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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2625 of 2017
and C.M.P.No.12514 of 2017

1.Venkatachala Konar (died)
2.Navammal
3.Muthazhagan
4.Veeramani
5.Rajalakshmi .. Petitioners

(Sole petitioner died. Petitioners 2 to 5 brought on record as legal heirs of the deceased sole petitioner viz., Venkatachala Konar vide Court order dated 01.2.2023 made in C.M.P.No. 1843 of 2023 in CRP.No.2625 of 2017)

Vs.

1.Perumal (died)

2.Venkatesan

3.Govindan

(Respondents 2 & 3 legal heirs of the deceased 1st respondent viz., Perumal vide Court order dated 01.02.2023 made in C.M.P.No.1848 of 2023 in C.R.P.No.2625 of 2017) ... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 30.01.2017 made in I.A.No.555 of 2016 in

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O.S.No.75 of 2012 on the file of the II Additional District Munsif Court, Vridhachalam.

For Petitioners : Ms.R.Meenal

For R2 & R3 : Mr.G.Suryanarayanan

O R D E R

The revision arises against an order passed by the learned District Munsif, Vridhachalam, under Order XXIII Rule 1 of the C.P.C.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents. I have carefully gone through the records.

3. The 1st civil revision petitioner is the plaintiff and the respondents are the defendants. The plaintiff presented a suit for declaration and injunction. Soon thereafter, the written statement was filed by the 1st defendant, which was adopted by the defendants 2 & 3. At the time of trial, it was noticed that the genealogy and the schedule of property differs. Treating this as formal defect, the plaintiff wanted to withdraw the suit and file a fresh suit on the same cause of action. Therefore, the plaintiff filed an application in I.A.No.555 of 2016 under Order XXIII Rule 1 of the C.P.C.

4. If there is a mistake in genealogy or in the schedule of property or in tracing of title, the same can be corrected by way of filing an application under Order VI Rule 17 of C.P.C. Having filed a suit, which invited the defendants to take a stand, which

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they have rightly taken so, to withdraw the suit and file a fresh suit on the same cause of action would amount to unnecessary harassment for the defendants.

5. The learned trial Judge dismissed the application holding that an amendment application can be filed. I do not find any error or irregularity in the order of the trial Court.

6. Accordingly, the Civil Revision Petition is dismissed confirming the order of the learned II Additional District Munsif, Vridhachalam, dated 30.01.2017 made in I.A.No.555 of 2016 in O.S.No.75 of 2012. Four weeks time is granted to the petitioners to file an amendment application, if they so desire. In case, if they do not file an amendment application within a period of four weeks, then the suit will proceed as per the plaint that had been presented on 24.03.2012. If the amendment application is allowed, sufficient time shall be granted to the defendants to file an additional written statement. No costs. Consequently, connected Miscellaneous Petition is closed.

24.07.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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V.LAKSHMINARAYANAN,J.

Kj

To

II Additional District Munsif
Virudhachalam.

C.R.P.(PD)No.2625 of 2017
and C.M.P.No.12514 of 2017

24.07.2023

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