



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.513 of 2016 (PD)

and

C.M.P(MD)No.2208 of 2016

Justin Raj

... Petitioner

Vs.

1.The District Collector,
Represented by the State of Tamilnadu,
Nagercoil, Kanyakumari District.

2.The Superintendent of Police,
Nagercoil,
Kanyakumari District.

3.Mr.Kasthuri Gandhi
Deputy Superintendent of Police,
Thuckalay, Kanyakumari District.

4.Mr.Sudhesan
S.P.Inspector,
S.P.Office, Nagercoil,
Kanyakumari District.

5.Mr.Charles,
Inspector, Thiruvattar Police Station,
Thiruvattar Post,
Kanyakumari District.

6.Mr.Rajasekar
Sub-Inspector,
Thiruvattar Police Station,
Thiruvattar Post,
Kanyakumari District.

7.Mr.Nelson

8.Jeyasingh Moses @ Rabi

... Respondents



O.S.No.280 of 2013, dated 11.09.2015 on the file of the Additional District Munsif Court, Padmanabhapuram and set aside the same.

For Petitioner : Mr.D.Saravanan

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ORDER

The petitioner is the plaintiff whereas the respondents are the defendants in the suit in O.S.No.280 of 2013, on the file of the Principal District Munsif, Padmanabhapuram. The petitioner filed suit for permission to put up permanent boundary on the West and North of the suit property as noted by the Advocate Commissioner in his plan, which was received and recorded as Court record in O.S.No.509 of 2008. The respondents filed written statement. The petitioner filed I.A.No772 of 2015 Under Order XXIII, Rule 1(3) of Code of Civil Procedure, for permission to withdraw the suit with liberty to file fresh suit.

2.According to the petitioner, the respondents 7 and 8 have created a fabricated documents and encumber the property. Therefore, as per Order XXIII Rule 1(3) of CPC, the petitioner is entitled to withdraw the suit and file a fresh suit. The respondents 1,2,4 to 6 filed counter affidavit stating that the suit itself is not maintainable and stated that the petitioner has not given any reason for filing the petition for permission to withdraw the suit and to file a fresh suit. The respondents 7 & 8 filed separate counter affidavit and stated that they are not necessary party and they are not the owners of the property in question. One Ganesan is the owner as per the decree passed in O.S.No.509 of 2008. The learned Judge considering the facts and materials on record, dismissed the application filed by the petitioner. Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

3.The learned counsel for the petitioner contended that the learned Judge erred in dismissing the application. The learned Judge failed to consider the fact that necessity to file fresh suit arises only due to the fact that the respondents 7 & 8 created encumbrance by fabricating documents, pending suit. The learned Judge failed to consider the documents executed by the respondents 7 & 8. The learned Judge ought to have seen that unless fresh suit is filed against the necessary parties, very purpose of filing suit would be defeated.

4.I have heard Mr.D.Saravanan, learned counsel appearing for the petitioner and also carefully perused the entire materials on record.

<https://hcservices.ecourts.gov.in/hcservices/>
5. On perusal of the materials on record, it is seen that as per Order XXIII, Rule 1(3) of Code of Civil Procedure, the Court can grant permission to the party to withdraw the suit and file a fresh suit



if there is a formal defect. Order XXIII, Rule 1(3) of Code of Civil Procedure is reads as follows:-

" 1(3) Where the Court is satisfied,

(a) that a suit must fail by reason of some formal defect, or

(b) that 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."

6. From the affidavit filed in support of the petition filed by the petitioner, does not reveal that the permission is sought for to withdraw the suit on the ground of formal defect. The permission is sought to withdraw the suit only on the ground that the respondents 7 & 8 have created encumbrance, pending suit. This is not sufficient reason for granting permission to withdraw the suit and file fresh suit. The learned Judge considered all the materials in proper perspective, dismissed the application by giving cogent and valid reason. There is no warranting interference by this Court.

7. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Additional District Munsif Court, Padmanabhapuram.

+one cc to M/s.D.Saravanan, Advocate in SR.No.12492

Am

CSL/NGM-SS/17.03.2016/3P/3C

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