

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Reserve: 10.07.2015

Date of Decision: 05.10.2015

+ CS(OS) 2607/2013

DROPTI DEVI

..... Plaintiff

Through: Mr. Pramod Ahuja with
Mr. Abhishek Mishra, Advs.

Versus

RAM PYARI & ORS

..... Defendants

Through: Mr. R.S.Rathi with
Ms. Kusum Advs. for D-1 to 4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

IA No. 21695/2014(u/O.VII R.11 CPC)

1. This application under Order VII, Rule 11 CPC seeks rejection of the plaint on the grounds *inter alia*, that: the plaint does disclose a cause of action; *ad valorem* court fees has not been paid; a previous suit bearing CS(OS) No.3929/1992 involving the same *lis* and parties was withdrawn on 24.3.1994 and no liberty to file a fresh suit was ever given hence the present suit is not maintainable; subsequently orders have been passed by this Court in three separate proceedings which would prove that efforts made by the plaintiff to re-agitate the issues which were raised in the withdrawn suit went, were in vain; this is nothing but a vexatious suit and hence it deserves to be dismissed.
2. The Court would note that the order dated 24.03.1994 whereby the earlier suit was withdrawn reads:-

“S.3929/92

Statement of the plaintiff has been recorded. She does not want to prosecute the suit on account of a settlement which she has signed. She has understood the settlement, although the same is in English which she does not understand, and which has been explained to her.

The suit is dismissed as withdrawn.”

3. Subsequently a Contempt Petition has been filed by the plaintiff against the defendant Nos. 1 to 4, who are the same defendants in this suit. The contempt petition was disposed off on 13.05.2013 being devoid of any ground to initiate contempt proceedings:

“CONT.CAS(C) 404/2011

Petitioner alleges wilful disobedience of the order dated 24.03.1994. The order reads as under:-

“S.3929/92

Statement of the plaintiff has been recorded. She does not want to prosecute the suit on account of a settlement which she has signed. She has understood the settlement, although the same is in English which she does not understand, and which has been explained to her.

The suit is dismissed as withdrawn.”

Having regard to the fact that the suit filed by the plaintiff has simply been withdrawn no grounds made to initiate contempt proceedings.

Contempt petition is dismissed.

CM No.11039/2011

Disposed of as infructuous.”

4. Another IA was filed in the already withdrawn suit bearing No.3929/1992, which too was dismissed on 3rd October, 2013 in terms

of the following:

“IA 15487/2013 (for preparation of decree) in CS(OS) 3929/1992

This application is filed by the plaintiff seeking direction to the office for preparing decree in terms of the family settlement dated 5th December, 1993.

I have heard the counsel for the applicant and also gone through the record.

The plaintiff had filed this suit for partition against the defendants in October, 1992. On 24th March, 1994, an application being I.A.1287/1994 was filed under Order 23 Rule 3 CPC stating that the parties have arrived at a settlement and suit may be permitted to be withdrawn. On the same day statement of the plaintiff was recorded wherein also she stated that she does not want to prosecute the suit anymore and the same may be disposed as such. It was on this application and the statement that the suit was dismissed as withdrawn on the same day i.e. 24th March, 1994. As the suit was dismissed as withdrawn and no final judgement was passed adjudicating the matter, and nor the terms of the settlement having been made a part of the decision of the Court, no decree of partition could be drawn as per the said settlement. It was on the simplicitor statement of the plaintiff that she does not want to prosecute the suit, that the suit was dismissed as withdrawn and nothing more. That being the state of affairs, the prayer made in the instant application, for drawing decree for partition as per settlement, is misconceived. The plaintiff may have her remedy somewhere else, but not in the instant case which was dismissed as withdrawn way back in 1994.

The application stands dismissed.”

5. Subsequently the plaintiff appealed against the said order and the Division Bench too dismissed it as withdrawn:

“CM No. 17548/2013- (Exemption)

The exemption is allowed subject to all just exceptions.

FAO(OS) 498/2013 & CM No.17549/2013 \

The learned counsel for the appellant seeks permission to withdrawn this appeal with liberty to take recourse to any other remedy which may be available to her in accordance with law.

The appeal and the pending application are dismissed as withdrawn with aforesaid liberty “

6. The learned counsel for the applicants/defendant Nos.1 to 4 submits that the suit having been withdrawn on 24th March, 1994 without liberty to file a fresh suit, the present suit is not maintainable besides there are three subsequent orders which show that the subsequent efforts to re-agitate a non-existent *lis*, have either been dismissed by the Court or otherwise withdrawn by the plaintiff herself. He submits that this is nothing by a vexatious suit and that no settlement has even been entered between the parties as the suit is not maintainable.
7. What this Court would need to see is whether the earlier suit on the same issue between the same parties has been adjudicated. In view of the fact that the first suit CS(OS) 3929/1992 was withdrawn on 24.03.1994 without leave to file a fresh suit, subsequently on 13.05.2013 a contempt petition preferred by the plaintiff was dismissed as being without basis – in view of the aforesaid withdrawal of the suit; later the I.A. in the said withdrawn suit was dismissed on 03.10.2013 on the ground that the suit was simplicitor withdrawn and finally, the Division Bench dismissed the plaintiff's

appeal as withdrawn; the liberty granted to the plaintiff by the Division Bench would be only for such remedies as may be available to her in law. The liberty granted by the Hon'ble Division Bench did not create a remedy. If the plaintiff did not have a right to maintain a suit as on 03.10.2013, she would have none subsequently in the shadow of the order of the Hon'ble Division Bench, where the appeal was simply withdrawn. Therefore, the withdrawal simplicitor on 24.03.1994 without liberty to file a fresh suit would render this suit filed about 20 years thereafter, as not maintainable and liable to be rejected under Order VII Rule 11 of the CPC.

8. In view of the above, the plaint is rejected apropos the applicants i.e. defendant Nos. 1 to 4. Since the suit is not maintainable against defendant No. 1 to defendant No.4, it would also not be maintainable against the remaining defendants.
9. The application is allowed. The suit stands disposed off in the above terms.

NAJMI WAZIRI, J

OCTOBER 05, 2015/ak