



C.R.P(PD)(MD).No.2407 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P(PD)(MD).No.2407 of 2018
and CMP(MD)No.10760 of 2018

B.Meenakshi

... Petitioner

Vs

1. Chidamaram

2. Lalitha

3. M.Ramamoorthy

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Fair and Decreetal order, dated 04.08.2018 in I.A. No. 380 of 2017 in O.S. No. 64 of 2017 on the file of the I Additional District Court, Madurai by allowing this Civil Revision Petition.

For Petitioner : Mr.T.C.S.Thillainayagam

For Respondents : Mr.C.Karthick (R1, R2)

No Appearance (R3)



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ORDER

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To set aside the fair and decreetal order, dated 04.08.2018 in I.A. No. 380 of 2017 in O.S. No. 64 of 2017 passed by the learned I Additional District Judge, Madurai, the revision petitioner has filed this Civil Revision Petition before this Court.

2.The petitioner is the first respondent/plaintiff and the respondents are the petitioners/defendants 1 and 3 before the trial Court. For the sake of convenience, the parties are referred to as per the litigative status in the suit.

3.The brief facts, which arise for the filing of the instant civil revision petition are as follows:

(i)It appears that the first respondent/plaintiff has filed a suit for the relief of partition, in respect of five items of properties in O.S.No. 64 of 2017;

(ii)On perusal of record, even prior to filing of the said suit, the first petitioner/first defendant had already filed a suit in O.S.No.87 of 2012, for the relief of partition in respect of his mother's properties.



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Subsequently, in the said suit, the 2nd defendant has filed an application in I.A.No.89 of 2015 to include his father's properties, which was allowed by the Court below;

(iii)Therefore, the petitioners/defendants 1 and 3 have filed an application under Section 10 of C.P.C to stay the proceedings in O.S.No.64 of 2017.

(iv)The trial Court found that if any decree passed in O.S.No. 87 of 2012 would become *resjudicata* to the subsequent suit in O.S.No.64 of 2017 and also referred the precedend in ***National Institute of Mental Health and Neuro Sciences Vs. Parameswara*** reported in **2005 (2) SCC 256**, ultimately allowed the petition filed under Section 10 of C.P.C.

(v)Aggrieved with the said order, the first respondent/plaintiff has filed the present revision petition.

4.The learned counsel for the respondents would submit that though the reliefs sought in both the suits are one and the same, in O.S.No.



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64 of 2017, the petitioner has raised comprehensive relief, which were not raised in the earlier suit i.e., O.S.No.87 of 2012. Hence, prays to dispose both the suits simultaneously.

5.I have given my anxious consideration to either side submission.

6.This Court would disagree with the contentions of the learned counsel for the respondents, since the same is contrary to Section 10 of C.P.C. The finding of the trial Court that any decree passed in O.S.No.87 of 2012 would become *resjudicata* to O.S.No.64 of 2017 was fairly conceded by either side. Therefore, this Court does not want to interfere with the order of the Court below.

7.In the result, **this Civil Revision Petition stands dismissed.** There is no order as to costs. Consequently, connected miscellaneous petition is closed.

8.However, since some amendment took place by way of amending the suit property in O.S.No.87 of 2012, the petitioner is at liberty



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to file additional written statement. At this juncture, the learned counsel for the respondents would invite the attention of this Court that since the petitioner has already been set exparte in O.S.No.87 of 2012, unless, she filed an application to set aside the exparte decree, there can't be filing of any additional written statement. It goes without saying that without setting side the exparte order, the petitioner could not file additional written statement.

04.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PNM

To

- 1.The I Additional District Judge, Madurai.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN, J.,

PNM

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