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C.R.P. (PD) No.892 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

C.R.P. (PD) No.892 of 2019

and

C.M.P.No.5795 of 2019

Dr.MohammedJunaidGhatala

... Revision Petitioner

Vs.

ArulmighuBaleeswaraswamyThirukoil
Represented by its Fit Person
Parawakkam Village,
Poonamallee Taluk,
Chennai.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to strike of the original plaint in O.S.No.253 of 2009 on the file of the District Munsif, Poonamallee.

For Petitioner : Mr.P.Satheesh Kumar

For Respondent : Mr.A.K.Sriram



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ORDER

This Civil Revision Petition is filed to strike off the original plaint in O.S.No.253 of 2009 on the file of the District Munsif's Court, Poonamallee.

2.After hearing the arguments of the learned counsel for the petitioner for some time, this Court could understand that the main grievance of the petitioner is that the suit, which was originally dismissed for default, had been restored without notice to the defendant in the suit. Unfortunately, the present Revision Petition has been preferred by the defendant in the suit to strike off the plaint in the suit filed by the respondent, namely, Arulmigu Baleeswaraswamy Thirukoil, represented by its Fit Person.

3.Since the Civil Revision Petition is filed to strike off the plaint, this Court has to consider only the plaint averments. From the points raised in the memorandum of grounds, this Court is unable to entertain the Revision Petition on merits.



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4.However, the learned counsel appearing for the petitioner in the Revision Petition wanted the right of the defendant to be preserved to file appropriate application or a Revision Petition, challenging the order restoring the suit without even issuing notice to the defendant.

5.Learned counsel appearing for the respondent, on instructions, was able to confirm that the suit was restored, as a matter of fact, without notice to the defendant. However, this Court, in a Revision Petition to strike off the plaint, may not set aside the order passed by the trial Court restoring the suit, which is not challenged before this Court.

6.The learned counsel appearing for the petitioner submitted that the Revision Petition may be dismissed as withdrawn, however, preserving liberty to the petitioner to challenge the order restoring the suit and also to raise all the grounds available to him in the suit in accordance with law.

7.In view of the submissions made by the learned counsel on either side, this Court dismisses the Civil Revision Petition as withdrawn.



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However, liberty is given to the revision petitioner to challenge the order of the lower Court, restoring the suit without issuing notice to the revision petitioner. Liberty to the petitioner is also preserved to raise all his objections which he has raised in the Civil Revision Petition, before the trial Court, while defending the suit, in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

17.11.2021

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Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

To

The District Munsif,
Poonamallee.



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S.S. SUNDAR, J.

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