

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE M.M.SUNDRESH

O.S.A.Nos.46 and 50 of 2016

O.S.A.No.46 of 2016:

1.Veeramuthu
2.Nagarathinam .. Appellants

vs

1.Sudha K.Punjabi
2.R.V.Raajah
3.C.Veeramuthu
4.P.Munisamy
5.G.Arul
6.J.Rajaram .. Respondents

O.S.A.No.50 of 2016:

R.V.Raajah .. Appellant

vs

1.Sudha K.Punjabi
2.Veeramuthu
3.Nagarathinam
4.C.Veeramuthu
5.P.Munisamy
6.G.Arul
7.J.Rajaram .. Respondents

Common Prayer:

Appeals filed under Order XXXVI, Rule 11 of Original Side Rules read with Clause 15 of Letters Patent against the order made in A.No.467 of 2016 in C.S.No.789 of 2005 Dated,02.02.2016 on the file of this Court.

O.S.A.No.46 of 2016:

For Appellants .. Mr.P.S.Raman
Senior Counsel for
M/s.R.Srinivasalu

For Respondents.. Mr.C.Umashankar for R1

Mr.P.Wilson
Senior Counsel for
Mr.C.Murugan for R2

O.S.A.No.50 of 2016:

For Appellant ... Mr.P.Wilson
Senior Counsel for
Mr.C.Murugan

For Respondents.. Mr.C.Umashankar for R1

Mr.P.S.Raman
Senior Counsel for
Mr.R.Srinivasalu for R2 & R3

R4 to R7 - given up

COMMON JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The learned counsel for the first respondent/applicant before learned Single Judge concedes that she was not a party to the proceedings in the suit, but the relief sought for by the original plaintiff was for her benefit. Now the original plaintiff wants unconditionally to withdraw the suit and the defendants have no objection.

2. Faced with the aforesaid position, the undoubted legal position is that the plaintiff cannot be compelled to pursue a remedy which he is not inclined to do, especially when the withdrawal of the suit is unconditional [(2000) 5 SCC 458 - K.S.Bhoopathy and others v. Kokila and others].

3. In view of the aforesaid legal position, the impugned order dated 02.02.2016, which permits impleadment of the applicant/respondent No.1 before us and rejecting the memo of withdrawal of the suit, has to be set aside and the original

plaintiff is thus permitted to withdraw the suit unconditionally. Suit C.S.No.789 of 2005 stands withdrawn unconditionally.

4. As far as the first respondent is concerned, we make it clear that he has his own independent legal right in accordance with law, which is of course subject to any defences which may be raised by the other parties, on the same cause of action.

5. The appeals, accordingly, stand allowed, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.R.Srinivasalu, Advocate, S.R.No.16976
+1cc to Mr.C.Murugan, Advocate, S.R.No.16975
+1cc to M/S.C.Umashankar, S.R.No.17042

O.S.A.Nos.46 & 50 of 2016

ak(CO)
srg(18/03/2016)

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