

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD)No.2838 of 2018

C.Munikrishnan

...Petitioner/Plaintiff

Vs.

1.The Thasildhar,
Taluk Office, Gudiyatham.

2.The District Collector,
Collectorate Office, Vellore.

3.C.Devaraj

...Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order dated 30.01.2018 made in I.A.No.31 of 2018 in O.S.No.209 of 2012 on the file of the District Munsif Court, Gudiyatham, Vellore District.

For Petitioner : Mr.T.Dhanyakumar

For Respondents : Mr.Y.T.Aravind Gosh for R1 & R2
Additional Government Pleader

: Mr.V.Samuthira Vijayan for R3

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 30.01.2018 made in I.A.No.31 of 2018 in O.S.No.209 of 2012 on the file of the District Munsif Court, Gudiyatham, Vellore District.

2. The plaintiff in the suit in O.S.No.209 of 2012 claiming to be aggrieved by the order made in I.A.No.31 of 2018 which was filed under Order 23 Rule 1(3) of the Code of Civil Procedure, seeking permission to withdraw the suit and file a fresh suit on the same cause of action, has filed the present Civil Revision Petition. The suit was filed by the plaintiff seeking declaration of his joint ownership of the suit property along with the third defendant, mandatory injunction directing the first defendant to include the name of the plaintiff in patta No.544 along with the name of the third defendant.

3. The suit is being defended by the third defendant contending that the suit property is no longer in existence and the suit survey viz., 346/3A has been sub divided into as 346/3A1 and 346/3A2 and therefore, the suit is itself, is not maintainable. It is not in dispute that the plaintiff has already filed a suit for partition of this property and the same is also pending. While so, the plaintiff filed I.A.No.31 of 2018 seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action.

4. The learned Trial Judge upon a consideration of the facts and circumstances concluded that the plaintiff can be allowed to withdraw the suit and file a fresh suit but not on the same cause of action. Therefore, the application was partially allowed permitting the plaintiff to withdraw the suit and file a fresh suit on a new cause of action. As already pointed out the suit for partition filed by the plaintiff with reference to the same property is pending. The cause of action for the partition suit would essentially be different from the present suit which is one for declaration of title. So, the partition suit will not be affected by any orders passed in the suit for declaration. Hence, I do not see any reason to interfere with the

order of the Trial Court.

R.SUBRAMANIAN, J.

dna

5. Hence, this Civil Revision Petition fails and it is accordingly dismissed. No costs.

25-08-2020

Internet : Yes
Index : No
dna

To

1.The District Munsif Court, Gudiyatham,
Vellore District.

2.The Thasildhar,
Taluk Office, Gudiyatham.

3.The District Collector,
Collectorate Office, Vellore.



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