



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S. ANANTHI

CRP (MD) .No. 1443 2021 and
CMP (MD) .No.8093 of 2021

Thangavel

.. Revision Petitioner /
Respondent/Defendant

Vs.

Karuppaiah @ Anwar Husain

.. Respondent/Petitioner/Plaintiff

Prayer: These Civil Revision Petition is filed under Section 115 CPC against the fair and deceetal order dated 16.03.2021 in I.A.No.199 of 2019 in O.S.No.128 of 2016 on the file of the District Munsif Court, Ramanathapuram.

For Petitioner ... Ms. M. Parameswari
For respondent ... Mr. K.R. Laxman

ORDER

The revision petitioner / defendant filed this revision to set aside the order, dated 16.03.2021 passed in I.A.No.199 of 2019 in O.S.No.128 of 2016 on the file of the District Munsif Court, Ramanathapuram.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The said Interlocutory Application in I.A.No.199 of 2019 was filed by the respondent / plaintiff under Order 23 Rule 3(a) CPC to withdraw the suit in O.S.No.128 of 2016 with liberty to file a fresh suit for the same cause of action. The suit for declaration that he is a legal heir for the deceased Mangai Kilavan @ Ariff and also for declaration to declare the settlement deed executed in favour of Karungammal is null and void. Now, the respondent / plaintiff wants to withdraw the suit to file a fresh suit on the basis of the declaration of title and permanent injunction.

4. The respondent / plaintiff has claimed a right in entire property and hence, the declaration of title to the property is necessary. These two prayers not at all granted to the plaintiff in the present suit, so, he has to file a fresh suit for declaration of title to the property. However, the trial Court has allowed the petition as it is a formal defect, but, it is not a formal defect.



5. Since the new suit for declaration of title is necessary to decide the rights of the parties and that the sufficient cause shown by the respondent / plaintiff, this Court is inclined to allow this revision.

6. Accordingly, this Civil Revision Petition is dismissed by confirming the order, dated 16.03.2021 passed in I.A.No.199 of 2019 in O.S.No.128 of 2016 on the file of the District Munsif Court, Ramanathapuram. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

The District Munsif Court, Ramanathapuram.

+1 CC to M/s.S.M.S.JOHNNY BASHA, Advocate (SR-13063[F] dated 18/03/2022)

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_SS/25.03.2022 : 2P/3C