

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.310 of 2017

and

C.M.P.No.1426 of 2017

1.N.Rajasekar

2.N.Bhavani

3.N.Amudha

4.N.Devi

.. Petitioners

Vs.

Padmavathy

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 30.03.2016 made in I.A.No.273 of 2014 in O.S.No.450 of 2014 on the file of the Sub Court, Arakkonam.

For Petitioners : Mr.G.Jeremiah

For Respondent : No appearance

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decretal order dated 30.03.2016 made in I.A.No.273 of 2014 in O.S.No.450 of 2014 on the

file of the Sub Court, Arakkonam.

2.The petitioners are defendants 1 to 4 and the respondent / plaintiff filed the suit in O.S.No.450 of 2014 for declaration and injunction. The petitioners filed written statement and are contesting the suit. The petitioners filed I.A.No.273 of 2014 under Section 10 of C.P.C. for stay of the present suit. According to petitioners, their Father viz., Natarajan filed suit in O.S.No.193 of 2008 on the file of the District Munsif Court, Arakonam against the respondent for declaration and injunction. The properties in both the suits are one and the same and the parties as well as the relief sought for are also one and the same. The respondent filed written statement in the said suit and was contesting the suit. The petitioners' Father approached this Court and filed Writ Petition in W.P.No.25768 of 2008 against the respondent and Revenue Authorities. This Court by the order dated 23.06.2009, directed the District Munsif, Arakonam to dispose of the suit in O.S.No.193 of 2008 at the earliest. The Father of the petitioners died leaving a will, executed in favour of the 1st petitioner. The 1st petitioner filed petition to implead him as 2nd plaintiff in the said suit as only legal representative of his Father and the said I.A. is pending in O.S.No.193 of 2008. While so, the respondent filed the present suit in O.S.No.450 of 2014 against the petitioners for declaration and

injunction restraining the petitioners and their men and agents from in any way interfering with the respondent's peaceful possession and enjoyment of the suit properties. The respondent filed counter affidavit in I.A.No.273 of 2014 and denied all the averments in the said affidavit. According to the respondent, the issue involved in both the suit properties and parties are also different. The application filed under Section 10 of C.P.C. by the petitioners is not maintainable and prayed for dismissal of the I.A.

3.The learned Judge considered the I.A.No.273 of 2014 along with two other applications and closed the I.A.No.273 of 2014 by common order dated 30.03.2016 on the ground that petitioners or respondent have not filed any document relating to O.S.No.193 of 2008 to show that the issue, relief and parties are one and the same in both the suits.

4.Against the said order dated 30.03.2016 made in I.A.No.273 of 2014 in O.S.No.450 of 2014, the petitioners have come out with the present Civil Revision Petition.

5.Mr.G.Jeremiah, learned counsel appearing for the petitioners submitted that the petitioners have enclosed the plaint, copy of the plaint and

written statement in O.S.No.193 of 2008 and copy of the order of this Court dated 23.06.2009 made in W.P.No.25768 of 2008 along with petition in I.A.No.273 of 2014. In spite of the same, the learned Judge closed the I.A. stating that both the petitioners and respondent failed to file the documents relating to O.S.No.193 of 2008 to prove that the issue involved in both the suits are one and the same and the present suit is to be stayed. He further submitted that there is no provision in the Civil Procedure Code for closing the I.A. The learned Judge either to have allow or dismiss the I.A. The order of the learned Judge is erroneous and prayed for setting aside the order of the learned Judge and allowing the Civil Revision Petition.

