



CRP(MD).No.2536 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.11.2024

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.2536 of 2022 and
CMP(MD).No.12451 of 2022

1.Arumugathammal
2.Usha
3.Raja
4.Chinnaraja
5.Moorthy
6.Petchiammal

: Petitioners / plaintiffs

Vs.

1.Arunachalam
2.Maana @ Subbaiah

: Respondents / defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.3 of 2022 in O.S.No.140 of 2018, dated 24.08.2018 on the file of the Additional Sub Court, Tirunelveli.

For Petitioners : Mr. T. Selvan

For respondent No.1 : No appearance

For respondent No.2 : Mr.A.D. Ganesa Moorthy



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ORDER

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This Civil Revision Petition is preferred against the order, dated 24.08.2018 made in I.A.No.3 of 2022 in O.S.No.140 of 2018 on the file of the Additional Sub Court, Tirunelveli.

2. The revision petitioners as plaintiffs filed the above suit in O.S.No.140 of 2018 on the file of the Additional Sub Court, Tirunelveli. for partition claiming 1/3rd share in the suit property. At the stage of arguments, they have filed an application in I.A.No.3 of 2022 for withdrawing the suit with liberty to file a fresh suit on the same cause of action. In the said application it is averred that the written statement filed by the first respondent / defendant stating that there was an oral partition during the life time of the husband of the first plaintiff and the properties were allotted to him in the said partition. Thereafter, the husband of the first plaintiff had sold a portion of the property allotted to him. The said facts were not mentioned in the plaint. Hence, the suit is defective. If the trial is allowed to be proceeded, the plaintiff will not succeed in the suit. Hence, the plaintiff filed an application for withdrawal of the present suit with liberty to file a fresh suit on the same cause of action.



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3. The learned counsel appearing for the revision petitioners submits that if the suit is proceeded further with the formal defects, the plaintiffs will not get an appropriate relief in the above suit. Hence, the trial Court ought to have allowed the said application, but, erroneously dismissed the application, which calls for interference by this Court.

4. On the other hand, the learned counsel appearing for the respondents / defendants would submit as per the provision under Order 23 Rule 1 CPC, the said application is not maintainable and therefore, the trial Court has rightly dismissed the application which calls for no interference by this Court.

5. Heard on both sides and perused the materials available on record.

6. As per the proviso under Order 23 Rule 1 CPC the suit must fail due to some formal defect and there must be some sufficient grounds for allowing the plaintiffs to institute a fresh suit for the subject matter of a suit or part of a claim and further the plaintiffs can be permitted to withdraw the suit with liberty to institute a fresh suit in respect of the subject matter of such part of the claim, which is not applicable to the facts



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of the present case. Therefore, there is no perversity or infirmity in the order passed by the trial Court.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes/ No
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To

The Additional Sub Court, Tirunelveli.



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K. GOVINDARAJAN THILAKAVADI, J.,

trp

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