

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

**C.R.P.(NPD) No. 3513 of 2018
and CMP. Nos. 6502 & 6496 of 2018**

S.Deepa

...

Petitioner

Vs

1.R.Shanmugam

2.M.Dhanalakshmi

...

Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 26.06.2018 made in I.A.No.726 of 2017 in O.S.No.1118 of 2014 on the file of the I Additional Sub Judge, Coimbatore.

For Petitioner : Mr.A.Deivasigamani
For R1 : M/s.Mathuvanthi Mathavan
For R2 : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 26.06.2018 made in I.A.No.726 of 2017 in O.S.No.1118 of 2014 on the file of the I Additional Sub Judge, Coimbatore, thereby to permit the

petitioner to withdraw the suit and not entitled to file a fresh suit as against the respondents on the very same cause of action.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for partition. On receipt of the summons, the first respondent filed written statement as early as on 29.06.2015. After cross examination of witnesses, the matter was posted for arguments. The petitioner filed a petition seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action. In the affidavit filed in support of the said petition, the petitioner averred that the second respondent already filed a suit for partition in O.S.No.1035 of 2002 and the same was dismissed for the reason that the suit property was separate property of the first respondent herein. Therefore, it is necessary for the petitioner to set aside the said Judgment and Decree passed in O.S.No.1035 of 2002 or to file a fresh suit for the relief of partition and for declaring the Judgment passed in O.S.No.1035 of 2002 as null and void. While cross-examination of the petitioner as PW.1 in the suit, she admitted that she was very much aware of the suit filed by the second respondent in

O.S.No.1035 of 2002. In fact, the first respondent also filed written statement as early as on 29.06.2015 stating the above facts. Though, she was very much aware of the fact, when the suit was posted for arguments, the petitioner come forward with the petition seeking permission to withdraw the suit and to file a fresh suit on the same cause of action. Therefore, the Trial Court rightly allowed the petition to withdraw the suit and refused to grant liberty to file a fresh suit for the same cause of action.

3. Accordingly, this Court finds no illegality or infirmity in the order passed by the Court below. Hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.06.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

I Additional Sub Judge,
Coimbatore.

C.R.P.(N.P.D).No.3513 of 2018

G.K.ILANTHIRAIYAN.J,

lpp



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