



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2020

CORAM

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

C.R.P. (MD)No.669 of 2020

and

C.M.P. (MD)No.4471 of 2020

WEB COPY

R.S.Kalairajadurai
through his Power Agent K.Eshwari,
W/o.Kalairajadurai,
No.5/140, Sethu Nagar,
Mandapam,
Ramanathapuram District. : Petitioner/Petitioner/Plaintiff

(Cause title accepted vide Court order dated 03.09.2020 made in
C.M.P. (MD)No.4087 of 2020 in C.R.P. (MD)SR No.27611 of 2020)

.. Vs ..

1.Rajammal (Died)
2.R.S.R.Rajkumar
3.M.Ashokmetha

4.Sub Registrar No.2,
Joint Sub-Registrar Office,
Ramanathapuram. : Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India, praying to set aside the order dated
16.06.2020 passed by the Sub Court, Ramanathapuram in I.A.No.538 (A)
of 2019 in O.S.No.95 of 2013.

For Petitioner : Mr.R.Maheswaran

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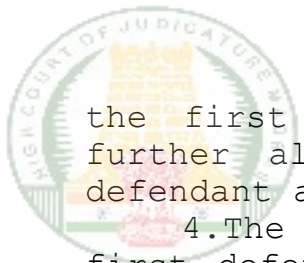
ORDER

This Civil Revision Petition is directed against the order
passed by the learned Subordinate Judge, Ramanathapuram in
I.A.No.538(A) of 2019 in O.S.No.95 of 2013, dated 16.06.2020.

2.Heard the learned Counsel appearing for the petitioner and
perused the materials on record.

3.The brief facts that are necessary for the disposal of this
Civil Revision Petition are as follows:

3.1.The revision petitioner is the plaintiff in the suit in
O.S.No.95 of 2013. The petitioner filed the suit for partition of
his 1/3 share in all the suit properties and for consequential
relief to declare that the subsequent settlement deed executed by



the first defendant in favour of the second defendant and the further alienation of second defendant in favour of the third defendant are void.

4.The revision petitioner categorically admitted the right of first defendant, namely, the mother of the revision petitioner of her 1/3 share. It is specifically admitted that as per the genealogy, the suit properties are the ancestral properties and that the plaintiff, first defendant and the second defendant are entitled to equal share in all the suit properties. Contrary to the said statement, the petitioner filed an interlocutory application in I.A.No.538(A) of 2019 in O.S.No.95 of 2013 seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action. The reasons alleged in the affidavit filed in support of the petition is that the petitioner's Advocate who was engaged earlier has drafted pleadings contrary to the instructions given to him, wrongly about the entitlement of the first defendant and by stating that the plaintiff is entitled only to 1/3 share in the suit properties. Since the mother of the petitioner, namely, the first defendant in the suit is not entitled to any share in the property, the petitioner stated in the affidavit that he should be permitted to file another suit claiming $\frac{1}{2}$ share in all the suit properties. The contention of the revision petitioner that his mother has no right in the property is contrary to what has been stated in the plaint. Though a plaintiff can be permitted to withdraw the suit with liberty to file another suit on the same cause of action, if he noticed any formal defect in the plaint, it is not permissible for the plaintiff to withdraw his specific stand or specific plea in the plaint and to file another suit with a different story altogether. Such liberty cannot be given having regard to the object of Order 23, Rule 1 C.P.C. The lower Court finding that the suit is sought to be withdrawn with liberty to file fresh suit with different plea held that permission cannot be granted to file another suit on the same cause of action. The order of the lower Court cannot be found fault with. Hence, this Civil Revision Petition is dismissed as devoid of any merits. However, the learned Counsel appearing for the petitioner states that the mother of the plaintiff died and that therefore, the share of the plaintiff is now enlarged. It is also open to the petitioner to file a petition for amendment appropriate if it is necessary on account of the subsequent events. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

The Subordinate Court,
Ramanathapuram.

+1 CC to Mr.R. MAHESWARAN, Advocate (SR-17336[F] dated 17/09/2020)

C.R.P. (MD) No. 669 of 2020

16.09.2020

VB (30.09.2020) 3P 3C