

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.1618 of 2014

Lakshmi : Petitioner

versus

1.Nagammal

2.Devendran : Respondents

PRAYER: Revision filed against the order dated 22.1.2014, in I.A.No.817 of 2013 in O.S.No.144 of 2008 on the file of the Principal District Munsif, Ulundurpet.

For petitioner : Mr.C.Munusamy

For respondents : No appearance

ORDER

The petitioner filed an application before the Trial Court to withdraw the suit with liberty to file a fresh suit for the very same cause of action. The application was dismissed by the Trial Court primarily on the ground that justifiable reasons were not given to permit the petitioner to withdraw the suit with liberty. The said order is under challenge in this civil revision petition.

2. I have heard the learned counsel for the petitioner. None appeared on behalf of the respondents.

3. The petitioner filed a suit for permanent injunction. The suit was contested by the respondents by filing written statement. Thereafter, the petitioner filed application in I.A.No.817 of 2013, invoking Order 23 Rule 1 CPC.

4. The Trial Court dismissed the application primarily on the ground that “sufficient reasons”, within the meaning of Order 23 Rule 1 CPC were not furnished by the petitioner.

5. Before the Trial Court, the petitioner contended that the suit is bound to fail on account of a technical defect. It was her further contention that certain incorrect statements were made in the plaint filed originally. The petitioner therefore wanted the suit to be withdrawn with liberty to file a fresh suit. The application was dismissed by the Trial Court with an observation that there were no pleadings with regard to the incorrect statement made in the plaint filed originally and the technical defect, on the basis of which, the suit is liable to be dismissed ultimately.

6. I have perused the affidavit filed in support of the application in I.A.No.817 of 2013. It is true that the affidavit is not happily worded. The petitioner ought to have given justifiable reasons within the meaning of Order 23 Rule 1 CPC so as to enable her to withdraw the suit with liberty.

7. After hearing the learned counsel for the petitioner at length, I consider it necessary to give an opportunity to the petitioner to file a better affidavit in support of her request for withdrawal of the suit, under Order 23 Rule 1 CPC. This would enable the respondents also to oppose the application in case there are no reasons justifying the withdrawal of the suit with liberty.

8. In the result, the order dated 22 January 2014 is set aside. The application in I.A.No.817 of 2013 is restored to file. The petitioner is given time till 30 November 2016 to file a better affidavit. The respondent should be given reasonable time to file counter. The learned Principal District Munsif, Ulundurpet, is directed to dispose of the application in I.A.No.817 of 2013, thereafter, on merits and as per law.

9. The civil revision petition is allowed to the extent indicated above. No costs. Consequently, M.P.No.1/2014 is closed.

09.11.2016

Index:Yes/no
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To
The Principal District Munsif, Ulundurpet.

K.K.SASIDHARAN, J.

(tar)

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