



**C.R.P(MD)No.2996 of 2024**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 12.12.2024**

**CORAM :**

**THE HONOURABLE Mr. JUSTICE G.ILANGO VAN**

**C.R.P(MD)No.2996 of 2024  
and  
C.M.P(MD)No.17128 of 2024**

M.Karnan

... Revision Petitioner / Defendant

Vs

1.Rajamani

2. Balamurugan

... Respondents / Plaintiffs

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to call for the records and set aside the fair and decreetal order dated 07.03.2023 in I.A.No.1 of 2022 in A.S.No.23 of 2012 on the file of the Subordinate Court, Sivagangai and to allow the Civil Revision Petition.

For Petitioner : Mr.VR.Shanmuganathan

For Respondents : Mr.S.Srinivasaraghavan



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## **ORDER**

This Civil Revision Petition is filed to call for the records and set aside the fair and decreetal order dated 07.03.2023 in I.A.No.1 of 2022 in A.S.No.23 of 2012 on the file of the Subordinate Court, Sivagangai and to allow the Civil Revision Petition.

2. The suit in O.S.No.29 of 2009 was filed by the respondents herein seeking the relief of permanent injunction and for costs. The defendants entered appearance and filed written statement. After contest, the suit was dismissed without any cost. Against which, an appeal was preferred by the respondent herein before the appellate Court namely, Subordinate Court, Sivagangai, in A.S.No.23 of 2012. Pending the appeal process, a petition was taken out by the respondent herein under Order 23 Rule 1(3) of CPC to grant liberty to him to file a fresh suit on the very same cause of action. That came to be allowed by the appellate Court on payment of cost of Rs.6,000/- on a particular date. Against which, this Civil Revision Petition.



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3. In the affidavit filed in support of the petition it is stated by the respondent herein that the suit was dismissed mainly on the ground that no declaratory relief is sought. The suit property originally belongs to one Periyasamy Ambalam S/o.Udayappan Ambalam. He mortgaged the property to Solai Konar on 09.01.1935, possession was also given to him. Mortgage was not redeemed. Solai Konar went to Burma. Because of the non redemption of mortgage, patta was granted in favour of Solai Konar. Solai Konar settled the property in favour of Balamurugan, by virtue of the settlement deed dated 08.09.2003, the possession was handed over to Balamurugan. So the second respondent herein became the absolute owner of the property.

4. Now due to the lapse of time, they may not be in a position to amend the plaint. In the event of granting liberty to the respondents herein, no prejudice will cause to the revision petitioner.

5. That was resisted by the revision petitioner by filing counter stating that tracing of title to the second respondent is not correct and he is in possession of the property by virtue of the sale deed dated



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13.12.2002. He sold the property to several persons. Having known all those things, he remained silent through out the proceedings.

6. After hearing both sides, the appellate Court found that there is serious issue with regard to the title. Unless a proper suit is filed for declaration, no conclusive finding can be recorded. On that account, it allowed the application of course on payment of cost. Against which this Civil Revision Petition is preferred.

7. Originally the appeal was dismissed for default. Later it was restored to file. After lapse of 10 years that application was filed by the petitioner, namely the respondent herein. The ground made in the petition is against the finding of the trial Court. Since there is a clear finding by the trial Court, after lapse of several years, this petition came to be filed. He would also rely upon the following judgment for the purpose of argument that, mainly because no prejudice will be caused to the revision petitioner such an application cannot be allowed and that too at the appellate stage:



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(i) **(2000) 5 Supreme Court Cases 458**, in the case of

***K.S.Bhoopathy and Others Vs Kokila and Others***

(ii) **2024 (6) CTC 150** in the case of ***M.Rajathi Vs K.Sathasivam***

***(Died)***

(iii) **2021 0 Supreme (Mad) 3078** in the case of ***Pushpa Kala Devi***

***Vs Mookkan***

8. Per contra learned counsel for the respondents would rely upon the judgment of the Hon'ble Supreme Court reported in **(2017) 5 Supreme Court Cases 63** in the case of ***V.Rajendran and another Vs Annasamy Pandian (dead) through legal representatives karthyayani Natchiar***. He would further contend that on the basis of the liberty granted to the respondents, the second respondent filed fresh suit in O.S.No.89 of 2023 before the District Court, Sivagangai in which the revision petitioner is also appeared. According to the respondents, since the suit was dismissed due to the absence of declaratory relief, even if the plaint is going to be amended, then again the suit has to be tried from its inception. That will be a time consuming process. Instead of that now they have chosen to file a petition to withdraw the suit. It is further



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contented that such a petition is maintainable at any stage of the proceedings.

9. Per contra, learned counsel for the revision petitioner would submit that such an exercise will cause serious prejudice, since he has already got benefit of finding by the trial Court. By way of filing this petition, the respondent wants to erase that finding recorded in favour of the revision petitioner. Such an attempt should not be permitted.

10. The trial Court has recorded a finding that due to the absence of declaratory relief as stated by the respondent, even if the plaint is going to be amended, then it has to be commenced from the inception stage causing unnecessary delay once again. As mentioned above they have also filed a fresh suit. So what are all the defence available to the revision petitioner can be taken by him in the above said suit.

11. Absence of declaratory relief is nothing but a formal defect. So I am of the considered view that the case of the revision petitioner is not going to be seriously prejudice, since the right and title over the property



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can be gone into after affording full opportunity to both sides. So I am of the considered view that there is no illegality in the order passed by the trial Court.

12. This Court is not inclined to interfere with the order passed by the learned Subordinate Judge, Sivagangai, dated 07.03.2023 in I.A.No.1 of 2022 in A.S.No.23 of 2012.

13. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

**12.12.2024**

NCC :Yes/No  
Index :Yes/No  
Internet : Yes/ No  
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To

- 1.The Subordinate Judge, Sivagangai.
- 2.The Section Officer, VR Section,  
Madurai Bench of Madras High Court, Madurai.

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**G.ILANGO VAN, J.**

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ORDER  
IN  
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**and**  
**C.M.P(MD)No.17128 of 2024**

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