

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.10.2016**

CORAM:

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

C.R.P.(P.D.) No.1208 of 2015 and
MP.No.1 of 2015

M.Subramaniam

...Petitioner

versus

1. Manickam

2. Dhakshnamurthy

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 7.2.2015 passed in I.A.No.347 of 2014 in O.S.No.170 of 2011 on the file of I Additional District Munsif Court, Bhavani, Erode.

For Petitioner : Mr. V.S.Ramadoss

ORDER

The petitioner filed a suit in O.S.NO.170 of 2011 for injunction against the respondents. The respondents entered appearance before the trial court and filed a written statement, contending that the petitioner has no right to institute the suit as he is not the owner of the property in question. The respondents contended that the petitioner settled the property in favour of his son and as such he is not entitled to maintain the suit. The petitioner, even after filing the written

statement by the respondents disputing his authority to file the suit, has not taken any further action till the matter was posted for arguments. The petitioner filed an application in I.A.No.347 of 204 to implead his son as a party. The application was dismissed by the trial court. The said order is under challenge in this Civil Revision Petition.

2. Learned counsel for the petitioner, on instructions, submitted that the petitioner wanted the suit to be withdrawn with liberty to file a fresh suit by his son.

3. The suit filed by the petitioner is bound to fail on account of a technical defect.

4. The factual matrix indicates that the property is now owned by his son. The petitioner filed the suit, as if he continued to be the owner. It was only when it was found that the suit is bound to fail, the petitioner filed an application for impleading. Now that the petitioner himself wanted the suit to be withdrawn with liberty to his son to file a fresh suit for injunction, necessarily he should be permitted to withdraw the Original suit.

4. The petitioner is given liberty to file an application before the trial court for withdrawal of the suit in O.S.No.170 of 2011. In case any such application is filed, the same shall be considered and disposed of by the learned trial Judge, in view of the compliance of the conditions by the petitioner for withdrawal of the suit with liberty.

5. The Civil Revision Petition is disposed of with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

25.10.2016

Index:Yes/No
ajr
To

I Additional District Munsif Court, Bhavani, Erode.

K.K.SASIDHARAN, J.

ajr

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