



C.R.P. (MD).No.1709 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)No.1709 of 2019

1. Maruthumaalai (died)

2. Selvam

... Petitioners/Respondents/
Defendants

-vs-

Angammal

... Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, as against the fair and decretal order dated 28.03.2019 in I.A.No. 826 of 2018 in O.S.No.92 of 2014, on the file of the District Munsif Court, Madurai Taluk.

For Petitioners : Mr.S.Ramesh

For Respondent : Mr.Anand Chandrasekar
for M/s.Sarvabhuman Associates

ORDER

The present Civil Revision Petition has been filed by the defendants in O.S.No.92 of 2014, on the file of the District Munsif Court, Madurai Taluk,



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challenging the order, wherein, the trial Court has permitted the plaintiff withdraw the suit with liberty to file a fresh suit on the same cause of action.

2. Pending the Civil Revision Petition, the first petitioner had passed away and the second petitioner is already on record. A memo has been filed to that effect by the learned counsel appearing for the revision petitioners on 28.02.2021, and the same is recorded.

3. The respondent herein as the plaintiff has filed the said suit for declaration that the settlement deed executed by the first defendant in favour of the second defendant is not binding upon him and also for a permanent injunction. According to the respondent/plaintiff, she is the absolute owner of the property and she had contended that taking advantage of the mutation of revenue records in favour of the first defendant during UDR proceedings, he had proceeded to execute a settlement deed in favour of his son, namely, the second defendant on 22.10.2012. The defendants have filed a written statement contending that they have purchased the property from the plaintiff under a oral sale and pursuant to the oral sale, mutation of revenue records have been effected in their name.



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4. The evidence of P.W.1 was taken, wherein when a question was put to her as to whether the suit is maintainable without a prayer for declaration of title and recovery of possession, the plaintiff had admitted that the defendants are in possession of the property. At this stage, the plaintiff had filed I.A.No.826 of 2018 seeking permission of the Court to withdraw the suit and to file a comprehensive suit for declaration of title and recovery of possession.

5. The trial Court, after considering the submissions made on either side, has permitted the plaintiff to withdraw the suit on the ground that it is a formal defect and any permission given to the plaintiff to withdraw the suit with liberty to file a fresh suit would not affect the rights of the defendants. This order is under challenge in the present Revision Petition.

6. According to the learned counsel appearing for the revision petitioners, the respondent/plaintiff was aware of the fact that the defendants are in possession of the property and she had made an attempt to cancel the mutation of revenue records standing in the name of the first respondent and



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she was successful in the said attempt. Therefore, the respondent/plaintiff has made false averments and has deposed before the Court as if she is in possession of the property. That apart, in the written statement filed in April 2015, the oral sale has already been pleaded by the defendants. However, the present application for withdrawal of the suit has been filed only in November 2018. Therefore, it is clear that the plaintiff herself is dragging on the proceedings and not approached the Court with clean hands.

7. Per contra, the learned counsel appearing for the respondent/plaintiff had contended that though the orders passed by the Revenue Authorities are brought to the notice of the then counsel, it was not incorporated in the plaint and the plaintiff came to know about the fact that the suit was not filed for declaration of title and recovery of possession only when she was cross examined by the defendants. In case, if they want to incorporate the prayer for declaration of title and recovery of possession in the present suit, they have to amend the entire body of the plaint. Therefore, in order to avoid the same and to file a comprehensive suit with averments for declaration of title and recovery of possession they, want to withdraw the present suit.



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8. The learned counsel appearing for the respondent also brought to the notice of this Court that pursuant to the orders of the Court, already an independent suit has been filed in O.S.No.1059 of 2022, before the II Sub Court, Madurai, and the present revision petitioners have also filed written statement and it is posted for framing of issues. Hence, he prayed for sustaining the order passed by the trial Court.

9. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

10. Originally the suit has been filed for the relief of declaration that the settlement deed executed by the first defendant in favour of second defendant is null and void and for permanent injunction to protect the possession of the plaintiff. When the plaintiff was examined as P.W.1, the defect in the suit with regard to non inclusion of the prayer for declaration of title and possession of the property has been brought forth by the defendants. Therefore, the plaintiff has filed application to withdraw the suit and to file a comprehensive suit for declaration of title and recovery of possession. In case, if the plaintiff intends to amend the prayer in the plaint, the entire body



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of the plaint has to be amended in order to amend the prayer of the said suit for declaration of title and permanent injunction. In such circumstances, the defect in the suit could be considered as a formal defect warranting the permission of the Court to withdraw the suit and to file a fresh suit on the same cause of action.

11. Considering the fact that already a fresh suit has been filed two years back and it is ready for trial, this Court is not inclined to interfere in the order passed by the trial Court and there are no merits in the Civil Revision Petition.

12. Accordingly, this Civil Revision Petition is dismissed with a direction to dispose of suit in O.S.No.1059 of 2022, pending on the file of the II Sub Court, Madurai on or before **30.04.2025**. There shall be no order as to costs.

04.07.2024

NCC : Yes/No
Index : Yes / No
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To

1. The District Munsif Court,
Madurai Taluk,
Madurai.
2. The II Sub Court,
Madurai.



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R.VIJAYAKUMAR,J.

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