

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.12.2016

Coram:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (PD).396 of 2014

and

M.P.No.1 of 2014

Shanbi ... Petitioner/Plaintiff

vs.

Alligan (died)

1.Sader

2.Abdul Rahiman

3.Rajiya

4.Maajan

5.Akbar Basha

6.Basha

7.Babu

8.Shiek Khader

... Respondents/Defendants

Petition filed under Section 227 of the Constitution of India against the fair and decreetal order dated 18.11.2013, made in I.A.No.914 of 2013 in O.S.No.327 of 2008, on the file of the District Munsif Court at Krishnagiri.

For Petitioner : Mr.C.Prabakaran

For Respondents : No appearance

ORDER

This civil revision petition is filed by the plaintiff in the suit, which is for declaration of title and for consequential injunction.

2. It is stated that during the pendency of the suit, when the case was posted for cross-examination of the plaintiff, she had come to know that there were wrong averments in the plaint, including the name of her husband and she accepted the same due to inadvertence. Therefore, I.A.No.914 of 2013 was filed under Order 23 Rule 1 of C.P.C., seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action. The said application was dismissed by the learned trial Judge and this revision is filed against the said order.

3. The learned counsel for the petitioner contended that inadvertently, in the plaint, an averment to the effect that the suit property is a self-acquired property of the plaintiff has been made, whereas, it was inherited by her, by way of succession through her husband. On that ground, the learned counsel argued that the defect is only a formal one and to rectify the same, the plaintiff may be allowed to withdraw the suit and file a fresh suit on the same cause of action.

4. The trial Court has dismissed the application on the ground that even the fundamental facts are wrongly stated in the plaint. Though the defects may be due to wrong drafting by the counsel, however, the same cannot be allowed considering them to be a formal defect. If it is a mistake crept in due to inadvertence, the plaintiff could have adopted any other method to rectify the same, in the manner known to law. But withdrawal of the suit with liberty to file a fresh suit on the same cause of action is impermissible, when it is not a formal defect. I could see no infirmity or illegality in the order passed by the trial Court, warranting interference by this Court. Hence the civil revision petition is dismissed. No costs. Connected miscellaneous petition is dismissed.

s/d-
Assistant Registrar(CS VII)

/true copy/

Sub-Assistant Registrar

Msk

To

The First Additional District Munsif, Erode.

+1 CC to Mr. C. Prabakaran, Advocate vise SR 74208

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C.R.P.No.396 of 2014

GJ
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