



WEB COPY

CRP(MD)No.310 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP (MD) No.310 of 2020

and

CMP (MD) No.1792 of 2020

1.Nedumaran
2.Sathi
3.Kamaraj
4.Valliammal
5.Muniasamy
6.Ravi
7.Chitra
8.Panchavarnam

.. Petitioners/Respondents/Respondents

Vs.

1.Karuppiah
2.Gurusamy
3.Singadurai
4.Karthigaisamy

... Respondents/Respondents/Appellants

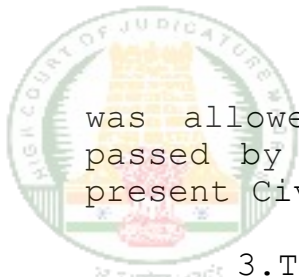
Civil Revision Petition filed under Section 115 CPC to set aside the fair and decreetal order made in I.A.No.80 of 2019 in A.S.No.66 of 2017 on the file of the Sub Court, Paramakudi dated 28.11.2019 and allow the above CRP.

For Petitioners : Mr.D.Senthil
For Respondents : Mr.N.Anantha Padmanabhan
for APN Law Associates

ORDER

This Civil Revision Petition is filed to set aside the order dated 28.11.2019 passed in I.A.No.80 of 2019 in A.S.No.66 of 2017 on the file of the Sub Court, Paramakudi.

2.The respondents herein/plaintiffs filed a suit in O.S.No.64 of 2014 on the file of the District Munsif Court, Paramakudi for declaration, declaring the sale deed dated 08.08.2013, executed in the office of the Sub Registrar, Paramakudi in Document No.3912/2013 executed by the 8th defendant therein in favour of the first defendant in respect of the suit properties is null and void. The suit was dismissed, against which, they filed an appeal before the Sub Court, Pramakudi in A.S.No.66 of 2017. During pendency of the appeal, the respondents/plaintiffs filed an application in I.A.No.80 of 2019 under Order 23 Rule 1(3) and Section 151 Cr.P.C to give them permission to withdraw the appeal with a liberty to file a fresh suit for partition on the same cause of action. The said petition



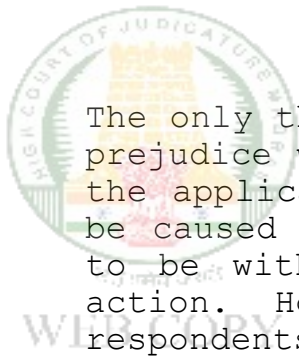
was allowed by the appellate Court. Challenging the said order passed by the appellate Court, the respondents therein filed the present Civil Revision Petition before this Court.

3.The learned counsel for the petitioners would submit that the respondents/plaintiffs had filed the suit in the year 2014 and they lost the suit and filed an appeal in the year 2017 and till 2019, they have not taken any steps to argue the appeal and in the year 2019 they filed the application to withdraw the appeal with a liberty to file a fresh suit for partition on the same cause of action and only to drag on the proceedings, at the time of hearing the appeal, they filed the present application. The trial Judge, having considered the nature of the claim sought by the plaintiffs and also finding no merit in the suit, dismissed the suit, against which, they filed an appeal. Pending appeal, they once again wanted to torture the petitioners/defendants and therefore, they filed the present application. The appellate Court failed to consider the facts and erroneously allowed the application. Therefore, the order passed by the appellate Court warrants interference.

4.The learned counsel for the respondents/plaintiffs would submit that the trial Court dismissed the suit observing that partition has not been proved and the plaintiffs were advised to file a suit for partition. In order to avoid the multiplicity of suit proceedings and to have an effective adjudication between the parties, the present application has been filed to withdraw the appeal with a liberty to file a fresh suit for partition on the same cause of action. The appellate Court, after considering the materials available on record, has rightly allowed the application and therefore, the same does not require any interference by this Court.

5.On a careful perusal of the entire records placed before this Court would show that admittedly the respondents/plaintiffs have filed the suit against the petitioners/defendants in O.S.No.64 of 2014 on the file of the District Munsif Court, Paramakudi. After full-fledged trial, the suit was dismissed, against which, they filed an appeal in A.S.No.66 of 2017 on the file of the Sub Court, Paramakudi. During pendency of the appeal, the respondents/plaintiffs filed an application in I.A.No.80 of 2019 to withdraw the appeal with a liberty to file a fresh suit for partition on the same cause of action.

6.The petitioners/defendants herein have taken the main defence that only to drag on the proceedings, the plaintiffs have filed the application. Of course it is true that the suit was filed in the year 2014 and the decree was passed in the year 2017 and the appeal was filed in the year 2017 and the same is pending till 2019. However, the respondents/plaintiffs want to withdraw the appeal with a liberty to file a fresh suit for partition on the same cause of action. The same can be found out only after filing of the suit.



The only thing that has to be seen now by this Court is whether any prejudice would be caused to the petitioners/defendants by allowing the application. This Court is of the view that no prejudice would be caused to the petitioners/defendants if the appeal is permitted to be withdrawn and to file a fresh suit on the same cause of action. However, the Court cannot ignore the fact that the respondents/plaintiffs troubled the petitioners/defendants for five years and now they have filed this petition in I.A.No.80 of 2019 to withdraw the appeal with liberty to file a fresh suit for partition on the very same cause of action. Because of the act of the respondents/plaintiffs, the petitioners/defendants have met out some expenses. Therefore, in the interest of justice, the respondents/plaintiffs are directed to bear the expenses spent by the petitioners/defendants in the suit and appeal, for which, this Court directs the respondents/plaintiffs to pay a sum of Rs.25,000/- to the petitioners/defendants on or before 20.03.2020.

7.With the above direction, the order passed by the appellate Court is confirmed and this Civil Revision Petition is disposed of. No costs. Consequently, CMP(MD)No.1792 of 2020 is closed.

List the matter on 23.03.2020 for reporting compliance.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

mj

To

1.The Principal District Munsif Court,
Paramakudi.

2.The Subordinate Judge, Paramakudi.

Copy to: The Section Officer, (Judicial Section)
Madurai Bench of Madras High Court, Madurai.
(For Reports compliance on 23/03/2020)

+1 CC to M/s.D.SENTHIL, Advocate (SR-10705[F] dated 10/03/2020)

CRP (MD)No.310 of 2020

SMA/16/03/2020/3P/5C