

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

CRP (PD) NO.2150 OF 2019ANDCMP NO.13866 OF 2019

S.R.Lingaraj

.. Petitioner

Versus

A.Selvaraj

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.193 of 2019 on the file of the V Additional District Court, Coimbatore.

For Petitioner : Mr.G.Karthikeyan
For Respondent : Mr.S.Karthikei Balan

ORDER

The petitioner is the defendant in the suit in O.S.No.193 of 2019. The petitioner along with his mother owned a larger extent of land. After partition, the mother sold a portion of the land allotted to her to the respondent herein. According to the petitioner, even though an extent of 3500 SFT was allotted to his mother, what was available was

only 3146 SFT, to be sold to the respondent herein and the respondent was also agreed for the same. But the defendant got a sale deed for an larger extent and in the guise of occupying his portion, he tried to encroach into the portion of the petitioner and that is why, he filed a suit for interim injunction restraining the respondent from interfering with his peaceful possession and enjoyment.

2. It is seen from the records that a counter suit was filed by the respondent in O.S.No.463 of 2011 for the very same relief. In the meanwhile, it is noted that Commissioners' were appointed in both the suits and sketches were filed in respect of the specific features of the suit properties. The respondent, at a later point of time, has withdrawn the suit in O.S.No.463 of 2011 and filed a comprehensive suit for declaration and injunction in O.S.No.193 of 2019. The petitioner has now filed the above Civil Revision Petition under Article 227 of the Constitution of India on the ground that it is an abuse of process of law, re-litigation and second suit is barred by limitation and therefore, the plaint should be struck off.

3. Admittedly, the mother of the petitioner only sold the property to the respondent. Therefore, the title to the extent of sale cannot be disputed without there being any proof for the same. The other point is that the cause of action for filing the comprehensive suit arose when written statement was filed by the petitioner in the suit filed by the respondent. The written statement came to be filed on 01.02.2011 and the present suit is filed on 25.03.2019. The limitation period is three years. But it is filed beyond the period of nine years which is barred by limitation and that it should be struck off. Secondly, when a litigation was initiated by the respondent on the very same subject matter, he is not entitled to withdraw the same to file a fresh suit without any liberty. Therefore, the learned counsel for the petitioner would contend that it is a clear abuse of process of law and it should be struck off.

4. Per contra, learned counsel for the respondent would contend that the cause of action between the parties in the previous suit and the subsequent suit filed by him are entirely different. The subsequent suit was filed on the cause of action when the petitioner's

men attempted to demolish the building constructed by him after getting due approval from the competent authority.

5. From the consideration of the materials, it is seen that the title of the respective parties is admitted by each other. Secondly, the withdrawal of the suit cannot be considered as suit decided on merits, which will lead the conclusion that it is re-litigation. Thirdly, the point of limitation is a mixed question of fact and law and it should be only decided by the Trial Court.

6. Considering all these points, I do not find any abuse of process of law in filing the subsequent suit. Hence, the prayer for striking off the plaint in O.S.No.193 of 2019 on the file of V Additional District Court, Coimbatore, cannot be entertained at this stage. However, a direction is issued to the V Additional District Court, Coimbatore, to consider the issue of limitation and the issue under Order II Rule 2 of Civil Procedure Code as preliminary issues, while trying the suit. A further direction is issued to dispose of both the suits as expeditiously as possible and it is open to both the Trial Courts to conduct either simultaneous trial or joint trial.

