



C.R.P.No.496 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P. No.496 of 2020

V. Thenmozhi W/o. VijayaBasker

... Petitioner

vs.

1. V. Dhevakumar @ Periyasamy S/o. Vathegounder
2. V. Chinnasamy S/o. Vathegounder
3. V. Arumugam S/o. Vathegounder
4. P. Palaniyammal D/o. Vathegounder W/o. Dr. T.V. Periyasamy
5. P.G. Murugesan S/o. Not known to the petitioner.
6. Tamilselvi W/o. Chinnasamy (late)
7. Rajeshwari D/o. Chinnasamy (late) W/o. Senthilkumar
8. Vimalraj S/o. Chinnasamy (late)
9. Kesavan S/o. Chinnasamy (late)
10. Yokeshwari D/o. Chinnasamy (late)
11. Srimathi W/o. Chinnasamy (late)

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order passed by the Additional District Court, Dharmapuri in I.A No.3 of 2019 in O.S. No.12 of 2019 dated 16.10.2019 and consequently allowed the petitioner to withdraw the suit and allowed to file a fresh suit.



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For Petitioner : Mr.A. Saranraj
For Respondents : Mr. N. Manoharan [for R1]
R2 – Died
R3 to R11 – Served – no appearance.

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court refusing to grant liberty to the petitioner to file a fresh suit while allowing him to withdraw the suit.

2. The petitioner herein filed a Suit for partition against her siblings. The respondents filed a written statement mentioning various alienations made in respect of the suit properties. The trial in the suit is already commenced and the evidence of plaintiff side was closed. When the matter is posted for recording the evidence of defendant's side, the petitioner / plaintiff has come up with a petition to withdraw the suit with liberty to file a fresh suit on the same cause of action. In the affidavit filed in support of the application seeking leave of Court, it was stated that after filing of written statement by the respondents, the petitioner had taken an encumbrance certificate for the suit properties and came to know about the various alienations made by the respondents in respect of the suit properties.



Therefore, the petitioner wants to withdraw the suit with liberty to file fresh suit by challenging the alienation and also by impleading the alienees as party defendants. The said application was dismissed by the Trial Court on the ground that the petitioner filed the instant application after nearly 7 years from the date of filing of written statement by the respondents. The Trial Court also pointed out the earlier applications filed by the petitioner to reopen the case and the earlier conduct of the petitioner filing a petition to reopen the case and to amend the reopen application. The Trial Court came to the conclusion that the petitioner was not interested in prosecuting the case and hence refused to grant liberty to file fresh suit on the same cause of action. However, the prayer of the petitioner for withdrawal of suit was granted. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted that the cause of action for filing suit for partition is a continuous one and hence granting of liberty to file fresh suit would not cause any serious prejudice to the respondents. However, the order of the Trial Court refusing liberty to file a fresh suit, will cause serious prejudice to the petitioner when he files fresh suit.



4. The learned counsel for the respondents submitted that under Order

23 Rule 3 of C.P.C., the Court can permit the plaintiff to withdraw the suit with liberty to file a fresh suit only in case of formal defect in the suit. However, in the case on hand, there is no formal defect and hence the petitioner is not entitled to the prayer for withdrawal of the suit with liberty to file a fresh suit.

5. The petitioner filed a Suit for partition against her siblings. Even as per the case of the respondents in the written statement that the suit properties were alienated in favour of 3rd parties. According to the petitioner, as per the encumbrance certificate obtained subsequent to the filing of written statement by the respondents, there were 40 alienations in respect of the suit properties. In such circumstances, if the petitioner is allowed to proceed with the present suit without impleading alienees in respect of the alienations prior to the suit, certainly the alienations prior to the suit will affect the rights of the petitioner to file partition suit. Further any decree passed in the partition suit cannot be executed satisfactorily if the alienees are not impleaded. Therefore, if the petitioner continues the suit without impleading the alienees who had



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purchased the properties prior to the filing of suit, there is a danger of dismissal of suit on the ground of non-joinder. Therefore this Court come to the conclusion that if the petitioner is allowed to proceed with the suit, her interest would be prejudiced.

6. As rightly stated by the learned counsel for the petitioner that in case of partition suits, the cause of action is a continuous one and therefore granting liberty to the petitioner to file a fresh partition suit on the same cause of action would not prejudice and affect the right of the respondents. However, having regard to the fact that the petitioner failed to file an application for withdrawal of the suit immediately after filing of written statement by the respondents pointing out various alienations, this Court deems it proper to impose cost on the petitioner while granting leave as prayed for.

7. Accordingly this Civil Revision Petition is allowed by granting leave to the petitioner to withdraw the suit with liberty to file a fresh suit on the same cause of action on condition that the petitioner shall deposit a cost



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of Rs.15,000/- to the credit of O.S. No.12 of 2019 on the file of Additional

WEB COURT District Court, Dharmapuri. In case any such suit is filed, the respondents are

entitled to raise all defences available to them under law. The cost shall be

deposited within **four (4) weeks** from the date of receipt of a copy of this

order. The respondents are permitted to withdraw the said amount by making

formal application. In case, the petitioner fails to deposit the cost within the

time stipulated, the Civil Revision Petition shall stand automatically

dismissed without any reference to this Court. No costs.

11.03.2024

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

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To

The Additional District Court,
Dharmapuri.



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S.SOUNTHAR, J.

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