

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.1436 of 2014
and M.P.No.1 of 2014

Kannan

.. Petitioner

Vs

Chinnasamy (Died)

1.Nataraj
2.Chinnathambi
3.Padmini
4.Sugunu

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.02.2014 made in I.A.No.562 of 2013 in O.S.No.57 of 2011 on the file of the District Munsif Court, Sankarapuram.

For Petitioner : Mr.P.Rajavel
For Respondents : Mr.N.Manokaran (For R2 to R4)
No appearance (For R1)

ORDER

The Civil Revision Petition is filed against the order dated 06.02.2014 made in I.A.No.562 of 2013 in O.S.No.57 of 2011 on the file of the District

Munsif Court, Sankarapuram.

2.The petitioner as a plaintiff filed a suit for declaration of title and injunction claiming title on the basis of the settlement deed alleged to be executed by Ayyamperumal. But the suit was decreed. During the pendency of the suit, the defendant died and his legal heirs were impleaded. Since the suit was decreed, they filed an appeal and wherein the suit was remanded back to the Trial Court, additional issues were framed and the Trial Court was directed to dispose of the suit in accordance with law. At that time, the plaintiff filed an application under Order XXIII Rule 1 CPC to withdraw the suit with liberty to file a fresh suit on the same cause of action. The Trial Court after hearing both sides has dismissed the application. Against which, the present Civil Revision Petition has been filed.

3.Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4.Learned counsel for the petitioner submitted that the petitioner/plaintiff has omitted to mention some averments in the plaint and that formal defects has to be rectified by way of filing a fresh suit. Hence, he filed an application for withdrawal of the suit with liberty to file a fresh suit.

He further submitted that sufficient cause has to be decided on the basis of the averment and it is not the ground for rejection. Hence, he prayed for setting aside the order passed by the Trial Court. To substantiate his argument, he relied upon the decision reported in **2013 (5) CTC 385 (Rajamanickam vs. P.Dhandapani and others)**.

5.Resisting the same, the learned counsel for the respondents would submit that for withdrawal of the suit and to grant permission to file a fresh suit, he has to mention sufficient reason as to why the plaint to be withdrawn. But here in this case, reason has not been mentioned and so, he is not entitled to file a fresh suit on the same cause of action. Hence, he prayed for dismissal of the revision petition. To substantiate his argument, he relied upon the decision reported in **2013 (4) MLJ 315 (Athiappan and others vs. Palaniappan and others)**.

6.Considered the rival submissions made on both sides and perused the typed set of papers.

7.The petitioner as a plaintiff filed a suit for declaration of title and injunction and the suit was decreed. During the pendency of the suit, the defendant died and his legal heirs were impleaded. Since the suit has been

decreed, his legal heirs filed an appeal and in that appeal, additional issues were framed and the matter was remitted back to the Trial Court to decide the matter afresh and decide the additional issues. After the remand has been made in the year 2010 i.e. after 3-1/2 years the plaintiff/petitioner filed an application for withdrawing the suit with the liberty to file a fresh suit on the same cause of action. But no reason has been assigned as why there was a delay in filing the application. Furthermore, in the affidavit he has mentioned that while preparing the plaint there was some formal defects. But he has not mentioned as to what is the defect and he has not given sufficient cause for withdrawing the same. So, it is appropriate to incorporate Order XXIII Rule 1 of CPC, which is as follows:

[1. Withdrawal of suit or abandonment of part of claim (1)

At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion,

for the benefit of the minor or such other person.

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be preclude from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.]

8.In the decision reported in **2013 (4) MLJ 315 (Athiappan and others vs. Palaniappan and others)**, wherein it was specifically mentioned that while

exercising the discretionary power under Order XXIII Rule 1 of CPC subject to the conditions specified therein by exercising the same with great care and caution and also after taking into all attendant and relevant aspects of the matter including the desirability of allowing a litigant to commence a fresh bout of litigation on the same cause of action. But here no sufficient cause has been mentioned because the suit has been decreed and at the time of appeal additional issues have been framed in respect of the settlement deed alleged to be executed by Ayyamperumal. The suit has been based only on the settlement deed executed by Ayyamperumal and so, the vital document is the settlement deed. In such circumstances, I am of the view that the petitioner herein has not mentioned as to what is the formal defect mentioned in the plaint. Furthermore, after the remand the petitioner kept quiet for 3-1/2 years and when the matter was posted for trial, he has come forward with an application and the delay has also not been properly explained.

9. Considering the decision reported in **2013 (4) MLJ 315 (Athiappan and others vs. Palaniappan and others)**, I am of the view that it is not fit case to interfere with the finding of the Trial Court. Hence, the impugned order passed by the Trial Court is hereby confirmed and the Civil Revision Petition deserves to be dismissed.

10. In the result, the Civil Revision Petition is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

09.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The District Munsif Court, Sankarapuram.

R.MALA. J.,

cse

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