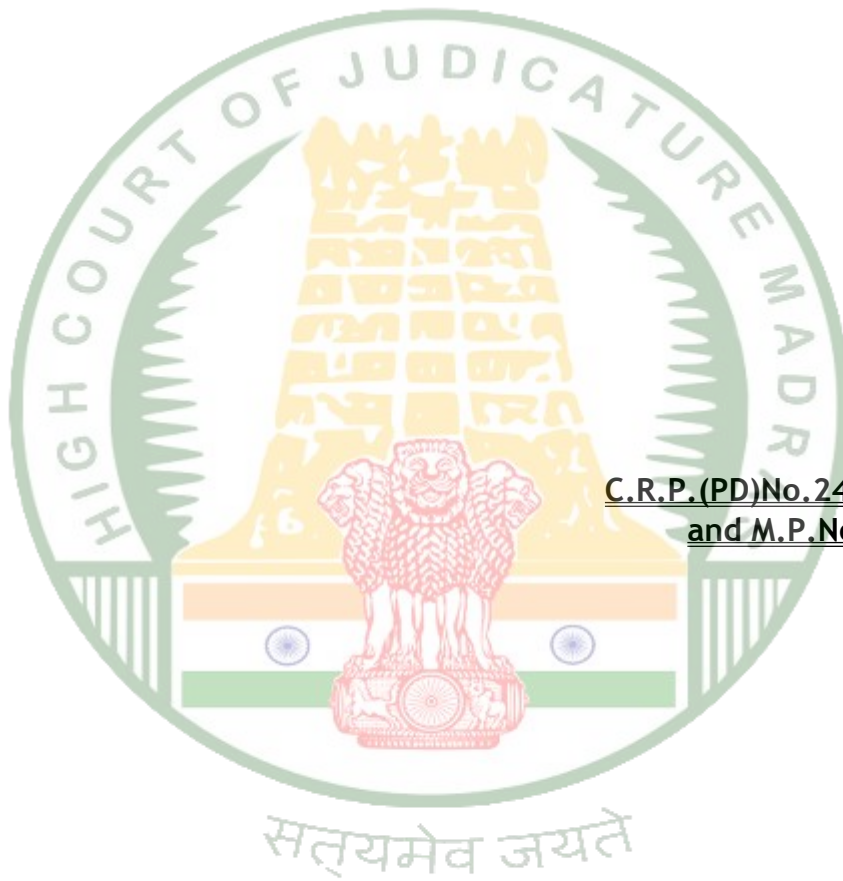
The Subordinate Judge, Tiruvallur.



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R.PONGIAPPAN, J.,

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