

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2019

PRONOUNCED ON : 20.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE **R.PONGIAPPAN**

C.R.P.PD.No.4937 of 2014
and M.P.No.1 of 2014

1. Arul Raj
2. Kannan

... Petitioners

Vs

1. Manickam
2. The State of TamilNadu
Rep by District Collector,
Salem.
3. The Revenue Divisional Officer,
Mettur, Salem District.
4. The Tahsildar,
Mettur Taluk,
Salem.

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 27.10.2014, in I.A.No.821 of 2014 in O.S.No.82 of 2009 on the file of the District Munsif Court, Mettur.

For Petitioners : Mr.V.Sekar

For Respondents

For R1 : Mr.R.Subramanian

For R2 to R4 : No appearance

ORDER

Aggrieved over the order dated 27.10.2014, passed in I.A.No.821 of 2014 in O.S.No.82 of 2009 on the file of the learned District Munsif, Mettur, the petitioners, who are the plaintiffs in the said suit filed this Civil Revision Petition.

2. The petitioners herein are the plaintiffs in O.S.No. 82 of 2009 on the file of the learned District Munsif, Mettur and they filed the said suit as against the respondents herein for the relief of permanent injunction restraining the first respondent and his men in interfering with the plaintiffs' peaceful possession and enjoyment of the suit property, further they prayed for the relief of direction to direct the third respondent to legally dispose off the petition dated 19.01.2009, presented by the father of the petitioners within the stipulated time by way of mandatory injunction. Apart from those reliefs, they also prayed for the cost.

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3. During the pendency of the suit on 25.06.2014, the petitioners filed an application under Order 23 Rule 1 and Section 151 of C.P.C., in I.A.No.821 of 2014, in which, they prayed to permit them to withdraw the suit at present with liberty to file a fresh suit on the

same cause of action. The learned District Munsif, Mettur, after affording opportunities to the respondents/defendants, dismissed the said application filed by the petitioners. Aggrieved over the said order dated 27.10.2014, the petitioners/plaintiffs filed this present Civil Revision Petition.

4. The learned counsel appearing for the petitioners would contend that in earlier the father of the petitioners presented a petition before the Revenue Authorities for the purpose of establishing the dispute existed between the father of the petitioners and the first respondent. The result of the petition which presented before the Revenue Authorities was not intimated either to the petitioners nor to their father. As of now, the father of the petitioners no more. Hence, the petitioners decided to present a fresh petition, before the Revenue Authorities, assuming that if the said petition is negated as against them, it is necessary to file a fresh suit for which, the liberty is necessary for filing the fresh suit based on the same cause of action.

5. Before the trial Court, tesisting the claim made by the petitioners, the first respondent in this Civil Revision Petition, being the first defendant in the said suit, filed a counter by denying the averments

made in the affidavit filed by the petitioners in support of the application. The learned counsel appearing on behalf of the first respondent would contend that the father of the petitioners is not having any right over the suit property. Further at the time of filing the suit, the petitioners did not enclose any document for proving his possession. As of now, no application is pending before the Revenue Authorities for deciding the right of the petitioners in the suit schedule property. Only in the said circumstances, when the suit was posted for both side arguments, the petitioners/plaintiffs have presented the said application. According to the first respondent, the order passed by the trial Court i.e., non granting of liberty is correct.

6. Submissions made by the learned counsel appearing on either side are considered.

7. Now on going through the averments made in the plaint filed by the petitioners and the averments made in the written statement filed by the first respondent, both will reveal the fact that the petitioners and the first respondent are claiming the right over the suit schedule property, for which, the father of the petitioners presented a petition before the Revenue Authorities for issuing patta. The result of the said petition is not known to the petitioners. Only in the said

circumstances, they have approached the Court below to withdraw their suit, apprehending that if the Revenue Authorities may pass orders in adverse against them.

8. In this connection, it would be appropriate to see the relevant Section 14 of the Patta Pass Book Act, with the factual aspects presented by the petitioners herein, before the trial Court.

"14. Bar of suits.- No suit shall lie against the Government or any officer of the Government in respect of a claim in have an entry made in any patta pass book that is maintained under this Act or to have any such entry omitted or amended:

Therefore, as per the Section 14 of the Patta Pass Book Act, there will be a bar in instituting a suit as against the Revenue Authorities in respect of the issuance of patta. If really the Revenue Authorities refused to pass orders in favour of the petitioners, the only remedy available to them is to approach this Court by way of filing Writ Petition. In stead of that, that petitioners thought that they are entitled to file a suit and claimed liberty to file fresh suit with the same cause of action. Since there is no limitation for filing the Writ Petition, the apprehension of the petitioners is not at all necessary for them.

