



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Tuesday, the Twenty Ninth day of March Two Thousand and Twenty Two

PRESENT

WEB COPY

The Hon`ble Mr.Justice S.M.SUBRAMANIAM

CMP(MD) . No.1143 of 2022
in
SA(MD) No.36 of 2020

1.K.Retnaswamy
2.Prabha Stalin
3.Dr.R.Jegan
4.Thamarai Selvan

... Petitioner/Appellant

Vs

1 Packianathan
2 Valiammal
3 Athilingam
4 Kathikeyan
5 Marimuthu
6 Executive Officer
Agastheeswaram Town Panchayath
Agastheeswaram, Agastheeswaram Taluk
Kanyakumari Dt.
7 The State of Tamil Nadu
Rep. by the District Collector,
Kanyakumari at Nagercoil,
Nagercoil Village
Agastheeswaram Tk, KanyakumariDt.
8 Muthusamy

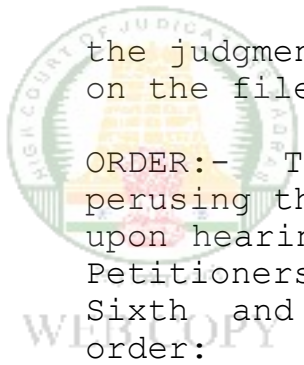
... Respondents/Respondents

Prayer :-

This Petition filed under order XXIII rule 1 of C.P.C r/w section 151 of C.P.C to withdraw the main suit in O.S. No.93 of 2003 on the file of the II Additional District Munsif, Nagercoil with a liberty to file a fresh suit with the necessary relief due to the change in circumstances of the instant case.

Prayer in SA(MD) . 36/ 2020 :

This Second Appeal filed under section 100 of C.P to set aside the judgment and decree dated 02.08.2017 passed in AS.No.135 of 2014 on the file of the Principal Subordinate Judge, nagercoil confirming



the judgment and decree dated 14.2.2014 passed in O.S. No.93 of 2003 on the file of the II nd Additional District Munsif Nagercoil

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru. S.Rajasekar, Advocate for the Petitioners and of Thiru.G.Sivaraja, Government Advocate for the Sixth and Seventh respondents, this Court made the following order:

This civil miscellaneous petition is filed to withdraw the main suit in O.S.No.93 of 2003 on the file of the II Additional District Munsif, Nagercoil, as the respondents 1 to 5 have constructed the building in front of the property belongs to the petitioner.

2.The petitioners already preferred second appeal against the judgment and decree dated 02.08.2017 passed in A.S.No.135 of 2014 on the file of the Principle Subordinate Judge, Nagarcoil, confirming the judgment and decree dated 14.02.2014 passed in O.S.No.93 of 2003 on the file of the II Additional District Munsif, Nagercoil.

3.The petitioner filed a suit for injunction in O.S.No.93 of 2003 to restrain the respondents from constructing the building in front of the property belongs to the petitioner. As he raised the ground that the defendants are constructing the houses in Government Poromboke land. During the pendency of the litigation, the defendants have constructed the building and therefore, the nature of the case has been changed. Thus the relief is to be modified as a fresh cause of action arose, on account of the construction of a building by the defendants in the subject property.

4.Under those circumstances, the learned counsel for the petitioners reiterated that pursuing the second appeal may not be of any avail to the petitioners as the cause originally arose did not exist as of now and a new cause arose, as the defendants constructed the houses in the subject property.

5.This being the factum established, the relief sought for in the civil miscellaneous petition is to be considered. Accordingly, the petitioners are permitted to withdraw the suit in O.S.No.93 of 2003 on the file of the II Additional District Munsif, Nagercoil, with a liberty to file a fresh suit in respect of the cause of action subsequently arose.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



TO

1. The District Collector,
Kanyakumari District
2. The Principal Subordinate Judge, Nagercoil
3. The IInd Additional District Munsif, Nagercoil
4. The Special Govt. Pleader,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-15607[F] dated
31/03/2022)

ORDER DATED : 29/03/2022

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ORDER
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CMP(MD) . No.1143 of 2022
in
S.A.(MD) .No.36 of 2020

Giving direction and etc.
as stated within.

MGJ(08.04.2022) 3P 6C