

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) No.2271 of 2016
and C.M.P.No.11757 of 2016

1. J.Hairunisha
2. Ayesha Natchiyar
3. Jallal Mohamed

... Petitioners/Plaintiffs/
Petitioners

Versus

1.Maniyammal
2.Malarkodi
3.Chellammal

... Respondents/Defendants/
Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order of the Learned Principal District Munsif, Karaikal dated 06.11.2015 made in I.A.No.447 of 2014 in O.S.No.44 of 2012.

For Petitioner : Mr.S.Saravanakumar
For Respondents : No appearance

ORDER

The petitioners filed a suit for injunction against the respondents in O.S.No.44 of 2012. The respondents 1 to 4 filed a written statement contending that the suit for injunction is not maintainable without seeking a prayer for declaration. Thereafter, the petitioners filed an application invoking Order XXIII

Rule 1 (3) of Civil Procedure Code, permitting them to withdraw the suit. The application was opposed by the respondents by filing counter. The learned Trial Court dismissed the application. Feeling aggrieved, the petitioners are before this Court.

2. Heard the learned counsel for the petitioners. None appears on behalf of the respondents, in spite of printing their names in the cause list after service.

3. The suit in O.S.No.44 of 2012 was instituted by the petitioners before the learned District Munsif at Karaikkal, praying for a decree of permanent injunction in respect of the suit property. The defendants 1 to 4 filed written statement, wherein, it was contended that they have perfected their right and as such, the petitioners are not entitled to a decree of injunction. The respondents further contended that the suit filed for permanent injunction is not maintainable without praying for a decree of declaration. The petitioners for the reasons best known failed to file an application for amendment.

4. The petitioners later filed an application for withdrawal of the suit, invoking Order XXIII Rule 1 (3) of Civil Procedure Code.

5. The petitioners while invoking the provisions of Order 23 Rule 1 (3) of Civil Procedure Code must plead and prove that the suit would fail on account of certain formal defects. The suit was filed only for injunction. The respondents have already taken a contention that the suit filed for permanent injunction is not maintainable without praying for a decree of declaration. The petitioners could have filed an application for amendment of the plaint, to incorporate the plea for declaration. The learned Judge was therefore right in dismissing the application. I do not find any error or illegality in the order passed by the learned Trial Judge, warranting interference, by invoking the revisional jurisdiction under Article 227 of the Constitution of India.

6. When the attention of the learned counsel for the petitioner was invited as to why application for amendment was not filed, the learned counsel submitted that in any case liberty is given, the petitioners would file an application for amendment of the plaint so as to incorporate a prayer for declaration along with the existing prayer for injunction. The petitioners are given liberty to file an application for amendment of the plaint, so as to enable them to take up the prayer regarding declaration. In case, any such an application is filed, within a period of two weeks from the date of receipt of a copy of this order, the same shall be entertained and disposed of by the learned

K.K.SASIDHARAN, J.

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Trial Judge on merits after giving notice to the respondents.

This Civil Revision Petition is disposed of with liberty as indicated above.

No costs. Consequently, connected Miscellaneous Petition is closed.

21.09.2016

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To

The District Munsif Court, Rasipuram,

CRP (PD) No.2271 of 2016

21.09.2016