



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
C.R.P. (NPD) (MD)No.1084 of 2013

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Alagarsamy

... Petitioner/R1/Appellant

vs.

1.Thangasamy Gounder

2.Thangaraman

... Respondent 1&2/Petitioner 1&2/Appellants

3. The Sales Manager,
Indian Oil Corporation,
Madurai-625 002.

... 3rd Respondent/2nd Petitioner/Respondent No.2

PRAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 07.12.2012 made in I.A.No.22 of 2012 in A.S.No.8 of 2009 on the file of the Sub Court, Uthamapalayam.

For Petitioner : Mr.K.Guhan
For R1 and R2 : No Appearance
For R3 : Mr.K.Muraleedharan

ORDER

This civil revision petition is at the instance of the defendants in O.S.No.89 of 2006 challenging an order of the appellate Court made in I.A.No.22 of 2012 in A.S.No.8 of 2009 allowing the application filed by the plaintiffs seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action.

2. The suit was filed by the plaintiffs seeking declaration of their title to the suit schedule properties, for recovery of possession, mandatory injunction and for costs. The suit was dismissed after trial.

3. Pending appeal, the plaintiffs came with an application for an amendment of plaint seeking amendment of the schedule property on the ground that measurements of the second item of the suit property have got interchanged. Instead of giving measurements as North-South as 10 $\frac{3}{4}$ feet and East- West 60 feet, the measurement was wrongly given as East-West as 10 $\frac{3}{4}$ feet and North-South 60 feet. Application for amendment was filed in I.A.No.65 of 2011.



4. I.A.No.65 of 2011 was resisted by the respondents contending that this error cannot be corrected by way of an amendment and the plaintiffs will have to file a separate suit after withdrawing the present suit.

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5. Accepting the said contention of the defendants / respondents, the application for amendment was dismissed by the lower appellate Court. Soon thereafter, the present application was filed seeking to withdraw the suit with liberty to file a fresh suit on the same cause of action.

6. This application was resisted by the respondents / defendants contending that the plaintiffs cannot by withdrawing the suit efface the findings of the trial Court, which are in their favour.

7. The lower appellate Court rejected the said contention of the respondents and concluded that there is a defect in the suit itself inasmuch as measurement of the property, he has been given wrongly and therefore, it will be open to the plaintiffs to withdraw the suit and file a fresh suit giving correct description of the property. Once it is found that the suit suffers from technical defect, grant of leave to withdraw the suit with liberty to file a fresh suit is almost automatic. That cannot be opposed on technical grounds.

8. In the case on hand, it is seen from the records that the petitioner, who now challenges the order granting leave, had taken a plea that the plaintiffs have to file a fresh suit and they cannot seek amendment in the present suit and such contention was accepted by the appellate Court while dismissing I.A.No.65 of 2011. I therefore, do not find any material irregularity in the order of the appellate Court in order to enable me to interfere with the order impugned under Section 115 of the Civil Procedure Code. Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AS)

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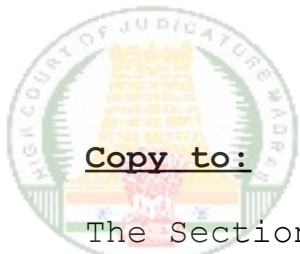
Sub Assistant Registrar (CS)

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To

The Sub Judge, Uthamapalayam

<https://hcservices.ecourts.gov.in/hcservices/>



Copy to:

The Section Officer,
VR Section(2 copies),
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to Mr.K.GUHAN, Advocate (SR-6467[F] dated 14/02/2020)

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MK (25.02.2020) 3P 5C