

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2015

CORAM:

THE HON'BLE MS.JUSTICE K.B.K.VASUKI

CRP (PD) No.2181 of 2002

1.Arayee
2.Elumalai

... Petitioners

Vs.

1.Kaveriammal
2.Annamalai
3.Arumugam

... Respondents

PRAYER : Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal orders of the learned Second Additional District Munsif, Salem dated 24.06.2002 in I.A.No.490 of 2001 in O.S.No.559 of 1997.

For Petitioner : M/s.R. Subramanian
For Respondents : Served, No representation

ORDER

The plaintiffs in O.S.No.559 of 1997 are the petitioners before this Court. This Civil Revision Petition is filed against the order made in I.A.No.490 of 2001 filed under Order 23 Rule 1 and Section 151 CPC, seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action.

2. The Plaintiffs come forward with the suit for permanent injunction restraining the defendants from in any way interfering with their peaceful possession and enjoyment of the suit property. It is the case of the plaintiffs that the property measuring 31 cents of land was purchased jointly in the name of the first plaintiff and the first defendant, who is the junior wife of one Sengoda Gounder, out of the joint family funds and subsequently the property could not be jointly enjoyed by the Plaintiffs and the defendants. At the instance of some mediators viz. Mathappu, S/o Pongali, Karuppannan, S/o Pongali, Vellaya Gounder, Allimuthu and Ponnusamy, the property was divided into two halves and the plaintiffs were allotted 16 cents of land and the defendants were allotted 15 cents and since the date of partition during 1980, the parties have been enjoying their respective shares. Whiles, the defendants attempted to disturb the plaintiffs' possession and hence the earlier suit in O.S.No.901 of

1991 was filed which was subsequently dismissed for default. Thereafter, the defendants again made attempts to interfere with the plaintiffs possession and enjoyment of the property, which compelled the plaintiffs to come forward with the suit in O.S.No.559 of 1997 for the relief as stated supra.

3. Resisting the same, a written statement was filed by the first defendant. It is stated therein that the first defendant purchased the suit property along with two other items measuring an extent of 3 cents and 15 cents respectively by sale deed dated 14.06.1961 with 1/12th right in the well and since the date of purchase, the defendants have been in possession and enjoyment of the property.

4. After the filing of written statement, the plaintiffs came forward with Interlocutory Application under Order 23 Rule 1 r/w Section 151 of CPC seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action. It is stated in the affidavit filed in support of the petition that as the title is denied and the maintainability of the suit is disputed, the suit is likely to fail due to formal defects and the plaintiffs have to file another plaint, on the same cause of action.

5. The trial Court, after hearing both sides, held that the plaintiffs had not specifically pleaded in the affidavit about the details of technical defect or other reasons and dismissed the petition on the ground that in the absence of those particulars the Court is unable to ascertain whether the formal defects can be rectified by filing the amendment petition or fresh suit can be filed on the same cause of action. Aggrieved against the same, the plaintiffs have come forward with the present Civil Revision Petition.

6. The learned counsel for the petitioners/plaintiffs would seriously argue before this Court that as the defendants have disputed the title, it become necessary for the plaintiffs to file fresh comprehensive suit on the same cause of action.

7. This Court is of the view that having regard to the nature of the defence raised in the written statement, the defects pointed out can be duly rectified by way of petition for amendment. Likewise, the restricted relief of permanent injunction can be suitably altered into one for declaration of title with or without consequential relief by way of suitable amendment. Thus, considering the reasons stated above and considering the duration of the suit, this Court finds no reason to permit the plaintiffs to abandon the present suit and to go for fresh suit on the same cause of action, as such, the impugned order warrants no interference.

8. In the result, this Civil Revision Petition is dismissed with liberty given to the plaintiffs to file appropriate amendment petitions. In that event, the trial Court is directed to decide the

amendment petitions liberally after giving due opportunity to both parties. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arr

To

The Second Additional District Munsif, Salem.

1 cc to M/s. R. Subramanian, Advocate Sr.21621

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