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CRP (MD) No.305 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP (MD) No.305 of 2020

and

CMP (MD) No.1771 of 2020

Mani @ Muthukaruppan

.. Petitioner

Vs.

1.Sundari @ Vanasundari
2.Subasini
3.Rajkumar
4.Anbuselvam
Sundaram (died)
5.Pichaikutty
Kumaravelu (died)
6.Saroja
7.Rasathi
8.Sivajothi
9.Selvarajacholan
10.Rasammal
11.Meyyammal
12.Geetha
13.Soman
14.Lakshmi
15.Anjalaidevi
16.Parvathi
17.Sudhakar
18.Minor.Dinesh kumar
19.Minor.Elancheliyan

... Respondents

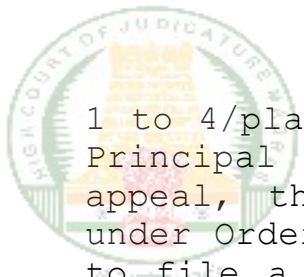
Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 19.07.2019 passed in I.A.No.6 of 2019 in A.S.No.12 of 2018 by the learned Principal District Judge Pudukkottai.

For Petitioner : Mr.D.Rameshkumar
For R3 & R4 : Mr.K.Balasundaram
For R1, R2, R6 to R19 : No appearance

ORDER

The respondents 1 to 4/plaintiffs filed a suit in O.S.No.48 of 2009 on the file of the Sub Court, Pudukkottai against the petitioners herein and others for partition and separate possession. The suit was dismissed. Against which, the respondents

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



1 to 4/plaintiffs filed an Appeal in A.S.No.12 of 2018 before the Principal District Court, Pudukottai. During pendency of the appeal, the respondents 1 to 4/plaintiffs filed an application under Order 23 Rule 1(3) CPC to withdraw the appeal with a liberty to file a fresh suit on the same cause of action in I.A.No.6 of 2019. The said application was allowed on payment of cost of Rs.15,000/- to the respondents therein. Challenging the said order passed by the appellate Court, the second defendant/second respondent has filed the present Civil Revision Petition.

2.The learned counsel for the petitioner would submit that even during pendency of the trial, the respondents 1 to 4/plaintiffs had already filed an application under Order 23 Rule 1(3) CPC in I.A.No.935 of 2016 to withdraw the suit with liberty to file a fresh suit on the same cause of action. The said petition was dismissed on 07.07.2017 and the plaintiffs have not challenged the said dismissal order and after dismissal of the suit, they filed the appeal and during pendency of the appeal they filed an application seeking the very same relief before the trial Court, which hits by *res judicata*. Further, the appellate Court wrongly observed in the order that Order 48 Rule 1(a) CPC gives permission to challenge the earlier order when a regular appeal is filed. Therefore, the order passed by the appellate Court warrants interference of this Court.

3.The learned counsel for the respondents 3 and 4 submitted that the respondents 1 to 4/plaintiffs have deposited the cost of Rs.15,000/- imposed by the appellate Court.

4.Though this Court ordered private notice, the petitioners have not taken steps to serve notice to the unserved respondents in time.

5.Heard the learned counsel for the petitioner and the learned counsel for the respondents 3 and 4 and perused the entire materials on record.

6.It is not in dispute that the respondents 1 to 4 are the plaintiffs in O.S.No.48 of 2009, wherein the petitioner herein was arrayed as second defendant. The suit was dismissed. Aggrieved by which, the plaintiffs preferred an appeal before the Principal District Court, Pudukottai in A.S.No.12 of 2018. During pendency of the appeal, they filed an application in I.A.No.6 of 2019 to withdraw the appeal with a liberty to file a fresh suit on the same cause of action.

7.The learned counsel for the petitioner would submit that the plaintiffs had already filed an application in I.A.No.935 of 2016 for the very same relief and the said application was



dismissed by the trial Court and subsequently, they have filed an application in I.A.No.6 of 2019 before the appellate Court. Though the learned counsel for the petitioner would submit that the order passed in I.A.No.935 of 2016 hits by *res judicata* to file the subsequent application in I.A.No.6 of 2019 in O.S.No.12 of 2018, since the appeal is a continuance of proceedings of the suit, principle of *res judicata* would not operate.

8.In this case, it is the suit for partition and the suit was dismissed mainly on the ground that all the properties are not mentioned and necessary parties are not impleaded. Therefore, under these circumstances, no prejudice would be caused, if the suit is allowed to be withdrawn and to file a fresh suit mentioning all the properties and by impleading all the parties.

9.Considering the nature of the suit and the claim made by the parties and the order passed by the appellate Court, this Court does not find any perversity in the order passed by the appellate Court. Therefore, this Civil Revision Petition is liable to be dismissed and accordingly it is dismissed. Since the respondents 1 to 4/plaintiffs have already deposited Rs.15,000/- as directed by the appellate Court, the petitioner herein and other defendants are entitled to withdraw the said amount. No costs. Consequently, CMP (MD) No.1771 of 2020 is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

MJ

To

1.The Principal District Judge Pudukkottai.

2.The Sub Judge, Pudukkottai.

+1 CC to Mr.K.BAALASUNDARAM, Advocate (SR-12710[F] dated 20/03/2020)

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