

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2985 of 2018 and
CMP No.17356 of 2018

Narayanasamy Petitioner

Vs

1. Vijayakumar

2. Boopathy

3. Chandra

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India, against the fair and decreetal order in I.A.No.306 of 2017 in O.S.No.64 of 2011, dated 04.01.2018 on the file of the learned Subordinate Judge, Tiruvallur.

For Petitioner

: Ms.Sushil Sarayu for
Mrs.Shabnam

For Respondents

: Mr.R.Dhanaram

ORDER

The 1st plaintiff in O.S.No.64 of 2011 is the petitioner. The challenge in this revision is to the order of the trial Court, dismissing an application filed by the plaintiffs in I.A.No.306 of 2017, seeking permission to withdraw the suit with liberty to file a fresh suit.

2. The trial Court dismissed the application on the ground that the affidavit does not disclose sufficient grounds to establish that the said suit suffered from formal defects.

3. I have heard Ms.Sushil Sarayu, learned counsel appearing for the petitioner and Mr.R.Dhanaram, learned counsel appearing for the respondents.

4. Ms.Sushil Sarayu, learned counsel appearing for the petitioner would vehemently contend that the trial Court was not right in dismissing the application on the ground that the affidavit did not disclose the so called formal defects in the suit. She would submit that the suit being one for

partition, it is open to the parties to file any number of suits with slight alteration in the cause of action. The learned counsel for the petitioner would further submit that the written statement points out many formal defects in the suit and it also talks about the non impleading of necessary parties as well as certain documents which should have been challenged. Therefore, according to her, the trial Court must have taken note of all these facts and allowed the application.

5. Contending contra, Mr.R.Dhanaram, learned counsel appearing for the respondents would submit that the application has been filed after PW1 was examined. Apart from being belated, the affidavit filed in support of the application is laconic and it does not contain the reasons or so called formal defects in the suit.

6. I have considered the rival submissions.

7. No doubt, the affidavit filed in support of the application is bereft of material particulars. Order 23 Rule 1 (3) of the Code of Civil

Procedure contemplates satisfaction of the Court. The plaintiff can be permitted to withdraw the suit on the Court being satisfied that the suit itself would fail for the reason of some formal defect/s. As rightly pointed out by the learned counsel for the petitioner that the written statement itself points out several formal defects / technical defects in the suit. There is a failure or negligence on the part of the petitioner in not setting out those details in the affidavit filed in support of the application. But dismissal of the application cannot be the consequence of such failure.

8. Taking into account the nature of the suit, namely, a suit for partition and the possibility of the present plaintiff could even allow the suit to be dismissed for default and come up with another suit by slightly changing the cause of action, I do not think that the trial Court was justified in dismissing the application. However, the plaintiff has chosen to seek withdrawal of the suit after examination of P.W.1. I am of the considered opinion that the plaintiff could be allowed to withdraw the suit with liberty to file a fresh suit subject to condition as to payment of costs.

9. In view of the above, the Civil Revision petition will stand allowed. I.A.No.306 of 2017 also stands allowed and the plaintiff is permitted to withdraw the suit with liberty to file a fresh suit, subject to condition that the petitioner/plaintiff pays a sum of Rs.25,000/- (Rupees twenty five thousand only) as costs to the counsel appearing for the respondents in this Court on or before 25.01.2021, failing which, the Civil revision will stand dismissed without any further reference to this Court. No costs. Consequently, connected miscellaneous petition is closed.

09.12.2020

Note : Time bound order
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Index: Yes/No
Speaking order / Non speaking order

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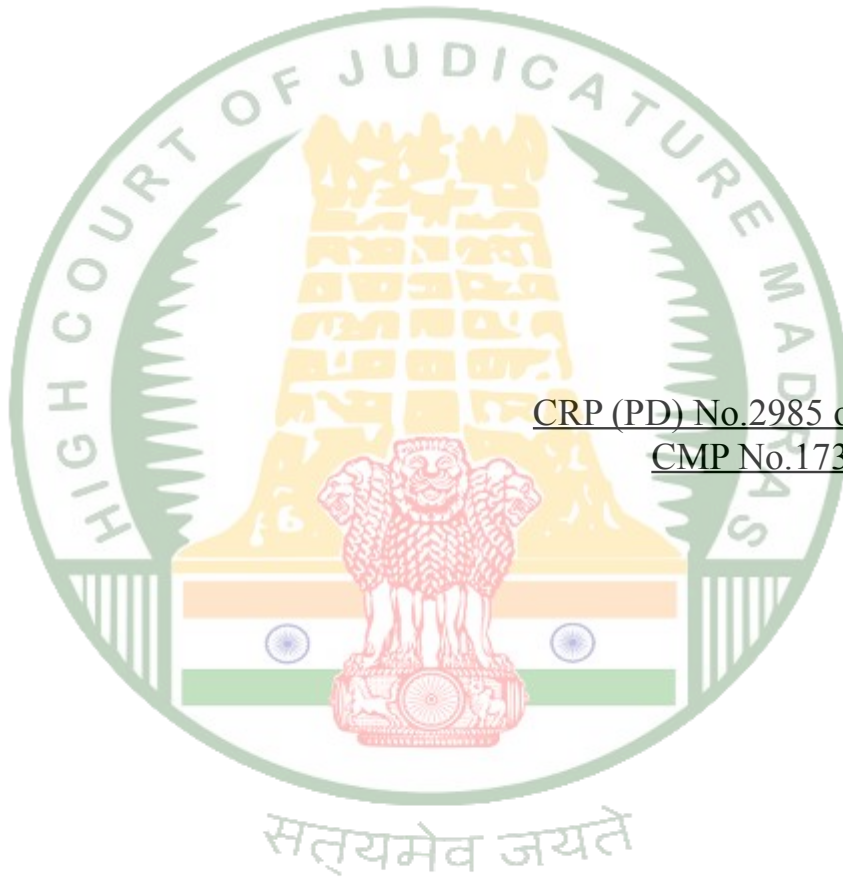
The Subordinate Judge, Tiruvallur

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R.SUBRAMANIAN, J.

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