



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVIC.R.P.No. 1994 of 2017 and C.M.P. No.9607 of 2017

1. C.M. Subbanna Gounder,
2. Ganesh @ Kandasamy,
3. Murthy @ Shanmugasundaram,
4. R. Mohanambal,
5. Kumar @ Kumarasamy,
6. Eswaran @ Eswaramurthy,
7. S. Chandradevi,
8. S. Arulprakash,
9. S. Rukumani

.. Petitioners

Versus

1. S. Chinnasamy Gounder,
2. S. Nachimuthu,
3. The Tahsildar,
Tirupur Taluk,
Kumaran Road,
Tiruppur Town,
4. The Revenue Divisional Officer,
Taluk Office Compound,
Tiruppur - 641 601.
5. The District Collector,
Coimbatore,
Collector Officer, Coimbatore.

..Respondents



Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.03.2017 made in I.A.No.1201 of 2014 in O.S. No.261 of 2012 on the file of the learned District Munsif, Tiruppur.

For Petitioners : Mr. J. Antony Jesus

For Respondents : Mr. R. Bharath Kumar
: For R1 & R2
: Mr.B. Tamilnidhi
(Additional Government Pleader)
: For R3 - R5

ORDER

This Civil Revision Petition has been filed seeking to set aside the the fair and decreetal order dated 09.03.2017 made in I.A.No.1201 of 2014 in O.S. No.261 of 2012 on the file of the learned District Munsif, Tiruppur.

2. The petitioners herein are the plaintiffs and the respondents herein are the defendants in the original suit.

3. The petitioners /plaintiffs filed a suit in O.S.No. 261 of 2012 against the defendants/respondents herein on the file of the learned



District Munsif, Tiruppur, for declaration of title and other consequential relief in respect of the suit property to an extent of 0.03.0 hectores (0.07 acres) in S.F. No.592/3, an extent of 0.13.0 hectores (0.32 acres) in S.F. No.592/4 and an extent of 0.95.0 hectore (2.35 acres) in S.F. No.592/6. During the pendency of the suit, the plaintiffs/petitioners herein have filed the application in I.A.No.1201 of 2014 before the Trial Court under Order 23 Rule 1 (3) of CPC to withdraw the suit with liberty to institute a fresh suit on the same cause of action. The same was dismissed by order dated 09.03.2017 holding that the plaintiffs have not specifically stated any formal defects so as to consider that the suit might be failed due to any formal defect. Being not satisfied with the aforesaid order, the plaintiffs have filed the present Civil Revision Petition seeking to set aside the same.

4. The learned counsel for the petitioners would submit that one Mr. Samiappan is entitled to S.F. No.592/7, as per Patta No.195 and he is also claiming Vaikkal portion in S.F. No.595/2 which was omitted to be mentioned in the schedule property. Hence, it has become necessary to withdraw the suit and file a fresh one.



5. It has been further submitted that this Court dismissed the CRP No.4087 and 4088 of 2009 filed by the plaintiffs/petitioners herein seeking for amendment of plaint and for accepting the reply statement since the Trial was already commenced wherein parties were cross examined and filed proof affidavit. However, without including all the parties and properties in the suit omitted by the plaintiffs, the substantial justice cannot be served and it would harm interest of the justice. Further, in the event of filing of fresh suit for the same cause of action, it would not cause any damage and hardship to the respondents.

6. The learned counsel for the petitioners would further submit that in the deposition of P.W.1, the 1st plaintiff has signed in proof affidavit prepared in the name of the 2nd plaintiff and the 2nd plaintiff also died. While being so, the plaintiffs are intending to file a fresh suit for the same cause of action after withdrawing the present suit in O.S. No.261 of 2005 on the file of the District Munsif, Tiruppur, in order to prove their claim over the suit property. If the petitioners are not granted fair opportunity to prove their claim over the properties for the mistake of the earlier counsel appearing for the plaintiffs, the plaintiffs/petitioners would be put to



irreparable hardship. Without taking into account the aforesaid aspects, the Trial Court has dismissed the application in I.A. No.1201 of 2014 in O.S. No.261 of 2005 mechanically. It is not sustainable and liable to be set aside.

7. The learned counsel for the respondents would submit that the plaintiffs have filed the said application with the intention to protract the suit proceedings. The 2nd plaintiff was examined as P.W.1 on 07.08.2007 by way of filing proof-affidavit. Ex.A1 to Ex.A3 were marked through P.W.1 and he was cross examined on 13.08.2007 and 18.03.2008. While being so, the plaintiffs cannot seek a permission to withdraw the suit with liberty to file a fresh suit for the same subject matter on the ground that the 2nd plaintiff has not put his signature in his proof affidavit and on contrary the 1st plaintiff has signed on it. When the trial of the suit has entered the final phase, the plaintiffs are trying their best to stall the conclusion of the Trial after taking advantage of their own omissions and commission by seeking a leave to file a fresh suit on the same cause of action. A party to the suit cannot take advantage of his own omissions and commissions. In a suit for declaration of title, the omission to implead a



person and Vaikkal portion having a interest in the property is a fatal to the suit. After considering facts and circumstances of the case, the Trial Court has rightly dismissed the said application filed by the plaintiffs/petitioners herein.

8. Heard both sides and perused the materials available on record.

9. On a perusal of the records, it is seen that the plaintiffs filed a suit in O.S.No.261 of 2017 before the Trial Court for declaration and other consequential relief in the suit schedule property. In the suit schedule property in S.F. No.592, vaikkal portion is in S.F. No.592/2 out of other survey numbers claimed by the parties. The same is not included in the suit schedule property while the parties are claiming the same. It is said that one Mr. Samiappan is entitled to S.F. No.592/7 in the suit property as per Patta No.195 who is not impleaded in the said suit due to inadvertence of the earlier Counsel for the plaintiffs. The parties should not suffered for not including the necessary party and portion of the property. If the parties are not granted liberty to file a fresh suit, the right of the plaintiffs would be deprived for the mistake of the advocate engaged by the



plaintiffs in the suit while the suit is for declaration of title. Further, as both parties are claiming right over the suit properties, they have to adduce their evidence on their side to prove their title over the suit property. Then only the suit would be disposed of on merit after considering the oral and documentary evidence with the necessary parties in the suit. Hence, having considered the facts and circumstances of the case and interest of justice, this Court is inclined to allow the Civil Revision Petition by setting aside the order dated 09.03.2017 passed by the Trial Court in I.A. No.1201 of 2014.

10. In the result, the Civil Revision Petition is allowed. Accordingly, the liberty is given to the plaintiffs/petitioners herein to file a fresh suit for declaration of the title in the suit property by including the necessary parties and properties in the fresh suit. No Costs. Consequently, connected miscellaneous petition is closed if any.

12.10.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No



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CRP.No.1994 of 2017

T.V.THAMILSELVI, J.

Lbm

To

1. The learned District Munsif, Tiruppur.
2. The Section Officer, V.R.Section
High Court, Madras.

C.R.P.No. 1994 of 2017
and
C.M.P. No.9607 of 2017

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