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C.R.P.No.1120 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.1120 of 2021 and

C.M.P.No.8707 of 2021

1.Lakshmi
2.Rajaguru
3.Sampath
Vijay(died)
4.Santhi
5.Jamuna

... Petitioners

Vs.

1.Raji
2.Mahendran
3.Ilamathi

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the order dated 12.02.2021 passed in I.A.No.174 of 2020 in O.S.No.430 of 2019 on the file of the learned District Munsif-cum-Judicial Magistrate, Kalasapakkam and consequently direct the learned Trial Court to conduct the trial of the suit in O.S.No.430 of 2019.

For Petitioners
For Respondents 1 &2

: Ms.S.Ambigapathi
: Mr.M.Muthappan
R3-No such person



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C.R.P.No.1120 of 2021

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below allowing the application filed by the respondents seeking leave of the Court to withdraw the suit with liberty to file a fresh suit on same cause of action.

2. The respondents herein filed a suit for bare injunction in O.S.No.430 of 2019 on the file of District Munsif-cum-Judicial Magistrate, Kalasapakkam. Thereafter, the respondents filed an application seeking to withdraw the suit with liberty to file fresh suit. In the affidavit filed in support of the said petition, it is stated by the respondents that their counsel filed a suit for bare injunction and they signed the same without knowing the contents. The petitioners resisted the suit by claiming title over the suit property. Since there was a dispute with regard to the title, the respondents wanted to file a suit for declaration and consequential relief by withdrawing the present suit for bare injunction. The said application was resisted by petitioners by filing a counter affidavit.



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3.The Court below, by perusing the pleadings of the parties, came to the conclusion that there is a serious dispute with regard to the title of the suit property and therefore, inclined to permit the respondents to withdraw the suit for bare injunction with liberty to file a comprehensive suit for declaration of title and consequential relief in accordance with law. I do not find any error in the order passed by the Court below. The order permitting the respondents to file a suit for declaration of title and other appropriate consequential relief will not cause any prejudice to the petitioners. In such circumstances, the order passed by the Court below does not require any interference by this Court.

4. Taking into consideration the suit for bare injunction was pending before the Court for some time, the respondents are directed to pay a cost of Rs.5000/-(Rupees five thousand only) to the petitioners within a period of four weeks from the date of receipt of a copy of this order. Unless the respondents pay the cost as directed, the benefit of the liberty granted to them will not enure to them.



C.R.P.No.1120 of 2021.

WEB COPY

5. With these observations, the Civil Revision Petition stands dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

02.02.2024

Index : Yes / No

Internet : Yes / No

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C.R.P.No.1120 of 2021.

S.SOUNTHAR, J.

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To

The learned Munsif-cum-Judicial Magistrate, Kalasapakkam.

C.R.P.No.1120 of 2021 and
C.M.P.No.8707 of 2021

02.02.2024

5/5