

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.1260 of 2008

ORDER:

This Civil Revision Petition is preferred against the order dated 20.11.2007 passed in I.A.No.3030 of 2007 in O.S.No.2922 of 2006 on the file of Principal Senior Civil Judge, R.R. District.

2. Revision petitioners herein are defendants in the above referred O.S.No.2922 of 2006. Plaintiff filed I.A.No.3030 of 2007 under Order XXIII Rule 1 (3) read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) seeking permission to withdraw the suit and the Court below, on a consideration of objection raised by defendants, permitted plaintiff to withdraw the suit. Questioning the same, defendants filed present revision.

3. Advocate for revision petitioners submitted that plaintiff filed two interlocutory applications in the suit, one for grant of injunction restraining defendants from changing the nature of suit schedule property and the other to restrain defendants from alienating the suit schedule property, pending disposal of the suit and Court below, allowed the interlocutory application restraining the defendants from alienating suit schedule property and dismissed the interlocutory application whereunder, relief not to change the nature of suit schedule property is claimed. Thereafter, plaintiff preferred CMA before this Court in CMA No.314 of 2007 against dismissal of application for the relief of changing the nature of suit schedule property and this Court, while disposing of the said CMA, directed the Court below to dispose of the suit within a period of six months. He further submitted, after remand, Court below framed issues and proceeded with trial and when suit was at the stage of cross-examination of D.W.1, plaintiff filed present application and the Court below erroneously permitted plaintiff to withdraw the suit. He further

submitted that this Court, in aforementioned CMA, observed that it is left open to plaintiff to amend the pleadings but plaintiff, without amending his pleadings, filed petition to withdraw the suit, which is not permissible.

4. Respondent, in spite of service of notice, neither appeared in person nor through any advocate.

5. I have perused the material papers including the impugned order dated 20.11.2007.

6. It is not in dispute that plaintiff, by invoking provision of Order XXIII of the Code, sought permission to withdraw the suit. As seen from Order XXIII Rule 1 of the Code, at any time after, the institution of the suit, the plaintiff may as against all or any of the defendants, abandon his suit or abandon a part of his claim; and Rule 2 contemplates that an application to seek leave shall be accompanied by affidavit in case the suit is filed on behalf of a minor.

7. Admittedly, suit is filed by sole plaintiff and there are no other plaintiffs. Only in case of other plaintiffs, unless all the plaintiffs seek withdrawal, the Court shall not permit for abandonment of the suit. When law provides abandonment of any claim by taking leave from the Court, opposite party cannot insist plaintiff to continue the suit or to amend relief. It is well settled principle that plaintiff is the master of his/her suit and the party has every right to prosecute his suit in accordance with law and can withdraw it at any time. At best, opposite party can insist for costs on the ground that he/she was forced to appear before the Court and engage an advocate. Except that, opposite party has no right to oppose withdrawal of the suit unless it is a partition suit, where, defendants would also have a share and deemed as plaintiffs, or any counter claim is made in the same suit. Admittedly, in the present case, it is not a partition suit, but it is a suit

for recovery of possession and consequential permanent injunction and *mesne* profits. So also, there is no counter claim from defendants. Therefore, trial Court has rightly accorded permission to plaintiff to withdraw the suit and I do not find any jurisdictional error or any illegality in the order passed by the Court below calling for interference by exercising revisional power. For these reasons, the revision is *de void* of merit and is liable to be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Miscellaneous petitions, if any, pending in this revision, shall stand dismissed.

S. RAVI KUMAR, J

22nd August, 2016.
Bvv