



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2031 of 2015

and

M.P.(MD)No.2 of 2015

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Theni District,
Uthamapalayam Taluk,
Veppampatti Village people,
Veppampatti Village General,
Pethanasamy Kovil Rep. By its
Secretary S.Ramamoorthy
S/o.Seeranga Gouder,
Ward-6, South Street,
Veppampatti Village.
Presently rep. By its Secretary
Narasingaperumal
Ward-2, Kaliyamman Kovil Street,
Veppampatti Village,
Uthamapalayam Taluk,
Theni District.

.. Petitioner/Petitioner/
Plaintiff

Vs.

K.Perumal

.. Respondent/Respondent/
Defendant

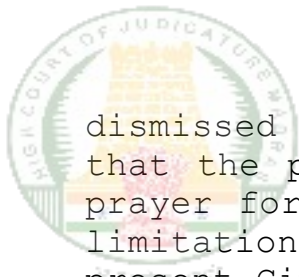
PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to call for the records relating with the ex-order and fair order, dated 05.06.2015, made in I.A.No.177/2013 in O.S.No.243/2010 on the file of District Munsif, Uthamapalayam and set aside the same.

For Petitioner : Mr.R.Suriyanarayanan

ORDER

The petitioner is the plaintiff in the suit in O.S.No.243 of 2010. He has filed a suit for permanent injunction. The respondent filed written statement and contested the suit.

2.The petitioner filed I.A.No.177 of 2013 under Order 23 Rule 1 of C.P.C., seeking permission to withdraw the suit with liberty to file a fresh suit. The respondent filed counter affidavit and contending that even before filing of suit itself, the respondent has been fencing in the property in question and the petitioner knew about the same. The learned Judge considering the facts and arguments of the learned counsel for the parties,



dismissed the I.A.No.177 of 2013 filed by the petitioner holding that the petitioner is at liberty to amend the plaint to include prayer for declaration and Mandatory injunction subject to law of limitation. Against the said order, the petitioner has filed the present Civil Revision Petition.

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3.The learned counsel for the petitioner contended that the plaintiff can withdraw the suit at any time. The learned Judge failed to take into consideration the decision of this Court and Hon'ble Apex Court that the suit can be withdrawn at any time. The plaint could be amended only if fencing had been put up after filing of suit. In the present case, the fencing was put up prior to filing of suit. Therefore, only filing of fresh suit claiming declaration and recovery of possession is the proper remedy. Therefore, prayed for allowing the Civil Revision Petition.

4. From the records, it is seen that the petitioner has filed a suit for permanent injunction. The respondent in the written statement has stated that fencing had already been put up by the respondent prior to filing of the suit. It is admitted by the petitioner. In the circumstances, the petitioner is not entitled to seek permission to withdraw the suit already filed with liberty to file a fresh suit as the reason given by the petitioner do not satisfy the ingredients of Order 23 of C.P.C. The learned Judge has given valid reason for dismissing the I.A. There is no irregularity in the said order warranting interference by this Court.

5.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/
Assistant Registrar (C.O.Dept)

/True Copy/

Sub Assistant Registrar

To
The District Munsif,
Uthamapalayam.

+1CC to Mr.R.Suriyanarayanan, Advocate in Sr.No.9941

CN/SKS-RR/8.03.2016/2P-3C

C.R.P (MD) No.2031 of 2015 (PD)