

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 2494 of 2018

and

C.M.P.No. 15249 of 2018

Chinnammal

...Petitioner/Plaintiff

Vs.

1.Sadhasivam

2.Selvakumar

3.Sibidevan

4.A.S.Murugan

5.K.Vivekanandan

6.Sundaramurthy

7.Nallammal

8.S.Pushpavathi

...Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the Subordinate Judge's Court at Bhavani, dated 27.02.2018 in I.A.No.17 of 2018 in O.S.No.134 of 2012.

For Petitioner : Mr. P.Valliappan

For Respondents : Mrs.Zeenath Begum for R1 to R4
R5 to R8 - No Appearance

O R D E R

The plaintiff in O.S.No.134 of 2012 has come up with this revision, challenging the order of the Trial Court made in I.A.No. 17 of 2018, an application for leave to withdraw the suit with liberty to institute a fresh suit on the same cause of action.

2. The plaintiff sued for partition contending that the suit properties were allotted to his father Marappa Gounder under a deed of partition dated 12.12.1971 and after the death of Marappa Gounder, he along with the first defendant is entitled to half share in suit Items 1 to 5. Since Marappa Gounder and defendants 5 and 6 are the co-owners of the Items 6

of the suit properties, the plaintiff would claim that he would be entitled 3/16th share in the 6th item.

3. The suit is being resisted by the defendants contending that Marappa Gounder has executed various settlement deeds even during his life time and therefore, the suit for partition is not maintainable. The defendants also contended that those documents are valid and as such plaintiff cannot claim partition. It is also pointed out that an earlier suit in O.S.No.703 of 2004 regarding the very same properties was settled between the parties. Though the plaintiff was not a party to the said suit, the said decree will bind him. The evidence was recorded in the suit and when the suit was posted for arguments, the plaintiff came out with the present application under Order 23 Rule 3 of C.P.C seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action in respect of all the suit properties.

4. In the application for withdrawal, the plaintiff had stated that he needs permission to withdraw, since all the properties belonging to the family have not been included in the present suit. The prayer in the affidavit filed in support of the application is that the plaintiff seeks to impugn certain documents which have been projected by the defendants. In another portion of the affidavit, it is stated that he needs to institute the suit in respect of the properties of the family claiming his share but he has not chosen to specify as to what are the properties that were omitted to be included in the present suit.

5. The Trial Court, upon a consideration of the requirement of Order 23 Rule 1(3) rejected the application pointing out that the plaintiff has not made out a cause for grant of permission to institute a fresh suit on the same cause of action. Order 23 Rule 1(3) of C.P.C enables the plaintiff to withdraw with liberty to file a fresh case, if he is able to satisfy the Court that the suit must fail for some formal defect and there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or for portion of the claim. A perusal the affidavit filed in support of the application before the Trial Court would show that the plaintiff has miserably failed to satisfy the above requirements of law.

Though the counsel for the petitioner would make a serious attempt to project the case of non-inclusion of certain properties which necessitated to application, the affidavit filed in support of the application before the Trial Court does not clearly say so. The details of the properties that have been omitted to be included have also not been set out in the affidavit. Unless the Court is satisfied about the existence

of the grounds, it cannot grant leave under Order 23 Rule 1(3) of C.P.C. None of the requirements of Order 23 Rule 1(3) have been specified by the petitioner. The affidavit filed in support of this application is vague and it does not merit acceptance. I therefore, do not see any ground to interfere with the order of the Trial Court. This civil revision petition fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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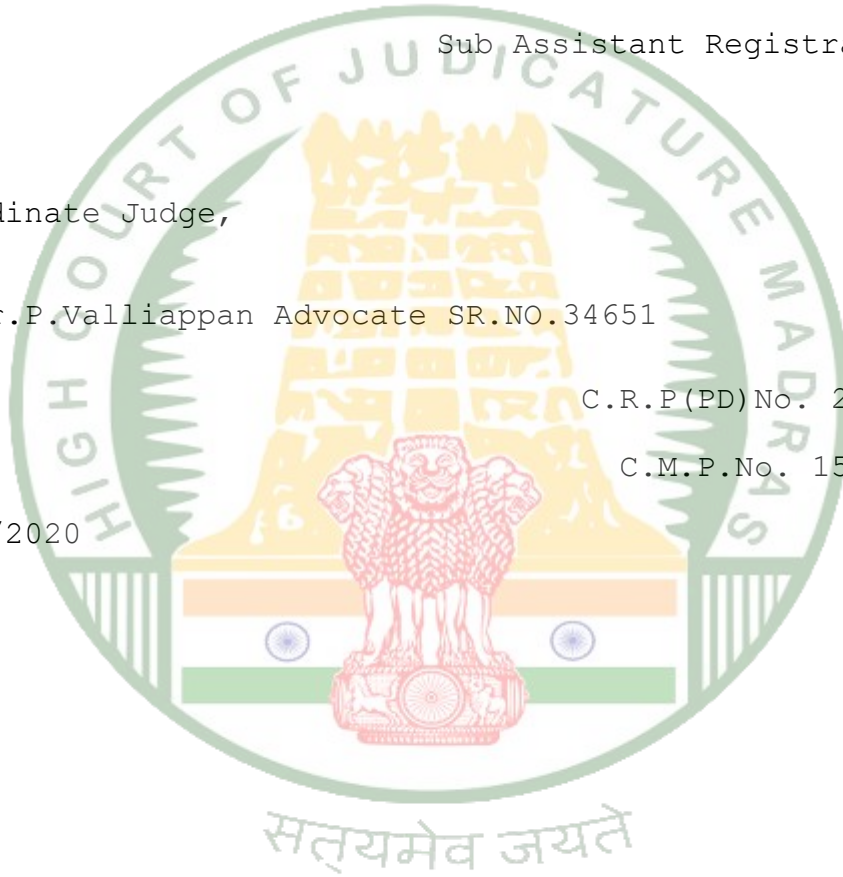
To:

The Subordinate Judge,
Bhavani.

+1cc to Mr.P.Valliappan Advocate SR.NO.34651

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and
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SR CO
SDR 16/12/2020



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