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CRP.No.4085 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4085 of 2019

and

CMP.No.26738 of 2019

1. P. Shanmuga Sundaram,
2. P. Rajasekaran,
3. P. Parthasarathy

.. Petitioners

Versus

1. T. Rajendran,
- Nagammal (Died)

2. Rajeswari
3. T. Perumal,
4. Balachandar,
5. Janaki,
6. Jothi,
7. Shanthi,
8. Jayanthi,
9. Prasanna,
10. Abirami,
11. Tamilselvi

...Respondents



Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 23.10.2019 made in I.A.No.3 of 2019 in O.S. No.66 of 2006 on the file of Additional District (Fast Track) Court, Mettur.

For Petitioners : Mr.Sundara Vadhanan

For Respondents :Mr. K. Elango
(For RR 1 & 2)
: No Appearance for RR3 - 6 & 8-10
: Insufficient Address for R7
: Left for R11

ORDER

This Civil Revision Petition has been filed by the petitioners seeking to set aside the fair and decreetal order dated 23.10.2019 made in I.A.No.3 of 2019 in O.S. No.66 of 2006 on the file of Additional District (Fast Track) Court, Mettur.

2. The petitioners herein are the defendants 2 to 4 and the respondents 1 and 2 are the plaintiffs in the original suit.

3. The 1st respondent/1st plaintiff along with 10 others filed a suit in



O.S.No.66 of 2006 before the District Judge, Salem, seeking for partition and other consequential relief. During the pendency of the suit, as the plaintiffs 3, 5 to 11 are not co-operating with the 1st plaintiff/respondent herein to prosecute the suit, he has filed I.A. No.3 of 2019 on the file of the Additional District (Fast Track) Court, Mettur seeking to transpose the aforesaid plaintiffs as defendants 5 to 12 in the suit proceedings. In spite of objections raised by the defendants, the Trial Court allowed the application stating that as the plaintiffs 3, 5 to 11 are not co-operating with the plaintiffs 1, 2 and 4, to avoid future complication and to avoid unnecessary multiplicity of proceedings and for the purpose of complete adjudication, transposition of 3rd, 5th to 11th plaintiffs as 5th to 12th defendants is must. Being aggrieved by the aforesaid order, the defendants 2 to 4 have filed the present Civil Revision Petition to set aside the same.

4. The learned counsel for the petitioners would submit that after commencement of Trial, the plaintiffs have filed the application with the intention to drag on the Trial proceedings. While the 1st plaintiff had already deposed and cross examined as P.W.1 and filed his proof affidavit on behalf of other plaintiffs, now cannot take contrary pleading against the



admission made by them in the pleading in the plaint. Hence, I.A. No.3 of 2019 is liable to be dismissed.

5. The learned counsel for the respondents 1 and 2 would submit that since the plaintiffs 3, 5 to 11 are not co-operating with the 1st plaintiff for Trial, no other option except to transpose them as the defendants 5 to 12 in order to avoid future complication and unnecessary multiplicity of proceedings. So far, the 1st plaintiff was examined as P.W.1 and filed proof affidavit on the side of the plaintiffs. Other than that, no evidence was examined. Therefore, the reasons assigned by the Trial Court is justifiable.

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

7. Admittedly, the plaintiffs 1 to 11 have filed the suit in O.S. No.66 of 2006 seeking for partition and other reliefs. During the pendency of the suit, the process of compromise had started between the parties in which no compromise could have been arrived at between them since the plaintiffs 3rd, 5th to 11 raised different views against their pleadings.

8. Under such circumstances, the 1st plaintiff has filed I.A. No.3 of



2019 to transpose the contrary plaintiffs as the defendants in the suit even though P.W.1 was examined and proof affidavit has been filed on behalf of other plaintiffs who are proposed to transpose as the defendants. Having considered facts and circumstances of the case, in order to avoid future complication and unnecessary multiplicity of proceedings, the Trial Court has allowed the aforesaid application which is justifiable and sustainable. However, at the stage of examination of P.W.1, the Trial Court is hereby directed to expunge the proof affidavit filed by the 1st plaintiff earlier on behalf of other plaintiffs and commence the Trial after including the plaintiffs 3, 5 to 11 as the defendants 5 to 12 in the suit. The liberty is given to the defendants to conduct the case by filing additional written statement having regard to the amendment shall not be caused for new cause of action in the suit. As the suit is pending from the year 2006, the Trial Court is hereby directed to dispose of the suit as expeditiously as possible and both parties are directed to co-operate with the Trial without seeking any unnecessary adjournments.



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T.V.THAMILSELVI, J.

Lbm

9. With the aforesaid directions, the Civil Revision Petition is allowed. Consequently connected miscellaneous petition is closed if any.

No costs.

10.10.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No

To

1. The Additional District (Fast Track) Court, Mettur.
2. The Section Officer, V.R.Section
High Court, Madras.

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