



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05.10.2020

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P (MD) No.224 of 2018

and

C.M.P (MD) .No.929 of 2018

Madakannu

...Revision Petitioner/2nd Respondent
/2nd Respondent in A.S.

Vs.

1.Sasikala ...1st Respondent/Petitioner/Plaintiff
Represented by Power Agent M.Vengatesan

2.Ashokan

3.The District Collector
District Collector Complex
Sattur Road
Virudhunagar, Virudhunagar District

4.Tahsildar
Taluk Office, Madurai Road
Virudhunagar, Virudhunagar Taluk

5.The Commissioner
Virudhunagar Municipality
Virudhunagar

...Respondents 2 to 5 /
Respondents 1 & 3 to 5/
Respondents 1 & 3 to 5 in A.S.

R2 to R5

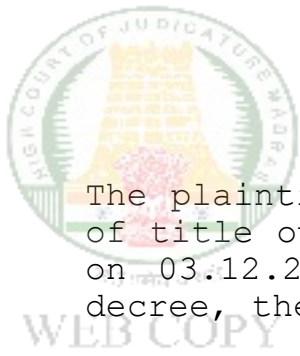
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Given Up (Vide EB)

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 16.08.2017 passed in I.A.No.36 of 2017 in A.S.No.6 of 2016 on the file of the Sub Court, Virudhunagar.

For Petitioner : Ms.S.Mahalakshmi
For Mr.P.Santhosh Kumar

For R1 : Mr.S.Parthasarathy



ORDER

The plaintiff has laid a suit in O.S.No.325 of 2007 for declaration of title over the suit property. The suit is said to have been laid on 03.12.2007 and dismissed on 18.11.2005. Aggrieved by the said decree, the plaintiff has preferred A.S.No.6 of 2016.

2. During the pendency of the appeal, the first respondent herein/plaintiff has filed I.A.No.36 of 2017 for withdrawing the suit with leave to file a fresh suit on the same cause of action under Order 23 Rule 1(3) C.P.C on the ground of certain formal defects. One of the defects appears to be the wrong description of the western boundary of the suit property. This petition came to be allowed. The present revision petition is preferred by the 2nd respondent in A.S.No.6 of 2016/2nd defendant in the suit.

3. Heard both sides.

4. The first respondent herein had filed I.A.No.36 of 2017 before the First Appellate Court. The trial Court in its Judgment has entered a finding that the suit is bad for non-joinder of necessary parties even though no pointed issue was raised. It is on these two grounds the first respondent/plaintiff sought withdrawal of the suit under Order 23 Rule 1(3) C.P.C.

5. This Court has not got into the merits as to whether the ground on which the petition was filed constituted a formal defect since the meaning of Order 23 Rule 1 C.P.C. Order 23 Rule 2 C.P.C expressly provides that limitation for filing a second suit. The limitation for instituting the suit on the original cause of action is not saved. This implies the second suit ought to be filed within the time stipulated for filing the first suit. If that is so, the second suit ought to have been laid on or before December 2017. Therefore, it would be a profitless exercise even if the revision is dismissed, since the second suit at the end of the day would be barred by limitation. There is therefore little option than to allow this petition since instituting the second suit would fall within Order 23 Rule 2 C.P.C.

6. The learned counsel for the first respondent/plaintiff submitted that he may be granted liberty to bring out a petition for amending the western boundary or impleading the necessary parties before the first appellate court.

7. The first respondent/appellant in A.S.No.6 of 2016 is at liberty to work out her strategies before the first appellate court if she is so desirous.

8. Accordingly, the order dated 16.08.2017 passed in I.A.No.36 of 2017 in A.S.No.6 of 2016 on the file of the Sub Court, Virudhunagar,



is set aside.

9. In fine, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

msa/cm

To,

1.The Subordinate Judge, Virudhunagar.

2.The V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.S. PARTHASARATHY, Advocate (SR-19207[F] dated
06/10/2020)

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and

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VR(CO)

AP(18/11/2020) 3P 5C