

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.11.2016**

CORAM:

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

C.R.P.(P.D.) No.3483 of 2016 and
CMP.No.17754 of 2016

Radhamal @ Radha

...Petitioner

versus

1. Baskar

2. G.Prabakar

3. G.Parthasarathy

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and Decreetal Order in I.A.No.10624 of 2015 in O.S.No.8539 of 2008 dated 15.04.2016 passed by the learned XVII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.G.Thyagarajan

For Respondents : Mr.P.Sreenivasulu

ORDER

The petitioner filed an application in I.A.No.10624 of 2015 in O.S.No.8539 of 2008 before the trial court to withdraw the civil suit with liberty to file a fresh suit. The application was dismissed by the trial court on the ground that the petitioner earlier filed a petition for amendment. The petition was dismissed and the said order was

confirmed by the High Court.

2. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

3. The petitioner initially filed a suit for injunction. Thereafter, the petitioner filed an application to amend the plaint with a contention that she was in possession of the property and as such, she is entitled to a decree for declaration of her possession. The application was dismissed by the trial court. The order was upheld by the High Court. It was, only thereafter, the petitioner filed the application seeking withdrawal of the civil suit.

4. The learned trial Judge was of the view that in view of the dismissal of the earlier application for amendment, the petitioner is not entitled to invoke Order 23 Rule 1 of CPC.

5. The petitioner in the application in I.A.No.10624/2015 contended that in view of the contention taken by the respondents that the petitioner is no more in possession of the property, the suit is bound to fail. The said statement itself would come within the meaning

of Order 23 Rule 1 of CPC entitling the petitioner to file an application for withdrawal. The trial court was, therefore, not correct in dismissing the application.

6. In the result, the fair and Decreetal Order in I.A.No.10624 of 2015 in O.S.No.8539 of 2008 dated 15.04.2016 on the file of the learned XVII Assistant Judge, City Civil Court, Chennai, is set aside. The suit in O.S.No.8539 of 2008 is permitted to be withdrawn with liberty.

7. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

29.11.2016

Index:Yes/No
tsi

To

The XVII Assistant Judge,
City Civil Court, Chennai.

K.K.SASIDHARAN, J.

(tsi)

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