



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2019

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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.R.P (MD) No.1088 of 2019

and

C.M.P (MD) No.5919 of 2019

Gomathi

.. Petitioner / Petitioner /
Plaintiff

Vs.

Senthur @ Senthurpandi Yadav (died)

1.Murugan @ Balakrishnan

2.Seethalakshmi

3.Lakshmi

4.Janakiammal

.. Respondents/ Respondents /
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 03.04.2019 made in I.A.No.24 of 2019 in O.S.No.61 of 2013 on the file of the learned District Munsif, Mudukulathur. (Renumbered as O.S.No.19 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Kadaladi.)

For petitioner : Mr.S.Gokul Raj

ORDER

The petitioner is the plaintiff in O.S.No.61 of 2013 pending on the file of the learned District Munsif, Mudhukulathur. This revision is directed by the petitioner against the order passed in I.A.No.24 of 2019 in O.S.No.61 of 2013.

2. In fact, before the trial Court, the petitioner filed a suit and seeking the relief of partition. Now, the suit is pending for the examination of plaintiff side evidence. In the said circumstances, the petitioner filed an interlocutory application before the trial Court in I.A.No.24 of 2019 and seeking the relief to withdraw the suit with liberty to file a fresh suit after



including some of the purchasers and some of the properties, which were left out at the time of filing the suit.

3. The learned District Munsif, Mudhukulathur, by considering the reason that the petition filed by the petitioner is not having any merits as required under Order 23 Rule 1 and 3 of C.P.C., dismissed the application, against which the petitioner is before this Court with this revision petition.

4. The learned counsel appearing for the petitioner would contend that at the time of filing the suit, some of the properties, which are also the joint family properties, are not included in the suit. Further, he would contend that in the available properties, some of the properties were sold away to various persons. So, only for adding the remaining properties and for adding the subsequent purchasers, the petitioner has filed the interlocutory application to withdraw the suit.

5. On going through the order passed by the learned District Munsif, Mudhukulathur, it is made clear that there is a provision available for amending the plaint by adding the necessary parties in the suit. Since the above remedy is available, it is not necessary for the petitioner to withdraw the suit. It is true, if suppose, some of the properties are left out from including the suit, there is a provision under Order 6 Rule 17 C.P.C., for adding the said properties in the original suit, which was filed in the year 2013. Further, under the same provision, the petitioner is having the right to file an application to amend the pleadings, which are all necessary for adding the subsequent purchasers. If the value of the property exceeds the pecuniary limit, the suit now pending before the learned District Munsif has automatically to be transferred to the forum, which is having the pecuniary jurisdiction. In this regard no explanation is offered on the side of the petitioner for non-filing of amendment application and impleading application. Since the suit is filed in the year of 2013, I am of the considered opinion that it is not necessary to grant permission to file a fresh suit on the same cause of action. In otherwise, the order passed by the trial Judge is reasonable and acceptable.

6. Hence, for the reasons stated above, this Civil Revision Petition is dismissed. No Costs. However, the petitioner is permitted to file necessary applications before the trial Court to work out his remedy in the manner known to law. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //



To

1. The District Munsif,
Mudhukulathur.

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

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-74534[F] dated 10/07/2019)

**ORDER MADE IN
C.R.P (MD) No.1088 of 2019
10.07.2019**

AE/ (26.07.2019) 3P 5C