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C.R.P.No.4758 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

C.R.P.No.4758 of 2024
and
C.M.P.No.26638 of 2024

1.M.Gnaneswaran
2.Rajinikanth

.. Petitioners

VS

1.V.Saravanan
2.Vimala
3.P.V.Sakthivel
4.J.Sujatha
5.James @ Janarthanan

6.The Thasildar
Thasildhar Office,
Pochempalli,
Krishnagiri District.

7.The Sub-Registrar,
Sub-Registrar Office,
Uthangarai,
Krishnagiri District.

8.The District Registrar,
District Registrar Office,
Krishnagiri.

9.The State Representative,
The District Collector,
Collectorate Office,
Krishnagiri.

.. Respondents



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Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.1 of 2023 in un-numbered OS No.____ of 2023 dated 28.03.2024 on the file of the Principal District Judge, Krishnagiri.

For Petitioner : Mr.R.Jayaprakash

ORDER

This civil revision petition arises against the order of the learned Principal District Judge at Krishnagiri in I.A.No.1 of 2023 in unnumbered suit of 2023 (presently numbered as O.S.No.157 of 2024) dated 28.03.2024.

2. The civil revision petitioners are the defendants 1 and 2 to the suit. Between the very same parties, a suit had been presented in O.S.No.90 of 2016 before the learned District Munsif cum Judicial Magistrate at Pochampalli. The said suit was sought to be withdrawn with liberty to file a fresh suit on the same cause of action. Accordingly, an application in I.A.No.275 of 2017 was filed in O.S.No.90 of 2016. The said application was allowed by the learned District Munsif cum Judicial Magistrate on 28.11.2019. The learned District Munsif permitted the withdrawal of the suit with liberty to



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file a fresh suit on the same cause of action on the condition that the plaintiffs pay the defendants a sum of Rs.2,500/-. The plaintiffs tendered the sum to the defendants but the defendants refused to accept the same. So the cost was deposited to the credit of the suit and consequently the application stood allowed.

3. Taking note of the fact that the conditional order passed by the learned District Munsif had been complied with by the plaintiffs, the learned District Munsif allowed I.A.No.275 of 2017 on 28.11.2019. Curiously enough, while granting liberty, the learned District Munsif passed the following order:

'இவ்வழக்கு இன்றைய நாளிலிருந்து 3 மாத காலத்திற்குள் அதே வழக்கு முலத்துடன் மீண்டும் புதியதாக ஒரு வழக்கை தாக்கல் செய்ய வேண்டி இவ்வழக்கை திரும்ப பெற இடைநிலை மனு எண்.275/2017 அனுமதிக்கப்பட்டதால் இந்த வழக்கை தள்ளுபடி செய்து ஆணையிடப்படுகிறது.'

4. The plaintiffs thereafter presented the present suit before the Principal District Judge at Krishnagiri. At the time of filing the suit, they had taken out an application to condone the delay of 1138 days in filing the fresh suit on the same cause of action. This



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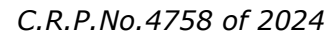
application was numbered as I.A.No.1 of 2023. Notice was issued in this application and the civil revision petitioners opposed the same.

The learned Principal District Judge held as the plaintiffs had complied with the condition that had been imposed on them in I.A.No.275 of 2017, I.A.No.1 of 2023 has to be allowed. Hence, this revision.

5. Mr.R.Jayaprakash pleads that the fresh suit is barred by time and hence, the learned Judge ought not to have allowed the application. According to him, since the application seeking permission to file a fresh suit on the same cause of action came to be allowed on 28.11.2019, the suit should have been filed within three months from the said date. He adds that as the said three month period had expired, the present suit is not maintainable as it is hit by limitation.

6. I have carefully considered the submissions of Mr.Jayaprakash.

7. I have to begin the judgment recollecting the maxim *actus curiae neminem gravabit* - an act of a Court cannot prejudice any party. Under Order XXIII Rule 1(a) or (b) of the Code of Civil Procedure, the Court can permit the party to withdraw the suit and



8. Mr. Jayaprakash seems to have been emboldened to make a plea of limitation based on the order of the learned Munsif. As the Court has fixed three months time to present the suit, the plea is fresh suit is barred by time. When I have held that the Court cannot fix any period of limitation for presentation of the plaint, thus, the period of limitation fixed by the learned District



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Munsif at Pochampalli in O.S. No.90 of 2016 was beyond his jurisdiction and therefore, unsustainable.

9. Under Order XXIII Rule 2 of CPC, if a suit is withdrawn with liberty to file a fresh suit on the same cause of action, the Court trying the second suit would necessarily have to see whether the second suit is in time. The fact that the suit had previously been presented and withdrawn will not enable the plaintiff to plead that as the first suit had been filed in time, the second suit is not barred. The Court trying the second suit will have to reckon the period of limitation from the date of presentation of the plaint in the second suit is presented, ignoring the fact that previous suit had earlier been filed and withdrawn. The plea of Mr.Jayaprakash that the second suit is barred by time should be pleaded by his clients by way of filing a written statement. In case they do so, I am sure the learned Principal District Judge will frame an issue and answer it appropriately. I should add here that even without a written statement filed by the defendants under Section 3 of Limitation Act, it is the duty of the Court to go into the issue of limitation and answer the same.

10. I am of the view that the order fixing a limitation period for filing a suit by the learned District Munsif is in excess of



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jurisdiction and the same will not bind the plaintiffs to bring forth a properly framed suit. Leaving it open to civil revision petitioners to present a written statement raising all the pleas including that of limitation, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.11.2024

Index:Yes/No

Neutral Citation:Yes/No
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To

- 1.The Thasildar
Thasildhar Office,
Pochempalli,
Krishnagiri District.
- 2.The Sub-Registrar,
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- 5.The District Munsif cum Judicial Magistrate,
Pochampalli.
- 6.The Principal District Judge,
Krishnagiri.



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V. LAKSHMINARAYANAN,J.

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