



C.R.P.Nos.1988 of 2016 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.1988, 1989 & 1990 of 2016
and
C.M.P.Nos. 10407, 10408 & 10409 of 2016

C.R.P.No.1988 of 2016

Vijayan Rajes .. Petitioner

VS

1.Mohan Rajes
2.Gowri Pandayanathan
Soundara Rajes (died)
3.Dayalan Rajes .. Respondents

C.R.P.No.1989 of 2016

Vijayan Rajes .. Petitioner

VS

1.Mohan Rajes
2.Dayalan Rajes
Soundara Rajes (died)
3.Gowri Pandiayanadhan
4.The No.1 Joint Sub Registrar
Salem (East), Salem – 636 001. .. Respondents

C.R.P.No.1990 of 2016

Vijayan Rajes .. Petitioner

VS

1.Mohan Rajes



C.R.P.Nos.1988 of 2016 etc

Soundara Rajes (Died)
2.Dayalan Rajes
3.Gowri Pandayanadhan
Bhanumathy Rajah (Died)
M.S.P.Rajah (died)
4.P.Jayaraj
5.Ulageswari
6.Sankareswari
7.Rajalakshmi
8.Vijayalakshmi
9.Madhana Ramamurthy
10.Suguna Mahendran
11.Radika Prabhu
12.Perisamy Ramesh Rajah
13.Preetha V.Kannan
14.Minor Ramaraj
15.Minor Aswini Ramesh Raja
16.Ashok Mohan Rajes

.. Respondents

Prayer in CRP No. 1988 of 2016 : Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 11.01.2016 passed in IA No. 135 of 2015 in OS No. 64 of 2007 on the file of III Additional District Court, Salem.

Prayer in CRP No. 1989 of 2016 : Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 11.01.2016 passed in IA No. 136 of 2015 in OS No. 90 of 2011 on the file of Additional District Court, Salem.

Prayer in CRP No. 1990 of 2016 : Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 11.01.2016 passed in IA No. 134 of 2015 in OS No. 116 of 2004 on the file of Additional District Court, Salem.



C.R.P.Nos.1988 of 2016 etc

For Petitioner : Mr.R.Vijayaragavan
For Respondents : Mr.S.Sethuraman
for R1 in all CRPs

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COMMON ORDER

I.A.Nos. 134 to 136 of 2015 have been filed under Section 10 of the Code of Civil Procedure. Prior to these applications seeking relief under Section 10 of CPC, I.A.Nos. 1026 & 1027 of 2007 were filed in O.S.No.116 of 2004 and in O.S.No. 64 of 2007. They were also applications filed under Section 10 of the CPC. The applications were dismissed by the learned Additional District Judge cum Fast Track Court, Salem on 28.11.2007. Challenging the same, the civil revision petitions are filed before this Court in C.R.P.(PD) Nos. 540 & 600 of 2008. The said revisions were dismissed on 11.02.2008 and 14.02.2008, respectively. In the said revisions this Court had specifically, held as follows:-

"CRP (PD) No. 540 of 2008

4.Admittedly, the petitioners preferred an application under Order 23 Rule 1 CPC for permission to withdraw the suit with liberty to file a fresh suit. The said application has been dismissed by the Court below and thereafter, the petitioners preferred CRP No. 2107 of 1999 before this Court and the same was also dismissed on 14.10.2003. Thereafter, the petitioners have proceeded with the suit and the suit was dismissed and an appeal seems to have been filed against the said Judgment and



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C.R.P.Nos.1988 of 2016 etc

decree. This has been weighed in the mind of the learned Judge while dismissing the application filed under Order 10 Rule 1 CPC. Further more, the petitioners have not filed any document substantiating that the issue involved in the present suit and the issue before this Court in the appeal are one and the same. Thus, the Court below has taken into consideration the above facts and dismissed the application preferred by the petitioners. Yet another reason that could be assigned is that the appeal before this Court may take couple of years ad till then, the suit filed by the first respondent need not be stayed.

CRP (PD) No. 600 of 2008

3. In the present suit what has to be decided is whether the gift deed is valid or not and the same is not the subject matter to be decided in the appeals that are pending before this Court. The appeals pending before this Court are relating to the relief of partition and separate possession. Thus the court below has rejected the contention raised on the side of the petitioner seeking for stay of the suit till disposal of the appeals pending before this Court. I do not see any illegality or infirmity in the said order."

2. After having suffered an order of dismissal before this Court, the respondents herein have argued before the trial Court that the case was not properly explained to learned District Judge as well as to the High Court and, therefore, they have filed fresh applications under Section 10 of the CPC.

3. I am afraid, once an order comes till the High Court



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and it is dismissed, it is no more open to the learned District Judge to entertain a fresh application on the same grounds. To state that the points were not urged before the High Court and, therefore, the petitioners are entitled to re-urge the very same points before the trial Court is nothing but granting premium for re-litigation.

4. I am bound by the orders passed by this Court in CRP (PD) Nos. 540 and 600 of 2008. It is unfortunate that the trial Court should have been persuaded by going into the merits of the case after the previous order had attained finality. Consequentially, the Civil Revision Petitions stand allowed. The stay granted is vacated and the trial Court shall proceed with the suit and dispose of the same within a period of six months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

17.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To
The III Additional District Court, Salem.



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V. LAKSHMINARAYANAN,J.

ssm

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