

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No737 of 2016

&

C.M.P.No.4003 of 2016

Duraisamy

... Petitioner

vs.

Krishnan (died)

1.D.Manogaran
2.Chandrammal
3.Viswanathan
4.Vittal Raman
5.Selvakumar
6.Ramani
7.Annakilli

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against fair and decretal order dated 02.07.2015 in I.A.No.716 of 2014 in O.S.No.781 of 2009 on the file of District Munsif Court, Katpadi, Vellore District.

For Petitioner : Mr.G.Rajan

ORDER

The plaintiff in the original suit O.S.No.781 of 2009, pending on the file of District Munsif, Katpadi, Vellore District, filed an application in I.A.No.716 of 2014 seeking the permission of the Court to withdraw the suit with liberty to file a fresh suit on the very same cause of action. The said petition came to be filed under Order XXIII Rule 1 CPC.

2. The learned trial Judge, after hearing, dismissed the said application holding that such a leave could not be granted. As against the said order of the trial Court dated 02.07.2015 made in I.A.No.716 of 2014 in O.S.No.781 of 2009, the present Civil Revision Petition has been filed.

3. If at all the plaintiff in a suit wants to withdraw the suit simplicitor, the Court cannot prevent the plaintiff from doing so. Even the opposite party cannot contend that the plaintiff shall not have the right to withdraw the suit. On the other hand, the opposite party, namely the defendant, may insist upon awarding cost. If the prayer is not for withdrawal of the suit simplicitor, but with a rider that the permission must be coupled with a leave to file a fresh suit in respect

of the same subject matter, then the Court has to decide whether such an application comes under any one of the clauses of sub-clause (3) of Rule 1 under Order 23 of the Code of Civil Procedure. It must be noticed that the leave to be granted for filing a fresh suit shall be not on the very same cause of action, but in respect of the very same subject matter of the suit. There is a remarkable difference between the scope of Order II Rule 2 CPC and Order XXIII Rule 1 CPC. Order II Rule 2 deals with the failure to file the suit for the entire claim or all the reliefs based on one and the same cause of action and consequences of such failure and also abandonment of part of claim and its consequences, whereas Order XXIII Rule 1 CPC deals with the withdrawal of the suit with a leave to file a fresh suit in respect of the very same subject matter.

4. Cause of action and the subject matter are two different aspects dealt with by Order II Rule 2 CPC and Order XXIII Rule 1 CPC respectively. The revision petitioner herein did not ask for permission to withdraw the suit to file a fresh suit in respect of the very same subject matter. On the other hand, he prayed for permission to withdraw the suit with liberty to file a fresh suit on the same cause of action. Hence, the prayer sought for is defective and the petitioner

had approached the trial Court under the wrong provision. Even under Order II Rule 2 CPC, the permission should have been sought for at the time of filing of the suit and not at the time of withdrawal of the suit. Even if the petition is treated to be one filed under Order II Rule II CPC, the permission to file a fresh suit cannot be granted. This Court does not find any defect in the order of the trial Court warranting interference by this Court. The revision does not have any merit in it and the same deserves dismissal at the threshold.

In the result, the revision is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

09.03.2016

Index: Yes/No
Internet: yes
gpa

To

The District Munsif Court
Katpadi, Vellore District

P.R.SHIVAKUMAR.J.,

gpa

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