

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.(PD) No.2000 of 2012  
and M.P.No.1 of 2012

T.B.Manickam

... Petitioner

Vs.

1.N.Rangasamy

2.Ramakkal

3.Kandasamy

4.K.Balachandran

.. Respondents

|                 |   |                    |
|-----------------|---|--------------------|
| For Petitioners | : | Mr.R.Bharath Kumar |
| For Respondent  | : | No appearance.     |

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal Order dated 10.01.2012 passed in I.A. No.787 of 2011 in O.S.No.477 of 2005 on the file of the II Additional District Munsif Court, Coimbatore.

**ORDER**

When the matter was called, the learned counsel for the petitioner is present and the learned counsel for the respondents are not present, inspite of the fact the notice was served to them and their names are printed in the cause list. Hence, the petition is taken up for final hearing.

2. The facts in nutshell, as contended by the counsel for the petitioner is as follows:-

(i) O.S.No.477 of 2005 was filed by the petitioner seeking the relief of permanent injunction restraining the defendants, their men and agents or anybody claiming through them, from in any manner, interfering with the plaintiff's peaceful possession and enjoyment in respect of the suit schedule property. Before the commencement of the trial in the said suit, the petitioner / plaintiff filed a petition seeking withdrawal of the suit, with liberty to institute a fresh suit in respect of the subject matter of the above suit, on the ground that he was dispossessed from the suit schedule property.

(ii) The defendants filed the counter statement stating that the petition seeking permission to withdraw the suit was filed after filing of the I.A.No.533 of 2010 seeking amendment of plaint.

(iii) The II Additional District Munsif Court, Coimbatore, dismissed the petition, by accepting the conditions made by the respondents, by stating that the withdrawal of the suit cannot be permitted, since the plaintiff filed a petition seeking amendment of the plaint.

3. The reason furnished by the Court below is not sound to dismiss the petition. Order 23 (3) enumerates that if there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or

part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

4. The fact remains that the petition seeking withdrawal of the suit was filed only after the petition for amendment of the plaint was filed. But the contention of the petitioner is that, in between, he was dispossessed from the suit schedule property and necessarily he has to file a comprehensive suit seeking larger relief and from other parties in O.S.No. for 477 of 2005.

5. Withdrawal of a suit is a matter of right of the plaintiff, subject to the condition that the conditions stipulated in Order 23 (3) should be satisfied. Considering the facts and circumstances of the case, more particularly the fact that the plaintiff was already dispossessed from the suit schedule property, no useful purpose will be served by keeping the suit pending. Further, the petitioner is at liberty to file a Comprehensive suit, seeking appropriate relief and his right of adjudication and the legal right cannot be denied.

**S.M.SUBRAMANIAM,J.**

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6. In these circumstances, the order passed by the II Additional District Munsif Court, Coimbatore in I.A. No.787 of 2011 in O.S. No.477 of 2005 is set aside and Civil Revision petition is allowed. No order as to costs. Consequently connected Miscellaneous Petition is also closed.

06.10.2016

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To  
The II Additional District Munsif Court, Coimbatore.

**C.R.P. (PD) No.2000 of 2012**

