



C.R.P(MD)No.2023 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.2023 of 2022

and

C.M.P(MD)No.9250 of 2022

Ravichandran ... Petitioner / 2nd Respondent / 2nd Defendant

Vs

1.Sagunthala ... 1st Respondent / Petitioner / Plaintiff

Sambhantham Pillai (died)

2.Rathnamala

3.Jayachithra

4.Rajini ... Respondents 2 to 4 / Respondents 3 to 5 /
Defendants 3 to 5

PRAYER : This Civil Revision petition is filed under Section 115 of the Civil Procedure Code to set aside the fair and decreetal order dated 19.07.2022 passed in I.A.No.290 of 2022 in O.S.No.127 of 2014 on the file of learned Principal Sub-Court, Kumbakonam.

For Petitioner : Mr.M.P.Senthil

For Respondents : No appearance



C.R.P(MD)No.2023 of 2022

ORDER

WEB COPY

This Civil Revision petition is filed to set aside the fair and decreetal order dated 19.07.2022 passed in I.A.No.290 of 2022 in O.S.No.127 of 2014 on the file of learned Principal Sub-Court, Kumbakonam.

2. The suit in O.S.No.127 of 2014 was filed by the first respondent herein seeking the relief of recovery of possession, for mesne profit and cost. The defendants who are the revision petitioner herein and other respondents herein, entered appearance and during the pendency of the trial process, a petition in I.A.No.290 of 2022 was taken out by the first respondent herein under Order 23 Rule 1 and Section 151 of C.P.C. seeking leave of the Court to withdraw the suit and file a fresh suit on the very same cause of action on the following averments:

The suit property belongs to her and Shenbagavalli who is the wife of her husband Murugesan jointly. Shenbagavalli died in 1998. At the request made by the first defendant namely Sambhantham Pillai, who is the brother of Shenbagavalli, the plaintiff namely the petitioner in the main petition became the permissive occupant. Taking advantage of the



C.R.P(MD)No.2023 of 2022

non-residence of the plaintiff / petitioner, the first defendant tried to encumber the property. So she collected revenue records. On the basis of the revenue records collected, it was found that the description of the property is R.S.No.199/20 measuring about 0.9.00 ares. The property mentioned in the plaint lies on the west. The above said mistake occurred on the basis of the incorrect revenue records. On that account, the petition was filed seeking leave of the Court.

3. The respondent / revision petitioner resisted the petition by filing counter by the respondent, stating that the main suit is pending for more than eight years, the reasons stated in the petition are not sufficient enough to grant leave to the plaintiff to file a fresh suit on the very same cause of action.

4. After hearing both sides, the trial Court allowed the petition by imposing a cost of Rs.2,000/-. Against which this Civil Revision Petition is preferred.

5. Heard both sides.



C.R.P(MD)No.2023 of 2022

WEB COPY

6. Learned counsel for the revision petitioner would rely upon the following judgments :

i) the judgment of this Court in the case of ***Chinnasamy and another Vs Manickam and another*** reported in ***2014(1) MWN (Civil) 493***;

ii) judgment of this Court in the case of ***Velusamy and another Vs Chenniappan and 6 others***, reported in ***2010 (5) CTC 330***

iii) judgment of this Court in the case of ***Regina Vs Ruby and others*** reported in ***2024(2) LW 180***,

as to the particulars to be taken note by the trial Court while granting or entertaining a petition under Order 23 Rule 1 of CPC.

7. Now we will straightaway go to the reasons assigned by the plaintiff / first respondent herein. It has been simply stated that there is a mis-description of the suit property in the plaint. It occurred due to oversight ; based upon the revenue records collected at the time of preparation of the plaint. As mentioned above, the main suit is for



C.R.P(MD)No.2023 of 2022

recovery of possession. With reference to the survey number and extent what prevented the first respondent from filing proper amendment petition is not explained by her. The main suit was filed in the year 2014. Now we are in 2025. If the first respondent is permitted to file a fresh suit on the very cause of action, no one knows how long it will take to complete the trial process.

8. Considering the oldness of the matter, the trial Court ought not to have permitted the first respondent to withdraw the suit. Now it has been stated by the revision petitioner that the trial is almost over since D.W.1 was examined and P.W.1 was cross examined in full. Further reading of the counter filed by the revision petitioner shows that the suit was dismissed for default on 31.06.2016. Later restored to file. The mis-descriptions of the property was brought to the notice of the first respondent even at the time of filing counter in I.A.No.8 of 2018. Later, after the cross examination of P.W.1 was over, the first respondent filed a petition for appointment of commissioner to note down the physical features. It was dismissed. Against which a Civil Revision Petition in CRP(MD)No.1681 of 2021 was filed, that came to be dismissed by this



C.R.P(MD)No.2023 of 2022

Court by an order dated 20.04.2022. After the prolonged proceedings, it appears that the present petition was filed by the first respondent on 08.06.2022. The date of dismissal of the earlier CRP, is 20.04.2022, stating that there is no identification issue between the parties over the subject matter of the suit. Having suffered an adverse order, it may not be proper on the part of the first respondent, in filing the present petition. As mentioned in the refusal order, when there is no issue with regard to the identification of the property in dispute as mentioned above, what prevented the first respondent to file a proper amendment petition is not explained by her. When such a remedy is available as mentioned earlier, if permission is granted then it will have no ending. When taking note of the record of proceedings it is seen that the trial Court allowed the petition on payment of cost.

9. For all those reasons without going into other aspects, I am of the considered view that the order order dated 19.07.2022 passed in I.A.No.290 of 2022 in O.S.No.127 of 2014 by the learned Principal Sub-Court, Kumbakonam, requires to be interfered. Accordingly, interfered. The petition filed by the respondents herein in I.A.No.290 of 2022,



C.R.P(MD)No.2023 of 2022

stands dismissed.

WEB COPY

10. Accordingly, this Civil Revision Petition stands allowed.

Consequently, connected miscellaneous petition stands closed. No costs.

31-01-2025

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

pnn

To

- 1.The Principal Sub-Court, Kumbakonam.
2. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P(MD)No.2023 of 2022

G.ILANGO VAN, J.

pnn

**C.R.P(MD)No.2023 of 2022
and
C.M.P(MD)No.9250 of 2022**

31.01.2025