



CRP(PD)(MD)No.1302 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1302 of 2022

and

CMP(MD)No.5365 of 2022

Rajagopal

... Revision Petitioner

versus

Dhanapackiyam (died)

1. Nagarajan

2. Rajeswari

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.03.2022 passed in I.A.No.16 of 2021 in A.S.No.17 of 2015 on the file of the Subordinate Court, Pattukkottai.

For Revision

Petitioner : Mr.P.Thirumahilmaran

ORDER

This Civil Revision Petition has been filed against the order dated 24.03.2022 passed in I.A.No.16 of 2021 in A.S.No.17 of 2015 on the



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file of the Subordinate Court, Pattukkottai.

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2. The revision petitioner is the plaintiff in O.S.No.142 of 2011 on the file of the District Munsif Court, Pattukottai. He filed the said suit for partition of his $\frac{1}{2}$ share in the suit schedule properties. The trial Court has dismissed the suit that the plaintiff is not entitled for partition of $\frac{1}{2}$ share in the suit schedule properties. Against the Judgment and Decree passed in O.S.No.142 of 2011, the plaintiff/revision petitioner preferred an appeal suit in A.S.No.17 of 2015 before the Sub Court, Pattukkottai. The said appeal suit was pending from the year 2015. In the year 2021, the appellant/revision petitioner filed an interlocutory application in I.A.No.16 of 2021 in A.S.No.17 of 2015 under Order 23 Rule 1(3) C.P.C. seeking permission for withdrawal of the appeal suit with liberty to file a fresh suit on the same cause of action in the suit in O.S.No.142 of 2011. However, the said application was dismissed by the appellate Court on 24.03.2022. Aggrieved over the same, the present Civil Revision Petition has been filed.



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3. The learned counsel appearing for the revision petitioner submits that the petitioner has not included the property to an extent of 7 ½ cents in Survey No.116/10 which was already sold and in order to mention the same in the plaint, the revision petitioner has filed the said application to withdraw the appeal suit and to file a fresh suit on the same cause of action of the suit in O.S.No.142 of 2011. He further submits that there is no cause of action in the suit for partition and the filing of fresh suit after withdrawal of the appeal will not affect the defendants. However, the appellate Court, without considering the same, rejected the application.

4. This Court considered the submissions made by the learned counsel for the petitioner and also perused the materials available on record.

5. On perusal of the order passed by the appellate Court, it is seen



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that while rejecting the application, the Appellate Court has considered the case of the plaintiff/appellant/revision petitioner that there was a oral partition among the family members and pursuant to the oral partition, the plaintiff/revision petitioner sold 7 ½ cents in Survey No. 116/10, which was allotted to him, to a third party under a registered sale deed dated 07.03.1992 (Ex.B7) and thereafter, he filed the suit against his sister that he is having ½ share in Survey No.116/10 and in order to fill up the lacuna pointed by the trial Court, the appellant/revision petitioner has filed the present application stating that it was omitted to be mentioned in the plaint about the allotment of 7 ½ cents in Survey No.116/10 to him, in a oral partition and he sold the said property to a third party.

6. The revision petitioner has filed the suit in O.S.No.142 of 2011 for partition against his sister with regard to the property in Survey No.116/10, suppressing the oral partition effected among the family members. However, even before instituting the suit in the year



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2011, the plaintiff/revision petitioner sold the property to an extent of 7 ½ cents in Survey No.116/10 to a third party under a registered sale deed executed on 07.03.1992 (Ex.B7). Suppressing the earlier oral partition and the sale deed executed pursuant to it, the revision petitioner filed the above suit. Therefore, the trial Court, by Judgment and Decree dated 03.08.2015, dismissed the said suit. Aggrieved over the same, he filed A.S.No.17 of 2015 before the Sub Court, Pattukkottai. In the year 2021, the plaintiff/revision petitioner has filed I.A.No.16 of 2021 under Order 23 Rule 1 C.P.C. seeking permission for withdrawal of the appeal and to file a fresh suit on the same cause of action of the suit in O.S.No.142 of 2011. The appellate Court, after considering the case of the plaintiff/appellant and various decisions of the Court, has rightly come to the conclusion that the application is filed in order to fill up the lacuna pointed by the trial Court and it cannot be permissible in law. Therefore, this Court does not find any reason to interfere with the order of the Appellate Court.



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7. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet: Yes / No
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To

The Subordinate Court,
Pattukkottai.



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B.PUGALENDHI, J.

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