

*** THE HON'BLE MR JUSTICE C.V.NAGARJUNA REDDY**

+ Civil Revision Petition No.4230 of 2014

+ DT.23.01.2015

Smt.A.Vijaya Kumari

...Petitioner

Vs.

\$ A.Narahari Rao and others

... Respondents

^ Counsel for the Petitioner: Sri Resu Mahender Reddy

! Counsel for the respondents: -----

< Gist:

> Head note:

? Cases referred:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Civil Revision Petition No.4230 of 2014

Dated 23rd January, 2015

Between:

Smt.A.Vijaya Kumari

...Petitioner

And

Sri A.Narahari Rao and others

...Respondents

Counsel for the petitioner: Sri Resu Mahender Reddy

Counsel for the respondents: -----

The Court made the following:

ORDER:

This civil revision petition arises out of order, dated 25.07.2014, in I.A.No.1701 of 2013 in O.S.No.695 of 2012, on the file of the learned Principal Senior Civil Judge, Ranga Reddy District.

The petitioner filed the above-mentioned suit for perpetual injunction restraining the respondents from interfering with the suit schedule property. Earlier, the petitioner has filed O.S.No.280 of 2011 in respect of 4000 sq.yards of property. Thereafter, she has withdrawn the same with liberty to file a fresh suit. The present suit was filed by deleting 760 sq.yards out of 4000 sq.yards of property for permanent injunction. The respondents filed written statement denying the relief claimed by the petitioner. Thereafter, the petitioner filed I.A.No.1701 of 2013 under Order XXIII Rule 1 CPC for permission to withdraw the present suit with liberty to file a fresh comprehensive suit. This application having been dismissed by the lower Court, the petitioner has filed this civil revision petition.

In the affidavit filed in support of the application, the petitioner has averred that in the separate written statements filed by defendant Nos.1 & 2 and defendant No.3, 'new concepts were invented', that if the petitioner seeks amendment, it will have its own limitations and that therefore filing of a comprehensive suit is necessary. The lower Court in its order has observed that the petitioner has withdrawn the earlier suit on the ground that after filing of the suit, the respondents have occupied 760 sq.yards of the land and that excluding the said extent, she has filed the present suit. It is further observed that the petitioner has not assigned any reasons for withdrawal of the present suit in respect of the balance property while she can file a separate suit for declaration of title and recovery of possession in respect of 760 sq.yards of land.

Under Order XXIII Rule 1(3) CPC, where the Court is satisfied that

by reason of some formal defect or 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 permit the plaintiff to withdraw the suit with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.

In order to succeed in an application filed for withdrawal of the suit with liberty to file a fresh suit, the plaintiff has to satisfy atleast one of the two requirements mentioned in Rule 1(3) of Order XXIII CPC. The petitioner has failed much less proved that the suit has suffered from formal defect. Hence, the requirement under Order XXIII Rule 1(3)(a) is not satisfied. As regards Clause-(b) of sub-rule (3) of Rule 1, except raising a vague plea that the defendants have invented new concepts, the petitioner has not explained as to what those concepts were and whether they constitute sufficient ground to allow them to withdraw the suit with liberty to file a fresh suit on the vague pleadings as put forth by the petitioner. The lower Court is therefore justified in dismissing the application filed by the petitioner.

For the above-mentioned reasons, I do not find any reason to interfere with the order of the lower Court. The civil revision petition is accordingly dismissed.

As a sequel to dismissal of the civil revision petition, C.R.P.M.P.No.5782 of 2014 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

23rd January, 2015

Note: LR copies to be marked.

(b/o)
VGB