

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.SUNDAR

C.R.P.(PD) No.1068 of 2017
and C.M.P.No.5125 of 2017

1.C.K.Moidu
2.A.M.Mubarak
3.V.K.Hassan

.. Petitioners

..VS..

R.Sudhakar Babu

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.09.2016 made in I.A.No.107 of 2016 in O.S.No.406 of 2006 on the file of the learned I Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.V.Anandhamurthy

ORDER

Three plaintiffs in the trial Court are the three revision petitioners before me.

2. Complaint was filed with prayers inter alia for declaration of title and consequent injunction qua possession.

3. There is a sole defendant in the suit.

4. It is not in dispute that the sole defendant in the suit filed a written statement dated 04.02.2007. In the written statement, there is a mention about an earlier suit O.S.No.430 of 1996, wherein the plaintiffs' vendor was a party and it was averred that there was a partition in the earlier suit i.e., O.S.No.430 of 1996.

5. Under such circumstances, the plaintiffs in the suit took out an application being I.A.No.107 of 2016 on 08.02.2016 under Order XXIII Rule 1(3)(a) & (b) of the Code of Civil Procedure, 1908 (hereinafter referred as 'C.P.C.' for brevity) with a prayer to withdraw the suit with liberty to file a fresh suit.

6. The plaintiffs have predicated this leave application primarily on the ground that they have to implead the parties in the earlier suit O.S.No.430 of 1996 and seek suitable reliefs.

7.The trial Court, after full contest, dismissed the leave application by an order dated 08.09.2016, which has been called in question in the instant revision petition and it has been preferred under Article 227 of the Constitution of India ('C.O.I.' for brevity).

8.The trial Court has dismissed the instant leave application primarily on the ground that the leave application has been filed almost a decade later. The written statement was filed and served on 04.02.2007, but the leave application was preferred only on 08.02.2016 a decade later.

9.It is open to the plaintiffs to seek suitable amendments in the present suit viz., O.S.No.406 of 2006 itself.

10.If the plaintiffs chose to do so, the same can be dealt with on merits. Such a course if chosen by the plaintiffs would avoid one more fresh suit on the same set of facts.

11.In the light of the facts that have been stated supra, I am of the view that there is no infirmity or illegality in the order of the trial Court dated 08.09.2016, which has been called in question in the instant revision petition.

12. With the above observation, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

04.04.2017

Index: Yes/No

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To

I Additional Subordinate Judge, Coimbatore.

M.SUNDAR, J.

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