6. Though notice has been served on the respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

7. Heard the learned counsel appearing for the petitioners and perused the entire materials on record.

8. From the materials available on record, it is seen that the petitioners have filed I.A.No.464 of 2013 under Section 10 of C.P.C. for stay of

O.S.No.26 of 2012 before the Sub Court, Ranipet (transferred to the Sub Court, Arakkonam based on the proceedings of the Principal District Judge, Vellore in Dis.No.2803/14 dated 13.03.2014 and renumbered as I.A.No.273 of 2014 in O.S.No.450 of 2014) filed by the respondent on the ground that earlier suit in O.S.No.193 of 2008 is filed by their Father for the very same property and parties as well as relief sought for are also one and the same. In view of the pendency of the earlier suit, this present suit is to be stayed and the present suit is not maintainable. According to the petitioners, they have filed copies of plaint, written statement in O.S.No.193 of 2008 and copy of the order dated 23.06.2009 in W.P.No.25768 of 2008 along with I.A.No.273 of 2008 and those documents were marked as Ex.P1. This Court called for the records from the Lower Court by the order dated 12.08.2021 and on verification, it is found that no document as alleged by the petitioners is available and marked as Ex.P1. In any event, the learned Judge considering the averments in the affidavit, counter affidavit, ought to have passed order either allowing the I.A. or dismissing the I.A. The learned Judge erred in closing the I.A. on the ground that both the petitioners and respondent did not file any document.

9.For the above reason, the impugned order of the learned Judge dated

30.03.2016 made in I.A.No.273 of 2014 is liable to be set aside and it is hereby set aside and I.A.No.273 of 2014 is remitted back to the Trial Court for fresh disposal on merits and in accordance with law. It is open to the petitioners and respondent to let in oral and documentary evidence, if they so desire.

10. With the above directions, this Civil Revision Petition stands allowed. The Registry is directed to send back all the original records to the Lower Court. Consequently, the connected Miscellaneous Petition is closed. No costs.

31.08.2021

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Index : Yes / No

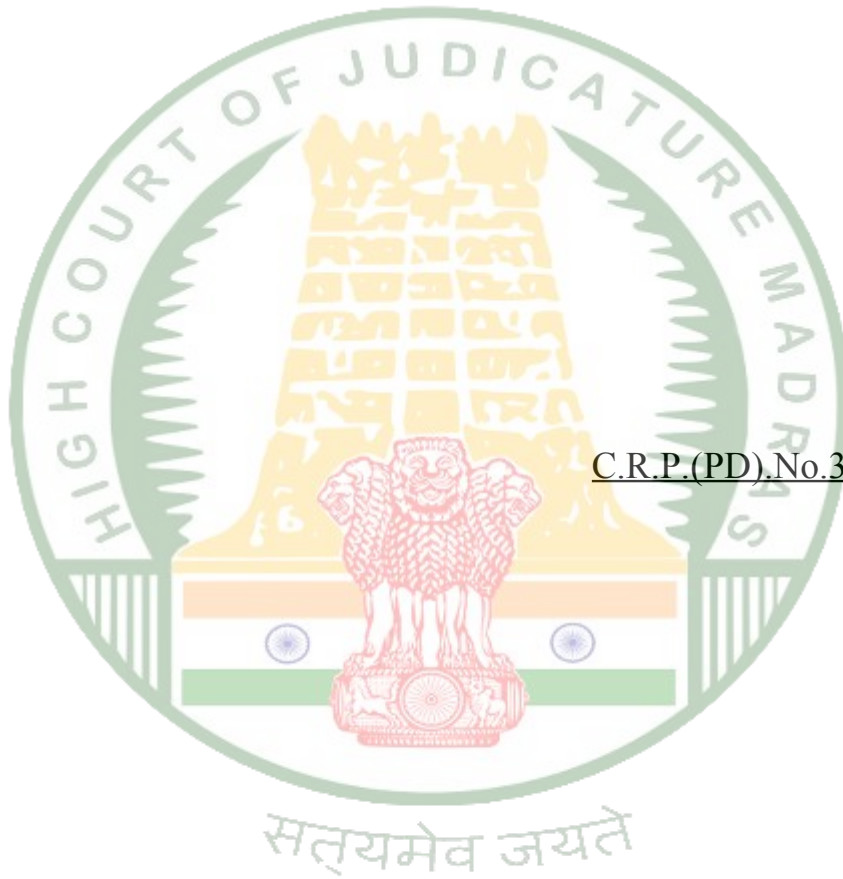
Internet : Yes / No

To

The Subordinate Judge,
Arakkonam.

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V.M.VELUMANI, J.
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