

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(P.D) No.2072 of 2021
and
C.M.P.No.15740 of 2021**

1. Muralichandra Reddy
2. Suguna

...Petitioners

Vs.

1. Parvathamma
2. Rooba
3. Babu Reddy
4. Murugesh Reddy
5. Venkataswamy Reddy
6. Muni Reddy
7. Srirama Reddy

...Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 26.08.2021, in I.A.No.1 of 2021 in O.S.No.62 of 2017, on the file of the Subordinate Court, Hosur.

For Petitioners : Mr.R.Jayaprakash

ORDER

This Civil Revision Petition is filed, to set aside the order dated 26.08.2021, in I.A.No.1 of 2021 in O.S.No.62 of 2017, passed by the learned Principal Subordinate Judge, Subordinate Court, Hosur.

2.The learned counsel for the petitioners submitted that the first respondent filed a suit in O.S.No.62 of 2017 for partition against the petitioners and the other respondents. The trial had commenced and PW1 to PW3, have been examined. When the case was pending for examination of further witnesses on the side of the first respondent/plaintiff, the first respondent/plaintiff, filed application in I.A.No.1 of 2021 in O.S.No.62 of 2017 under Order 23, Rule 1 of C.P.C., for withdrawing the suit in O.S.No.62 of 2017 with a liberty to file a fresh suit on the same cause of action. Though, this Petition was contested by the Parties, the learned Principal Subordinate Judge, Hosur, allowed the application in I.A.No.1 of 2021 in O.S.No.62 of 2017 on 26.08.2021. Therefore, the present Civil Revision Petition is filed against the order of allowing the application in I.A.No.1 of 2021 in O.S.No.62 of 2017.

3.The learned counsel for the petitioners further submitted that the first respondent could have filed the interlocutory Application for impleading the parties who are proper and necessary parties and also filed interlocutory Application for including the left out properties in the suit. The case is pending for trial and therefore the petitioners prayed for setting aside the order dated 26.08.2021, in I.A.No.1 of 2021 in O.S.No.62 of 2017, passed by the learned Principal Subordinate Judge, Hosur and for dismissing the interlocutory application in I.A.No.1 of 2021 in O.S.No.62 of 2017 .

4.Considered the submissions of the learned counsel for the petitioners and perused the records.

5.Reading of the affidavit filed in support of I.A.No.1 of 2021, shows that the first respondent is an illiterate and she was not aware of the fact that her elder brother late Rama Reddy and her younger brother late.Krishna Reddy had sold some of the properties in which she has also a right of share. Those properties need to be included in the Suit. It is also

said that the purchasers from her brothers are proper and necessary parties and they have not been added as parties in the Suit. They are proper and necessary parties. Therefore the application in I.A.No.1 of 2021 in O.S.No.62 of 2017, was filed for withdrawing the suit with the liberty to file a fresh suit on the same cause of action.

6.The Order 23 of Civil Procedure Code deals with withdrawal and adjustment of suits. Order 23 Rule 1 deals with withdrawal of suit or abandonment of part of claim. As per this rule, at any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim. Order 23 Sub-rule 3 reads that, where the Court is satisfied, that a suit must fail by reason of some formal defect, or that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

7.In the case on hand, the first respondent/plaintiff seeks withdrawal of the suit in O.S.No.62 of 2017 with the permission to institute a fresh suit on the same cause of action for two reasons.

i) that she had omitted to include certain properties which had been sold by her brothers and in that properties she has a right of claiming a share.

ii) to implead the purchasers of the properties from her brothers, who are proper and necessary parties.

8.There is no doubt, if the joint family property is not included in the suit for partition and if all the proper and necessary parties are not included in the suit, the suit could have to be necessarily dismissed for this defect.

9.Therefore, this court is of the considered view that, the reasons stated by the first respondent/plaintiff to withdraw the suit with the liberty to institute a fresh suit on the same cause of action, is justified.

10.With regard to the contention of the learned counsel for the petitioners that the first respondent/plaintiff could very well have filed interlocutory applications for including the left out properties and impleading the proper and necessary parties, though it is also a mode of prosecuting the case, this mode will consume a lot of time in impleading the parties and including the properties. Necessary amendment has to be carried out in the plaint. Defendants should be given opportunity to file additional written statement. In the said circumstances, this court finds that allowing of I.A.No.1 of 2021 in O.S.No.62 of 2017, for withdrawing the suit with the liberty to file a fresh suit, needs no interference and the order dated 26.08.2021, in I.A.No.1 of 2021 in O.S.No.62 of 2017, passed by the learned Principal Subordinate Judge, Hosur is confirmed.

11.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

ep/ay

29.09.2021

Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

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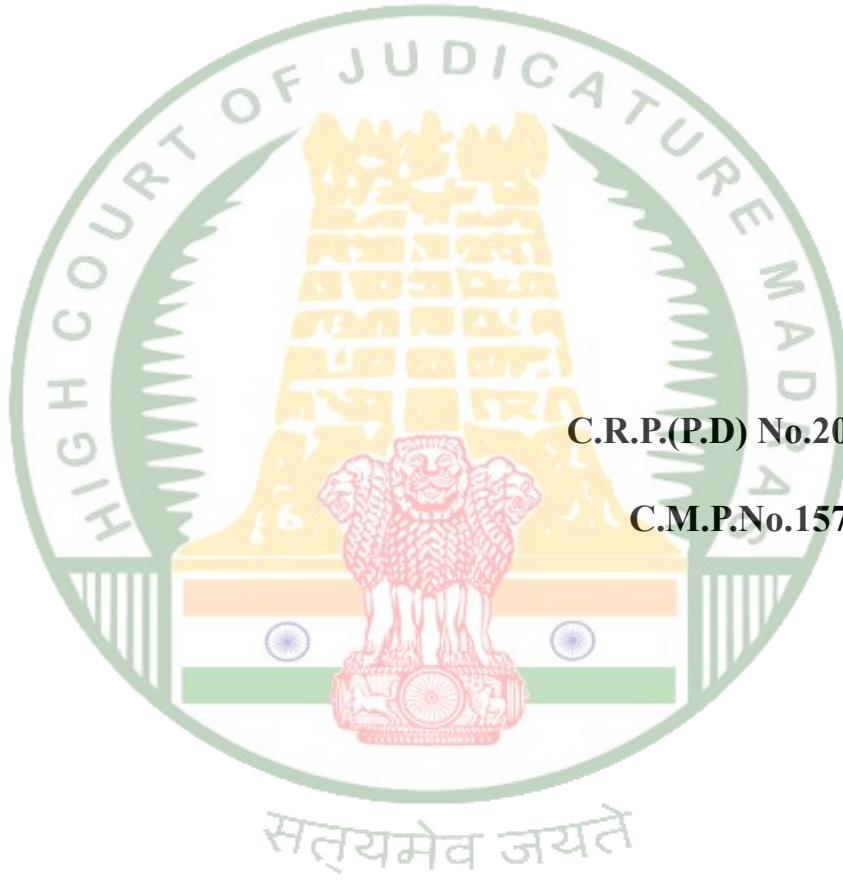
1. The Subordinate Judge,
Subordinate Court,
Hosur.
2. The Section Officer,
VR Section,
High Court of Madras.



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G.CHANDRASEKHARAN.J,

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