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C.R.P.No.3913 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22.08.2022

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.3913 of 2017
and C.M.P.No.18301 of 2017

S.Gnanambal (Died)

1. S.Sudhakaran
S/o. S.T.Shanmugam

2. N.Lakshmi
W/o.Nathirananthan

3. P.Usha
W/o.Panneerselvam

4. T.Manjula
W/o.Thennarasu

5. R.Sumathi
W/o.Ramu

.. Petitioners

Vs

S.Baskar
S/o.S.T.Shanmugam

..Respondent



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 22.08.2017 made in I.A.No.359 of 2017 in O.S.No.66 of 2008 on the file of District Munsif Court, Gudiyattam.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.T.Dhanyakumar

ORDER

The defendants have filed this Civil Revision Petition against the fair and decreetal order dated 22.08.2017 made in I.A.No.359 of 2017 in O.S.No.66 of 2008 on the file of District Munsif Court, Gudiyattam, whereby the respondent/plaintiff was permitted to withdraw the suit with liberty to file a fresh suit.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondent.



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3. Considering the submissions made on either side and on perusal of the materials available on record, this Court is of the considered opinion that this petition is liable to be dismissed.

4. It is an admitted fact that originally, the suit was filed by the plaintiff/respondent herein against the deceased defendant, Smt. Gnanammal for permanent injunction restraining the 1st defendant from alienating the suit property. It is the case of the petitioners/defendants that the suit property was originally purchased by Sri.S.T.Shanmugam Mudaliar and got the sale deed executed in the name of his wife Gnanammal, the deceased defendant and that there was a oral partition of the suit property during the lifetime of Sri.S.T.Shanmuga Mudaliar and it was divided into two portions (Door Nos.48A & 48B) by putting a wall, which were allotted to the defendants and the plaintiffs respectively and both of them are enjoying their respective share from the date of oral partition. Therefore, the plaintiff has no absolute right over the property and his claim based on the settlement deed is not a valid one. Apart from that, it is the specific case of the petitioners/



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defendants that the registered cancellation of settlement deed dated 16.03.2006 was obtained in July 2007, however, the suit was filed on 06.02.2008 and therefore, the respondent/plaintiff was fully aware of the cancellation of settlement deed and hence, the plaintiff has filed the suit with ulterior motive and unclean hands.

5. It is the case of the respondent/plaintiff that the 1st petitioner herein/2nd defendant forcibly made the deceased defendant to cancel the settlement deed on 16.03.2006 executed in favour of the plaintiff on 30.12.2005. During the pendency of the suit, on 22.09.2012, Gnanammal, mother of the petitioners and the respondent, died. It is the case of the respondent/plaintiff, pursuant to the settlement deed executed in his favour he was in possession and enjoyment of the suit property and that the settlement deed dated 30.12.2005 was acted upon and no one can claim any right or title over the property. While the matter stood thus, the petitioners/defendants disputed the plaintiff's title to the suit property based on the cancellation deed dated 16.03.2006. It is the case of the plaintiff that there



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was no oral partition as alleged by the petitioners/defendants and their claim, based on the permissive possession of the suit property, is false and they have no right or title over the suit property.

6. The Court below, upon consideration of the pleadings, has come to the conclusion that the relief sought for in the suit has become infructuous due to the death of the deceased defendant and therefore, no relief can also be granted against the petitioners/defendants. Thus, the Court below has found that the respondent/plaintiff has rightly sought for withdrawal of the suit seeking permanent injunction against the deceased defendant and to file a fresh suit with the relief of declaration and recovery of possession against the petitioner/defendants. It is also observed by the Court below that no prejudice would be caused to the defendant in allowing the respondent/plaintiff to withdraw the original suit and file a fresh suit. After the death of the deceased defendant, there is no cause of action against these petitioners/defendants in the suit. Therefore, in the interest of justice, the court below has rightly allowed the I.A. filed the respondent/ plaintiff permitting him to



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(vsi)
withdraw the original suit and to file a fresh suit against these petitioners/
defendants with the same cause of action. Therefore, this Court does not find
any illegality or infirmity in the order passed by the court below.
Accordingly, the Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

22.08.2022

Index :Yes/No
Speaking/Non-speaking order
vsi

To
1. The District Munsif, Gudiyattam.

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