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CRP(PD).No.1647 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.(PD).No.1647 of 2025

and

CMP.No. 9545 of 2025

Chitra

... Petitioner

Vs.

Akkamma (Since Deceased)

1.Lakshmi

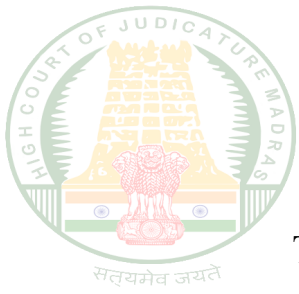
2.Vijay

3.Saranya

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 08.11.2024 passed in IA.No.1 of 2024 in OS.No.20 of 2021 on the file of Sub Judge, Udhagamandalam.

For Petitioner : M/s.K.Sukumaran



ORDER

This Civil Revision Petition is filed challenging the dismissal of an application filed by the plaintiff in I.A.No.1/2024 in OS.No.20 of 2021 on the file of the Sub Court, Udagamandalam in and by which the plaintiff's application under Order 23 Rule 1 of CPC to permit the plaintiff to withdraw the suit giving liberty to file a fresh suit has been dismissed.

2. It would be useful to set out the facts briefly as so as to appreciate the order under revision. The parties are referred to in the same ranking as before the Trial Court.

3. The plaintiff had filed the suit OS.No.20/2021 originally on the file of the District Munsif, Ootacamund which was subsequently transferred to the Sub Court, Udagamandalam with the same number. The suit has been filed to declare the plaintiff as the absolute owner of the suit proeprty, to direct the defendants to hand over the vacant possession of the suit property and to direct the defendants to pay a sum of Rs.2,62,500/- as arrears of rent.

4. It is the case of the plaintiff that she had purchased the suit



property from one Massiammal under a registered sale deed dated 20.08.2004. The said Massiammal in turn had purchased the property from N.S.Gowriammal under two sale deeds dated 07.12.1972. The defendants are the daughters of Massiammal. The said Massiammal had executed a power of attorney in favour of one Sugumaran on 08.03.2002. The power of attorney holder had sold the property to the plaintiff under a registered sale deed bearing no.811/2004. After the purchase, the said Massiammal had requested the plaintiff to permit her to stay in the suit property as a tenant which was also permitted on a monthly rent of Rs.7,500/-. The plaintiff would submit that the said Massiammal had died and after her death, 1st defendant continued as a tenant and orally agreed to pay the sum of Rs.7,500/- towards monthly rent.

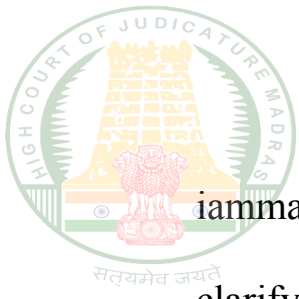
5. It is also the case of the plaintiff that she had filed a Rent Control Petition before the Rent Controller, Ootacamund against the defendants in RCOP.Nos.16 and 32 of 2012. However, these RCOPs were not pressed further due to some health issues of the plaintiff. The defendants had filed a counter statement in RCOP.No.32/2012 stating



that they are the owner of the property on the basis of the Will executed by the Massiammal. The plaintiff would submit that the Will is a fabricated one and the plaintiff is entitled for the arrears of rent. The plaintiff would submit that the defendants are in arrears of rent and as they have claimed title, the plaintiff had come forward with the suit in question.

6. A written statement was filed by the 2nd defendant wherein it was stated that Massiammal is alive and it was her sister who had passed away and a false statement has been made in the plaint as if she had passed away. The 2nd defendant had stated that there was no landlord-tenant relationship between the plaintiff and the defendants. Therefore, the 2nd defendant would seek to have the suit dismissed.

7. Pending the suit, the plaintiff had come forward with the present IA.No.1 of 2024 seeking to withdraw the suit with a liberty to file a fresh suit. In the affidavit filed in support of the said application, the plaintiff would submit that, at the time of filing the suit, due to some confusion, she had instructed her advocate that the vendor, Mass

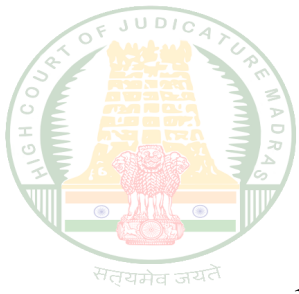


Massiammal had passed away. The plaintiff would submit that after clarifying with her counsel she came to learn that Massiammal is very much alive and therefore in order to bring about a quietus it would be proper to withdraw the suit with liberty to file a fresh suit on the same cause of action.

8. The said application was resisted by the defendants by contending that the plaintiff's statement that she did not know about Massiammal is highly imaginary. The defendants have already filed a detailed written statement in the suit stating that Massiammal is very much alive. The defendants would further submit that the plaintiff has come forward to file the petition after completion of her deposition and therefore the application is not maintainable.

9. The learned Sub Judge, Udagamandalam by her order dated 08.11.2024 was pleased to dismiss the said application. Challenging the same, the petitioner is before this Court.

10. Heard the counsel for the petitioner and perused the records.



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11. It is seen that the defendants have filed their written statement in the suit as early as on 12.11.2021 wherein they have clearly stated that Massiammal is very much alive. However, the plaintiff has not taken any steps at that point in time to amend the plaint and after a lapse of about three and a half years, the plaintiff has filed the impugned petition that too without giving any satisfactory explanation and when the relief against the said Massiammal has become time barred.. Therefore, the order passed by the learned Sub Judge, Udhagamandalam, is very much in order and I see no reason to interfere with the same.

12. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

21.04.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

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1. The Sub Judge, Udhagamandalam.

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P.T. ASHA. J.,

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