

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (NPD) No.2841 of 2018

1. N. Iyyaswamy

2. J.Sivaraj

.. Petitioners

Vs.

1. B.Padmini @ Gowri

2. Rani @ N.B.Saroja

3. N.B.Kannamma

4. N.B.Manogaran

.. Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and final order dated 26.03.2018 passed by the Learned District Munsiff, Kotagiri, The Nilgiris in I.A.No.386 of 2017 in O.S.No.43 of 2017.

For Petitioners : Mr.Sriram
for M/s.L.Mouli

For Respondents : Mr.K.V.Sajeev Kumar

ORDER

This matter is taken up for hearing through Video-Conferencing.

The plaintiffs in OS No.43 of 2017 aggrieved by the order of the Trial Court partly allowing their application in IA No.386 of 2017 filed under Order 23 Rule 1 of the Code of Civil Procedure, have come up on this Civil Revision Petition.

2. The suit was instituted by the plaintiffs in the Court by the District Munsif at Kotagiri, seeking permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property. The suit property is shown to be situate at Jagathala Village of Kotagiri Taluk. Upon service of notice in the suit, the defendants filed a memo stating that the village namely Jagathala is situate within the

jurisdiction of the District Munsif's Court, Coonoor and not the District Munsif's Court, Kotagiri. Upon receipt of the Memo, the plaintiffs came up with an Application in IA No.386 of 2017 seeking leave to withdraw the suit with liberty to file a fresh suit on the same cause of action in the proper Court.

3. This application was resisted by the defendants contending that if the District Munsif, Kotagiri had no territorial jurisdiction to entertain the suit. It will also not have jurisdiction to grant permission to file a fresh suit. The learned District Munsif allowed the application in part permitting the plaintiff to withdraw the suit and denying leave to institute a fresh suit. Aggrieved the plaintiffs have come up with this Civil Revision Petition.

4. I have heard Mr.Sriram, learned counsel appearing for M/s.L.Mouli, for the petitioners and Mr.K.V.Sanjeev Kumar, learned counsel appearing for the respondents.

5. Needless to point out that the order of the learned District Munsif

is far from satisfactory. This Court and the Hon'ble Supreme Court have repeatedly point out that while dealing with an Application under Order 23 Rule 1 of the Code of Civil Procedure, the Court has to either allow it in toto or dismiss it. There cannot be a partial allowing of the application, thereby dismissing the suit as withdrawn and not granting liberty to the plaintiff to file a fresh suit. The order of the learned District Munsif is therefore liable to be set aside and it is accordingly set aside. Things do not terminate there. Admittedly, the District Munsif Court, Kotagiri has no territorial jurisdiction to entertain the suit. The suit should have been actually filed at the District Munsif's Court, Coonoor. The next question that would arise is what is the duty of the Court which realises that it has no jurisdiction to entertain the suit. Order 7 Rule 10 of the Code of Civil Procedure provides for such an eventuality.

Order 7 Rule 10 of the Code of Civil Procedure, reads as follows.

10. Return of the Plaintiff.-

(1) Subject to the provisions of rule 10A, the plaintiff shall at any stage of the suit be returned to

be presented to the Court in which the suit should have been instituted/

Explanation: *For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule.*

(2) Procedure on returning.- *On returning a plaint, the Judge shall endorse thereon the date of presentation and return, the name of the party presenting it and a brief statement of reason or returning it.*

The above provision would undoubtedly apply to the case on hand. Once it is conceded by both the parties that the Court has no jurisdiction, the learned District Munsif, ought to have exercised his power under Order 7 Rule 10 of the Code of Civil Procedure, to return the plaint to the plaintiff for being presented in the proper Court that would have resolved the issues

and this Civil Revision Petition need not have been kept pending for two years now.

6. In view of the above, the order of the Trial Court is set aside. The Application in IA No.386 of 2017 will stand dismissed. The learned District Munsif, Kotagiri is directed to return the plaint under Order 7 Rule 10 of the Code of Civil Procedure, to the plaintiff prescribing a date for representation of it, as provided under Order 7 Rule 10(2) of the Code of Civil Procedure. No costs.

04.08.2020

jv
Index: Yes/No
Internet: Yes/No
speaking order/Non speaking order

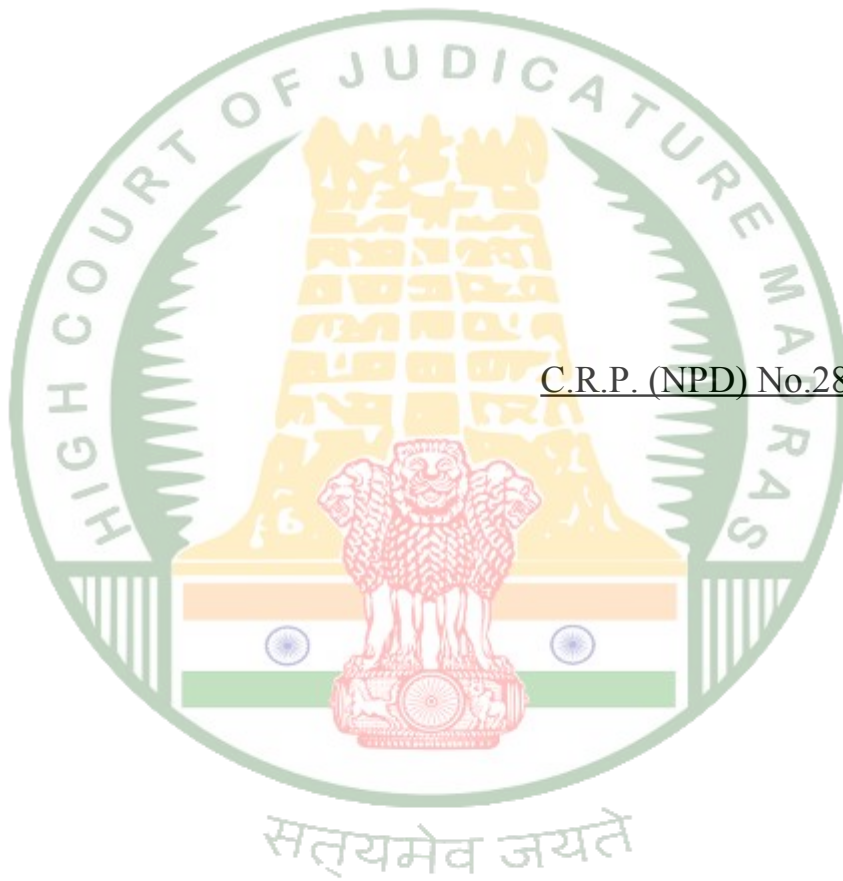
To

The District Munsiff, Kotagiri,
Nilgiris.

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R.SUBRAMANIAN, J.

jv



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