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C.R.P(NPD).No.1269 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P(NPD).No.1269 of 2022

and

C.M.P.No.6825 of 2022

Venkatachalam (Died)

1. Indirani
2. Mallika

... Petitioners

Vs

Perumal (Died)
Shanmugam (Died)

1. Neelaveni
2. Sathish Kumar
3. Elango
4. Vijay
5. Krishnammal
6. Sulochana
7. Devaraj

... Respondents



C.R.P(NPD).No.1269 of 2022

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the fair and decreetal order dated 07.12.2021 passed in I.A.No.1404 of 2015 in O.S.No.1176 of 2012 on the file of the IV Additional District Munsif, Salem.

For Petitioners : Mr.J.Sudhakaran

For Respondents : Mr.T.S.Vijaya Raghavan

ORDER

This Civil Revision Petition has been preferred challenging the order of the learned IV Additional District Munsif, Salem, dated 07.12.2021 made in I.A.No.1404 of 2015 in O.S.No.1176 of 2012.

2. The revision petitioners are the plaintiffs, who have filed the suit for declaration and permanent injunction against the respondents/defendants. During the pendency of the suit, the petitioners/plaintiffs have filed I.A.No.1404 of 2015 for seeking leave of the Court to allow the petitioners to withdraw the suit with a liberty to file a fresh suit on the same cause of action and the same was dismissed. Aggrieved over that, this Civil Revision Petition has been preferred.



C.R.P(NPD).No.1269 of 2022

WEB COPY

3. Learned counsel for the petitioners submitted that during the pendency of the suit, the 1st plaintiff died and his legal representatives have to be brought on record; certain other particulars have to be pleaded clearly on the basis of the documents and if the Court allows the plaintiffs to get their suit withdrawn with a liberty to file a fresh one, that will serve the best interest of both the parties and it would add more clarity to the case of the plaintiffs also.

4. Mr.T.S.Vijayaraghavan, learned counsel for the respondents resisted the claim of the revision petitioners by stating that the legal representatives of the deceased 1st plaintiff have already been brought on record; the suit has been filed for the relief of declaration and permanent injunction, in which the defendants have entered appearance and filed their written statements; now the suit is ripened for trial; hence, the suit need not be withdrawn with a liberty to file a fresh one on the same cause of action and that would only cause for further delay and hardship to the defendants.



C.R.P(NPD).No.1269 of 2022

WEB COPY

5. On perusal of the records, it is seen that the legal representatives of the deceased 1st plaintiff have already been impleaded and there is no reason to bring in any other party on record. If the revision petitioners/plaintiffs feel that certain particulars, which were omitted to be mentioned in the plaint, should be included, they are at liberty to file a petition for amending the pleadings, provided that they are confident that the inclusion will not change the nature of the suit.

6. The learned trial Judge has rightly dealt the petition in the light the conditions contemplated under Order 23 Rule 1(3) of CPC to allow the plaintiffs to withdraw the suit with liberty to file a fresh suit. The reasons stated by the revision petitioners to withdraw the suit by replacing it with a new one is not within the contours of the Order 23 Rule 1. Hence, I do not find any reason for interference in this case.



C.R.P(NPD).No.1269 of 2022

WEB COPY

7. In the result, this Civil Revision Petition is dismissed and the order of the learned IV Additional District Munsif, Salem made in I.A.No.1404 of 2015 in O.S.No.1176 of 2012, dated 07.12.2021 is hereby confirmed. Consequently, the connected Miscellaneous Petition is closed. No costs.

27.06.2022

rgi

Index : Yes

Internet : Yes

Speaking Order

To

1. The IV Additional District Munsif,
Salem.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

Page 5 / 6



WEB COPY



C.R.P(NPD).No.1269 of 2022

R.N.MANJULA,J.

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C.R.P(NPD).No.1269 of 2022
and C.M.P.No.6825 of 2022

27.06.2022