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W.M.P.No.20626 of 2022

in W.P.No.15148 of 2021

C.V.KARTHIKEYAN,J.,

This petition has been filed by a third party to the writ petition seeking to recall the order of this Court dated 05.08.2021 in the writ petition.

2.Prior to this WMP, the petitioner had filed WMP No.16122 of 2022 seeking to grant leave to the petitioner to file a petition to recall the order passed in W.P.No.15148 of 2021 dated 05.08.2021.

3.Notice had been directed and after hearing both the sides, by an order dated 01.08.2022, this Court had granted leave to file separate petition to recall the order in the writ petition. Accordingly, the present petition had been filed.

4.Heard Mr.P.R.Raman, learned Senior Counsel appearing on behalf of the petitioner herein and Mr.R.C.Manoharan, learned counsel appearing on behalf of the first respondent/petitioner in the writ petition.



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5. In the affidavit filed in support of the writ petition, one fact had been stated namely with respect to the dispute relating to the property that there was a civil suit pending in O.S.No.168 of 2011 on the file of the District Munsif Court, Chengalpet.

6. It is now brought to the notice of this Court that such suit had been dismissed for non prosecution as early as on 28.02.2020. An application had been filed to restore the suit but the suit has not been restored on the date of filing of the writ petition and stood dismissed for non prosecution. The fact that the suit had been dismissed for non prosecution was suppressed in the affidavit filed in support of the writ petition.

7. Along with the writ petition, a typed set of papers had been filed which included a representation given by the writ petitioner. In the said representation, the writ petitioner had mentioned about an order of a learned Single Judge of this Court in W.P.No.13367 of 2016.

8. But however, the actual fact is that the said order in W.P.No.13367



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of 2016 had been recalled by order dated 08.08.2016 of this Court and later, the said writ petition in W.P.No.13367 of 2016 had been dismissed on 04.01.2018. Both these facts had been suppressed by the writ petitioner herein in the affidavit filed in support of the writ petition.

9.It is contended by the learned counsel for the writ petitioner that an anticipatory bail has been obtained by the vendor of the present petitioner and reference is made to that particular order which referred to a Will, which is dated 13.03.1993.

10.If an examination is to be undertaken on all those facts, naturally, the petitioner herein will have to be heard with regard to his contention relating to the Will and to the said order in CrI.O.P.No.11108 of 2009 dated 05.08.2009, primarily because the fact that the suit is O.S.No.168 of 2011 was dismissed for non prosecution had not been mentioned in the affidavit and also because in the corresponding representation, a reference has been made to W.P.No.13367 of 2016 it had already been dismissed on 04.01.2018.



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11.I hold that if those facts relating to the suit and the writ petition had been stated, the order in the writ petition could not have been passed.

12.Therefore, even though there is no representation on behalf of the second and third respondents, I hold that the order dated 05.08.2021 will have to be necessarily recalled and the petitioner herein will have to be given an opportunity to contest the averments made in the affidavit filed in support of the writ petition.

13.In the result, this petition is allowed.

14.The order in W.P.No.15148 of 2021 dated 05.08.2021 is recalled. The petitioner in this WMP.No.20626 of 2022 is suo motu impleaded as a further respondent in the writ petition. Registry is directed to carry out necessary amendment to the cause title in the writ petition, showing the petitioner herein as a further respondent.



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15. Post the writ petition before the appropriate Court after four weeks.

sms

23.08.2022

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sms

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