



C.R.P(MD)No.662 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.12.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.662 of 2021

and

C.M.P(MD)No.3597 of 2021

Pappammal (Died)

1.Tawoodu
2.Thamasgrace
3.Johnsahayaraj
4.Sahayamary
5.Larence

... Petitioners / Respondents /Defendants

Vs

Alangarammaal

... Respondent / Petitioner / Plaintiff

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order made in I.A.No.66 of 2020 in O.S.No.102 of 2017 on the file of the Subordinate Court, Paramakudi, dated 05.06.2020 and allow the above Civil Revision Petition.

For Petitioners : Mr.D.Senthil

For Respondent : Mr.S.Ramesh



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ORDER

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This Civil Revision Petition is filed to set aside the fair and decreetal order made in I.A.No.66 of 2020 in O.S.No.102 of 2017 on the file of the Subordinate Court, Paramakudi, dated 05.06.2020 and allow the above Civil Revision Petition.

2. The facts in brief is that the suit in O.S.No.102 of 2017 was filed by the plaintiff namely Alangarammal against the deceased Pappammal @ Savariammal for the relief of declaration and for permanent injunction. Pending the suit, the defendant namely Pappammal @ Savariammal died and the legal representatives were brought on record. During the life time of Pappammal, she filed written statement and trial went on, based on the pleadings of the parties. In the meantime, I.A.No. 66 of 2020 was taken by the plaintiff under Order 23 Rule 3 and under Section 151 of Cr.P.C., seeking permission of the trial Court to withdraw the suit with liberty to file fresh suit on the same cause of action. That came to be allowed by the trial Court by imposing cost of Rs.2,000/- to be payable by the plaintiff within a stipulated time. Against which this Civil Revision Petition is preferred by the defendant, who are the legal



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representatives of the deceased defendant namely Pappammal @ Savariammal.

3. In the petition it has been averred by the plaintiffs that the defendant has filed a written statement stating that in respect of the very same property O.S.No.120 of 1982 was filed by her and it went up to the High Court and ended in her favour. Thereafter I.A.No.865/2001 was filed. Final decree was also passed in the matter. Later, she filed E.P.No.26 of 2008 and the property was delivered to her. But originally, the suit in O.S.No.120/1982, the subject suit property was mentioned as S.No.242/1 as 7th item, measuring about 0.22 ares. But later, it was amended as if the correct survey number is 311/18, 19. That amendment petition was allowed by the execution Court by order dated 22.03.2006 in I.A.No.545/2005. When the petitioner applied for copy application in the above said suit, it came to be returned, since that application was filed and document was sent and marked as Ex.A7 on his side. According to her, it is a collusive suit to cause wrongful loss to her. The suit proceedings is interfering into her right. To declare that the above said judgment and decree is not binding upon her, she has to necessarily



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file a suit. For that purpose, since she seeks permission of this Court to withdraw the suit to file a fresh suit on the very same cause of action.

4. That was resisted by the revision petitioner herein by filing counter stating that it is a belated attempt on the part of the respondent herein. Without complying the statutory provisions, the petition is filed and even the relief is barred by limitation. Apart from that the title over the property, which now claimed by the plaintiff, is also disputed. Similarly, the averments in the affidavit with regard to amendment of the 7th item in the previous suit, is also denied and disputed. According to them, in pursuance of the decree passed, delivery was effected in E.P.No. 26 of 2008. The trial Court by order dated 12.12.2009, allowed the application stating that there is an amendment subsequent to the passing of the final decree in O.S.No.120 of 1982. As to how the amendment was made, there is no proper explanation on the side of the revision petitioner. Since no relief is sought by the respondent herein in the suit regarding the binding nature of the decree in O.S.No.120 of 1982, it is nothing but a formal defect.



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5. Learned counsel for the revision petitioner during the course of hearing would submit that on the side of the plaintiffs, after examination was over, the evidence was closed. The defendant also filed chief in affidavit. Only at the time of cross examination, this petition came to be filed. According to him, it is nothing but a belated attempt. The ingredient mentioned under Order 23 Rule 3 is not satisfied.

6. Per contra, learned counsel for the respondent would submit that even at the time of final hearing, this petition is amendable. For that purpose, he referred to a judgment of the Hon'ble Supreme Court in the case of *Balide Kamayya and Five Others Vs Pragada Papayya* reported in *1916 SCC OnLine Mad 266*.

7. Learned counsel for the revision petitioner is referring to the order passed by the RDO, Paramakudi, in Patta Appeal Proceedings Pa.Mu(B1)684/2012 dated 12.03.2013.

8. Regarding the title over the property, I am not going to discuss anything since it may affect the outcome of the suit to be filed by the



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respondent herein. As mentioned by the trial Court in its order, in O.S.No.120 of 1982 which was filed by Pappammal, originally there was no reference to the subject survey number, later that was amended. In the final decree, the specific plea was taken. In support of this petition, the revision petitioner filed a counter stating that no such event took place in the proceedings in O.S.No.120 of 1982. But the facts are contra. When the defendant claims right over the suit property and possession in pursuance of the decree passed as amended, naturally, the outcome of the suit may be affected, without any proper prayer in respect of the above suit. Unless an opportunity is given to the respondent to file a fresh suit, on the very same cause of action, in a comprehensive manner, as mentioned above, the right of the respondent will be seriously prejudiced. But whereas the right of the revision petitioner may not be affected since he may get every right to take up the defences which are all available to them. The inconvenience caused to them may be compensated by way of cost but as mentioned above, if the relief is denied then the respondent may not be in a position to challenge the decree passed in O.S.No.120 of 1982.



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9. On the sole ground I am of the considered view that the Civil Revision Petition is not maintainable and liable to be dismissed. Ofcourse, as mentioned above, liberty is always available to the revision petitioner to challenge the suit taking out the point of limitation and suppression of order passed by the RDO as referred above and etc facts.

10. I am of the considered view that the cost of Rs.2000/- ordered by the trial Court can be enhanced to Rs.10,000/-(Rupees Ten Thousand only). Let the cost be paid by the respondent herein within a period of 15 days from the date of receipt of a copy of this order.

11. With the modification, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

03.12.2024

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

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G.ILANGO VAN, J.

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To

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

ORDER
IN
C.R.P(MD)No.662 of 2021
and
C.M.P(MD)No.3597 of 2021

03.12.2024