

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1445 of 2015
and M.P.No.1 of 2015

Srinivasan

... Petitioner

vs

Perumal

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 12.1.2015 in I.A.No.3877 of 2014 in O.S.No.423 of 2012 on the file of III Additional District Munsif Court, Kallakurichi.

For Petitioner : Mr.R. Narayanaswamy

ORDER

Aggrieved over the fair and final order passed in I.A.No.3877 of 2014 in O.S.No.423 of 2012 on the file of III Additional District Munsif Court, Kallakurichi, the plaintiff has filed the above civil revision petition.

2. The plaintiff filed a suit in O.S.No.423 of 2012 for declaration and injunction. The respondent/defendant filed his written statement and contesting the suit. Based on the pleadings, the trial court framed issues and the suit was taken up for trial. After commencement of the trial, the plaintiff filed an application in I.A.No.3877 of 2014 under Order 23 Rule (1) of Civil Procedure Code to withdraw the suit with liberty to file a fresh suit. In the affidavit, filed in support of the application, the plaintiff has stated that he has omitted to state some facts in the plaint and therefore, he sought permission of the Court to withdraw the suit with liberty to file a fresh suit on the same cause of action.

3. The said application was opposed by the defendant,

stating that the plaintiff has not filed the application with *bona-fide* reasons and that if the application is allowed, the defendant will be put to hardship and prejudiced.

4. Admittedly, the application was filed only after commencement of the trial. The suit was filed in the year 2012. The present application has been filed only in the year 2014, that too, after the commencement of the trial. The plaintiff could have filed the application at the earliest point of time either to amend the plaint or to withdraw the suit, with liberty to file a fresh suit. But, the plaintiff had kept silent for more than two years and filed the application after the commencement of the trial.

5. The trial court, after took into consideration of all these aspects, rightly dismissed the application. In these circumstances, I do not find any error or irregularity in the order passed in I.A.No.3877 of 2014 in O.S.No.423 of 2012 dated 12.1.2015 by the learned III Additional District Munsif, Kallakurichi and hence the civil revision

M. DURAISWAMY,J.,

sr

petition is liable to be dismissed as devoid of merits. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected MP is closed.

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Index:no
website:yes

To

III Additional District Munsif, Kallakurichi

C.R.P(PD)No.1445 of 2015