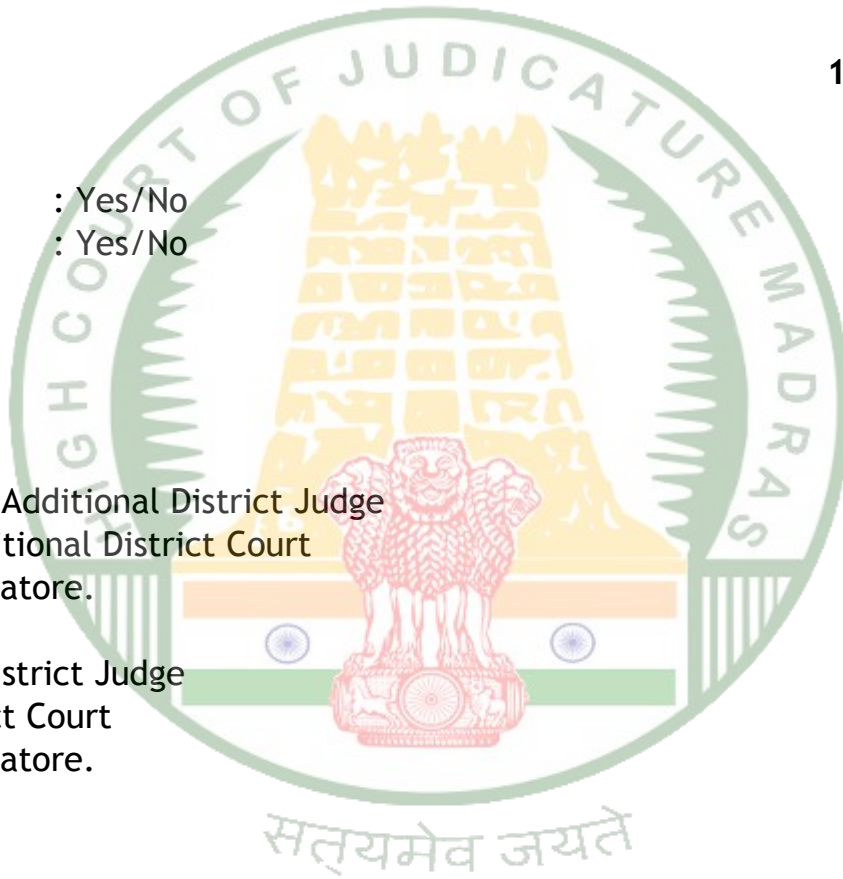
7. The Civil Revision Petition is disposed of with the above observations and directions. No costs. Consequently, connected civil miscellaneous petition is closed.

11.07.2019

Index : Yes/No
Internet : Yes/No
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To

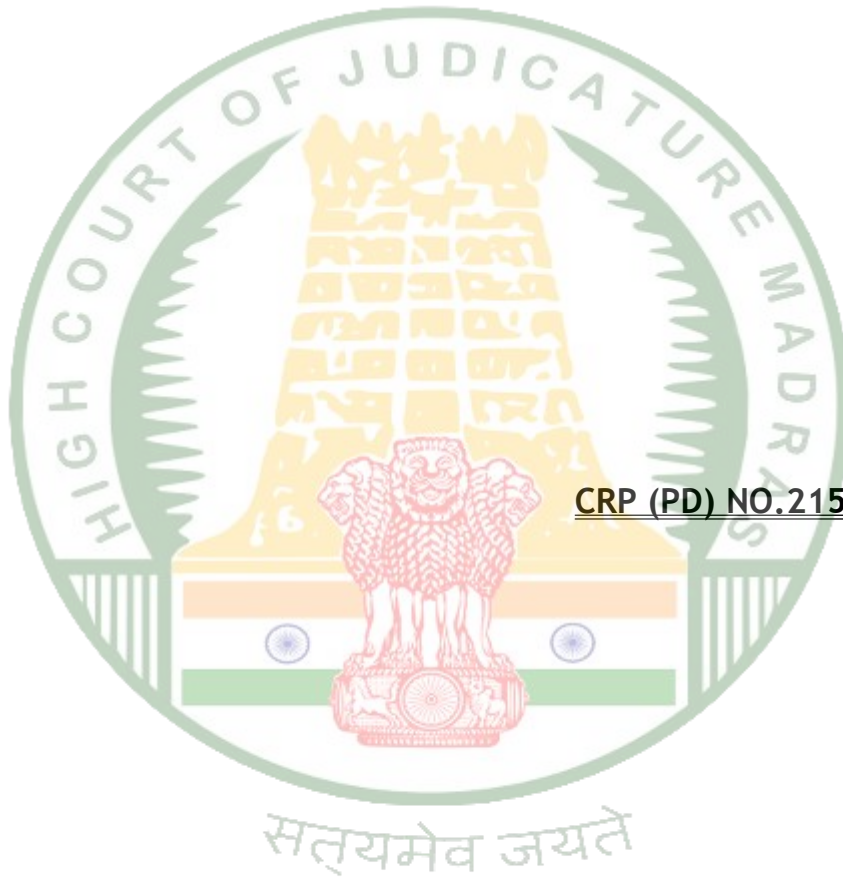
1. The V Additional District Judge
V Additional District Court
Coimbatore.
2. The District Judge
District Court
Coimbatore.



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M.GOVINDARAJ, J.

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