



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Tenth day of February Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice N.SATHISH KUMAR

CMP(MD) No.716 of 2017
IN
SA(MD) No.813 of 2011

1 LAKSHMIAMMAL
2 ANGALESWARI
3 ANGUSAMY
4 MEENATCHI

... PETITIONERS/ APPELLANTS

Vs

1 NAGAVALLI
2 RAMKUMAR
3 JEEVA
4 SUDHA
5 RATHIKA

... RESPONDENTS/ RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to permit the petitioner to withdraw the appeal granting liberty to file fresh suit on the same cause of action by giving proper description of suit properties.

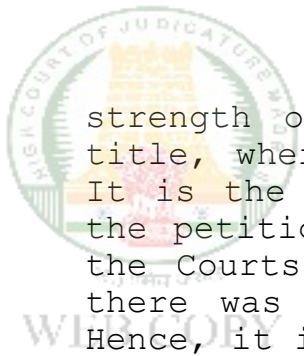
PRAYER IN SA(MD) No.813 of 2011:

To prefer this Memorandum of Second Appeal against the judgment and decree in A.S.No.31 of 2010 dated 12.11.2010 on the file of Sub court, Ramanathapuram, confirming the judgment and decree made in O.S.No.12 of 2008 dated 27.03.2010 on the file of District Munsif Cum Judicial Magistrate, Rameswaram.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.VELLAICHAMY, Advocate for the petitioners and of Mr.H.LAKSHMI SHANKAR, Advocate for the Respondents 1 to 5, the court made the following order:-

This application is filed to permit the petitioners to withdraw the appeal granting liberty to file fresh suit on the same cause of action by giving proper description of suit properties.

2. It is the main contention of the learned counsel appearing for the petitioners that the suit has been filed only on the



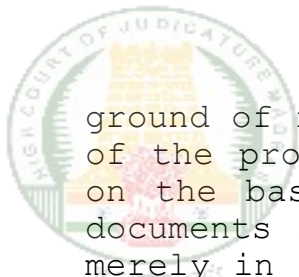
strength of Ex.A4 and Ex.A12-settlement deeds to establish their title, whereas, the respondents have set up the title under Ex.B1. It is the further contention of the learned counsel appearing for the petitioners that though Ex.A4 and Ex.A14 have been accepted by the Courts below, the suit was dismissed only on the ground that there was discrepancy in the description of the suit properties. Hence, it is the contention of the learned counsel appearing for the petitioners that it is only a formal defect and therefore, the petitioners have come forward with this petition.

3. This petition was opposed by the learned counsel appearing for the respondents by filing counter affidavit stating that the Courts below have threadbare discussed the oral and documentary evidence of the plaintiffs and after detailed consideration of the merits of their claim including the revenue records, dismissed the suit. It is further stated that the Courts below had entered upon the factual details of relationship of both parties, devolution of the properties and every documents filed by the plaintiffs, come to a conclusion that the plaintiffs' title is not proved. The possession of the defendants have also been established. It is further stated that having vexed them for the past more than 12 years with a frivolous and vexatious suit, they cannot seek liberty for withdrawing the appeal to file a fresh suit. Hence, prays for dismissal of this petition.

4. Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the respondents and perused the materials available on record carefully.

5. The suit has been laid for recovery of possession in respect of item No.1 and declaration of title in respect of item Nos.2 and 3 of the suit schedule properties. Ex.A4 and Ex.A12 pressed into service to prove the title to item Nos.1 and 2 and the plaintiffs have also taken a stand that item No.3 is the ancestral property. The trial Court in the first instance has analysed the entire materials and found that Ex.A4 and Ex.A12 were not established the title over the suit properties in favour of the plaintiffs and the description of the properties has also not been established. The appellate Court after analysing the materials carefully had come to the conclusion that under Ex.A1 and Ex.A12, the settlers have no right to settle the entire extent as mentioned in the document, as they have conveyed the properties more than their entitlement, besides, the appellate Court had come to the conclusion that none of the plaintiffs have entered into the witness box, only the power agent of plaintiffs, who had no knowledge about the suit property, has entered into the box. It is also relevant to note that the appellate Court has also found that the plaintiffs have already conveyed the suit schedule properties more than their entitlement.

6. In such view of the finding arrived at by the Courts below, <https://hccservicescourtsqb.in/jse-ssd> said that the suit has been dismissed only on the



ground of formal defect i.e., merely on the confusion of description of the property. When all the issues have been decided factually on the basis of the entire documents filed by both sides and the documents filed by the parties have been invalidated by the Courts, merely in one paragraph, the Court held that the description of the property is not correct and that itself cannot be sufficient to hold that the suit has been dismissed only on formal defect. Therefore, this Court is of the view that when the entire materials have been discussed in threadbare by the Courts below and recorded concurrent findings as to the right of the plaintiffs in the suit property, the petitioners cannot be permitted to withdraw the appeal granting liberty to file a fresh suit. Therefore, this Civil Miscellaneous Petition lacks merit and liable to be dismissed.

7. Accordingly, this Civil Miscellaneous Petition is dismissed.

8. Registry is directed to post the Second Appeal for arguments on 03.03.2021.

sd/-
10/02/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SUBORDINATE JUDGE,
RAMANATHAPURAM.

2 THE DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE,
RAMESWARAM.

ORDER
IN
CMP (MD) No.716 of 2017
IN
SA(MD) No.813 of 2011
Date :10/02/2021

VSM
MS/PN/SAR-4/15.02.2021/3P.3C