



CRP No.1710 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

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

CRP.No.1710 of 2016
and CMP.No.9137 of 2016

Venni @ Vennila

..Petitioner

Vs.

1.M.Jayakumar
2.Jenova

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order made in C.M.P.No.23 of 2016 in A.S.No.149 of 2001 dated 15.04.2016 on the file of the XVII Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Thiyagarajan

For Respondents

For R1 : No appearance

For R2 : No appearance

ORDER

The civil revision petition has been filed as against the fair and decreetal order dated 15.04.2016 passed in C.M.P.No.23 of 2016 in A.S.No.149 of 2001



on the file of the XVII Additional Judge, City Civil Court, Chennai, thereby allowing the petition filed to transpose the first respondent as the second respondent in the appeal suit.

2. The second respondent filed a suit for partition, in which, the petitioner is arrayed as first defendant and the first respondent is arrayed as third defendant. The second defendant is the father of all the parties in the suit. The said suit was decreed in favour of the second respondent herein and she was allotted half of the suit property. Aggrieved by the same, the petitioner herein and the first respondent filed an appeal suit in A.S.No.149 of 2001.

3. Pending appeal, the first respondent had withdrawn the said appeal. Therefore, the Appellate Court dismissed the appeal filed by the first respondent as withdrawn. Finally, the appeal suit filed by the petitioner was also dismissed. Aggrieved by the same, the petitioner alone filed second appeal before this Court in S.A.No.801 of 2009 and this Court allowed the appeal and remanded the matter to the first Appellate Court for fresh consideration. The first defendant was given an opportunity to file an additional written statement. After remand the appeal, the first respondent filed an application to transpose himself as one of the respondent.



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4. Admittedly, he was one of the appellant in A.S.No.149 of 2001 and he was sailing with the petitioner in the suit. Pending the appeal, he has withdrawn the appeal. Though, this Court had given opportunity to the petitioner to file additional written statement and others were given an opportunity to file their reply for the additional written statement, the first respondent had already not pressed the appeal suit and hence, he was not a party in the appeal suit. Therefore, unless dismissing the appeal as against the second respondent is set aside the earlier order passed in the appeal, he could not be added as a party in the appeal suit. He originally filed a suit and the subsequently filed an appeal. He himself had withdrawn the appeal suit. Therefore, it is clear that the first respondent was not interested in pursuing the appeal suit and he himself wanted to be relieved from the litigation. Now, he cannot be added as a party to the proceedings.

5. In view of the above, the impugned order passed by the first Appellate Court cannot be sustained and it is liable to be set aside. Accordingly, the civil revision petition stands allowed and the order dated 15.04.2016 passed in C.M.P.No.23 of 2016 in A.S.No.149 of 2001 on the file of the XVII Additional



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Judge, City Civil Court, Chennai, is hereby set aside. The Appellate Court is

directed to dispose of the appeal within period of three months from the date of receipt of a copy of this order, if not already disposed of.

12.12.2022

Speaking/Non-speaking order

Index : Yes/No

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To

The XVII Additional Judge,
City Civil Court, Chennai.



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G.K.ILANTHIRAIYAN.J.

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