



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) .No.1100 of 2019 (PD)

and

C.M.P. (MD) .No.5984 of 2019

1.Palaniappan

2.Alagammai

... Petitioners/
Petitioners/Appellants

Vs.

1.Pitchappan

2.Parvathy

3.The Municipality,
Karaikudi,
rep. by its Commissioner,
Karaikudi Municipality,
Karaikudi Taluk,
Sivagangai District.

... Respondents /
Respondents/Respondents

PRAYER:- Civil Miscellaneous Petitions filed under Article 227 of the Constitution of India, against the order dated 07.02.2019 passed in I.A.No.6 of 2018 in A.S.No.8 of 2016 by the Subordinate Court, Devakottai.

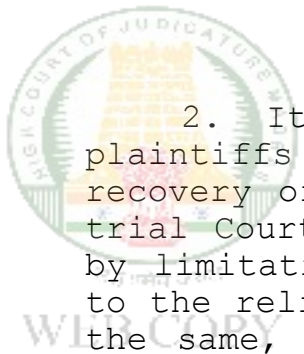
For petitioner : Mr.S.P.Maharajan

For 1st and 2nd respondents : Mr.R.Gandhi

For 3rd respondent : No appearance

ORDER

This Civil Revision Petition has been filed by the petitioners against the order dated 07.02.2019 passed in I.A.No.6 of 2018 in A.S.No.8 of 2016, whereby and whereunder the Court below has dismissed the petition filed by the petitioners/appellants seeking to withdraw the suit with permission to file a fresh suit on the same cause of action.



2. It is seen that the petitioners/appellants herein as plaintiffs have filed the suit in O.S.No.39 of 2007 for declaration, recovery of possession and mandatory injunction. After trial, the trial Court has dismissed the suit holding that the suit is barred by limitation and that the petitioners/plaintiffs are not entitled to the reliefs sought for in the suit even on merits. Aggrieved by the same, the petitioners/plaintiffs have filed A.S.No.8 of 2016. During the pendency of the appeal for argument, the petitioners/appellants have filed I.A.No.6 of 2018 seeking permission of the Court to withdraw the suit with liberty to file a fresh suit on the same cause of action. The first appellate Court, after hearing both sides, dismissed the said petition. Aggrieved by the same, the petitioners/appellants have filed this revision petition.

3. Heard the learned counsel for both sides and perused the records carefully.

4. The main ground on which the petitioners/appellants has filed the petition for withdrawal of the suit with permission to file a fresh suit on the same cause of action is that the petitioners recently came to know that they have omitted to specifically state survey number in the plaint and the survey No.243 has been erroneously subdivided into S.Nos.243/2 and 243/2B. Admittedly, the petitioners/appellants did not aver the survey number of the suit schedule property in the plaint. However, there is no dispute with regard to the description of the suit property. After full trial, the suit has been dismissed by the trial Court not only on merits but also on the ground of that the suit is barred by limitation. In the appeal, it is the stand of the petitioners/appellants that the suit is not barred by limitation. When that be so, the reliefs sought for by the petitioners/appellants cannot be granted.

5. It is seen that the appeal suit has been filed after a delay of 4 years and after two years, the petition for withdrawal of the suit has been filed. As rightly held by the Court below, the intention of the petitioners/appellants is only to drag on the matter one way or the other and therefore, the first appellate Court has dismissed the petition filed by the petitioners on the said ground also. This Court does not find any reason to interfere with the order passed by the first appellate Court.

6. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(AD-I)

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To

1.The Subordinate Judge,
Devakottai.

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

+1 CC to M/s.R. GANDHI, Advocate (SR-83725[F] dated 28/08/2019)

C.R.P (MD) .No.1100 of 2019 (PD)
26.08.2019

gcg

JM/25.09.2019/3P/5C