9. The learned counsel appearing for the petitioners relied upon the judgement reported in **2014 (4) LW 713** in the case of **Balasundara Achari Vs. Shanmugam & another**, wherein this Court held as follows :-

"6.In this case, the petitioner has filed the suit originally for bare injunction and thereafter, amended the plaint by seeking relief of declaration and consequential injunction. No doubt, the petitioner has filed the application seeking permission to withdraw the suit with liberty to file fresh suit after examination of P.W.1 in chief and cross. But, at the same time, it is seen from the affidavit filed in support of the application that the petitioner being 75 years old person and also illiterate, has not given the correct details to his counsel for drafting the pleadings, more particularly, with regard to the measurement of the suit property and also the nature of enjoyment and the length and breadth of the suit survey number. Already, an amendment petition was filed and allowed whereby the relief of declaration was included. Therefore, instead of filing one more amendment petition, the petitioner thought fit to withdraw the suit and file a fresh one by narrating all the material facts and details. In my considered view, granting such permission is not going to prejudice the other side in view of the fact that the petitioner is seeking only the relief of declaration and injunction in respect of the suit property."

Applying the said principal in the case in hand, in the case placed before this Court, the petitioners have not stated anything about the proposal for filing a suit for declaration. Only after having apprehension over the order which has to be passed in future occasion, they wanted to file fresh suit. Hence, the said principle decided in the above case is not applicable to the facts of the present case. Therefore, for the reasons stated above, I am of the opinion that the intervention of this Court is not necessary in the order passed by the learned District Munsif, Mettur.

10. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

20.09.2019

Index :Yes/No

Internet :Yes/No

Speaking order/Non-speaking order

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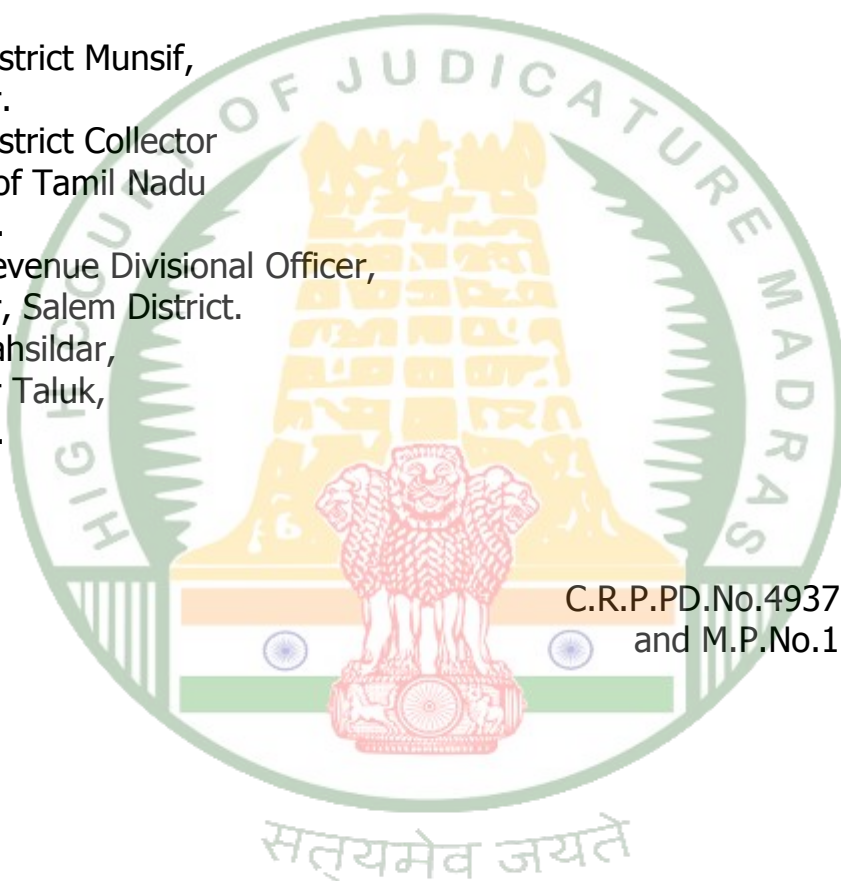
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R.PONGIAPPAN, J

rts

To

1. The District Munsif,
Mettur.
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State of Tamil Nadu
Salem.
3. The Revenue Divisional Officer,
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