



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD)No.464 of 2019

and

C.M.P. (MD)No.2327 of 2019

Saraswathi : Petitioner/Petitioner/Plaintiff

.. Vs ..

1.Thangapandi

2.Thangaraj

3.Perumal

4.Annalakshmi : Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the records relating to the fair order and decretal order made in I.A.No.599 of 2018 in O.S.No.174 of 2014, dated 29.01.2019 on the file of the learned Additional District Munsif Court, Valliyoor, Tirunelveli District and set aside the same.

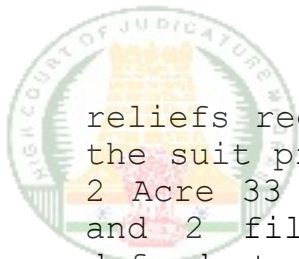
For Petitioner : Mr.T.R.Janarthanan

For Respondents : Mr.Karthick
for M/s.H.Arumugam

ORDER

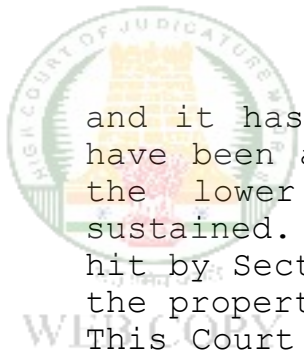
This Civil Revision Petition is directed against the order passed by the learned Additional District Munsif, Valliyoor, Tirunelveli District, in I.A.No.599 of 2018 in O.S.No.174 of 2014.

2.The revision petitioner is the plaintiff in the suit in O.S.No.174 of 2014 on the file of the Additional District Munsif Court, Valliyoor, Tirunelveli District. The suit in O.S.No.174 of 2014 was filed by the revision petitioner for declaration that the suit properties belonged to the plaintiff exclusively and for consequential relief of permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit properties. The suit is also for other



reliefs regarding certain alienations. As per the original plaint, the suit properties consist of six items measuring a total extent of 2 Acre 33 cents along with a well and pump-set. The defendants 1 and 2 filed a written statement. It is to be noted that the defendants 1 and 2 have admitted in paragraph 6 of the written statements that the plaint schedule properties item 1 to 5 belong to plaintiff. Of course, it is also to be noted that the defendants have also filed additional written statement. During the pendency of the suit, the revision petitioner filed an application in I.A.No.599 of 2018 for amendment of plaint. The amendment is to delete items 1 to 4 of the suit schedule properties and for consequential amendments so that the relief is restricted only to item Nos.5 and 6 measuring a total extent of 71.63 cents. The said application was contested by the defendants. The lower Court dismissed the petition on the ground that there is a dispute regarding title between the parties and that the suit prayer which is in respect of several other items cannot be restricted to few items after alienation of other properties. It is further stated that there will be change of cause of action for the entire suit. It is further observed by the lower Court that the amendment will lead to change of cause of action. Aggrieved by the order of the lower Court dismissing the petition for amendment, the above Civil Revision Petition is filed.

3.The learned Counsel appearing for the revision petitioner submitted that the plaintiff in every case has the unfettered right to abandon his/her claim or relief in respect of a portion of the property or claim. Since the petitioner/plaintiff is not seeking any liberty to file a fresh suit on the same cause of action, it is contended by the learned Counsel appearing for the petitioner that the amendment restricting the petitioner's claim in the original plaint cannot be dismissed. The learned Counsel appearing for the petitioner pointed out that the defendants 1 and 2 have filed a written statement admitting the position that the items 1 to 5 in the suit schedule belongs to the plaintiff. When the plaintiff's title is admitted in respect of items 1 to 5, it is further stated that the defendants are not put to any hardship or inconvenience by deleting the prayer in respect of items 1 to 5 of the suit schedule. It was also submitted by the learned Counsel appearing for the revision petitioner that the respondents have no right to dictate the plaintiff or to advise as to how the relief should be pursued in a suit like this. The learned Counsel appearing for the respondents after raising a formal objection is unable to point out any legal impediment for accepting the position that the plaintiff has a unfettered right to withdraw any portion of her claim when no liberty is sought for to file another suit in respect of a portion of the claim by way of another suit. The trial Court has erred in law while applying the law on facts in dismissing the application mainly on the ground that the title is in dispute and that therefore, there will be great prejudice to the other side when the plaintiff withdraws the suit or abandon a portion or part of the suit. The observation of the lower Court is absurd



and it has no legal basis. Merely because some of the properties have been alienated to strangers, the observation and conclusion of the lower Court by referring to such alienations cannot be sustained. The lower Court has further held that alienations are hit by Section 52 of Transfer of Properties Act and that by deleting the properties, the cause of action for the suit will wholly change. This Court is unable to appreciate the logic behind the view of the lower Court. Assuming that some of the suit properties are alienated pending litigation, those alienations in favour of the strangers do not affect the rights of the defendants who have not raised any issue or dispute with regard to the title of plaintiff's in respect of items 1 to 4. Since the respondents are not put to any prejudice or hardship by allowing the amendment, the lower Court has committed a serious error in dismissing the petition for amendment. Hence, this Civil Revision Petition is allowed and the order of the lower Court dated 29.01.2019 passed in I.A.No.599 of 2018 in O.S.No.174 of 2014 is set aside. The amendment shall be carried out. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

To

The Additional District Munsif Court,
Valliyoor,
Tirunelveli District.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-15159[F] dated 27/08/2020)

C.R.P. (MD) No.464 of 2019

25.08.2020

SRM

SDS (08.09.2020) 3P-3C