

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(N.P.D).No.2401 of 2014 and
M.P.No.1 of 2014

1.S.Sudhakaran
2.S.Bharathi

...Petitioners

Vs

1.S.Prabhakaran
2.The Sub Registrar
Joint -I, Manjakuppam
Cuddalore - 1.

...Respondents

Prayer:- Civil Revision Petition filed under Section 115 of the C.P.C., to allow this revision petition and set aside the fair order and decreetal order of the learned Additional District Munsif, Cuddalore, allowing I.A.No.194 of 2014 in O.S.No.616 of 2007 dated 21.03.2014.

For Petitioners : Mr.N.Suresh

For Respondents : Mr.R.Gururaj for R1
Mr.T.Jayaramaraj for R2
Government Advocate

ORDER

The first respondent filed an application before the Trial Court to

dismiss the suit invoking Order 23 Rule 1 of the Code of Civil Procedure. The application was allowed by the learned Trial Judge notwithstanding the contention taken by the petitioners that there was no 'Formal Defect' in the plaint originally filed so as to enable the first respondent to file a fresh suit after withdrawal. The order passed by the learned Additional District Munsif, Cuddalore, is under challenge at the instance of the defendants in O.S.No.616 of 2007.

2. I have heard the learned counsel for the petitioners. I have also heard the learned counsel for the first respondent.

3. The first respondent filed a suit for injunction against the petitioners before the District Munsif Court, Cuddalore. Before taking evidence, the first respondent filed an application in I.A.No.194 of 2014 for withdrawal of the suit with liberty to file a fresh suit on the basis of the very same cause of action.

4. The affidavit filed in support of the application in I.A.No.194 of 2014 does not contain any indication with regard to the 'Formal Defect', which is a mandatory requirement under Order 23 Rule 1 of C.P.C. The learned Additional District Munsif in a very mechanical manner allowed

the application and granted liberty to the first respondent to file a fresh suit. The affidavit filed in support of the interlocutory application does not contain any reason, much less justifiable reason, in support of the plea for withdrawal of the suit with liberty file a fresh suit.

5. After hearing the learned counsel for the parties, I am of the view that interest of justice would be sub-served by remanding the matter to the learned District Munsif, so as to enable the first respondent to file a better affidavit indicating the so called 'Formal Defect', justifying initiation of an application under Order 23 Rule 1 of C.P.C.

6. In the result, the order dated 21 March 2014 is set aside. The application in I.A.No.194 of 2014 is restored to file.

7. The learned Additional District Munsif, is directed to give reasonable opportunity to the first respondent to file a better affidavit in support of the application filed under Order 23 Rule 1 of C.P.C. The petitioners should also be given opportunity to file their counter. The matter shall be considered thereafter and disposed of by the learned Trial Judge on merits and as per law.

K.K.SASIDHARAN,J.

dna

8. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

20.06.2016

dna/svki

To

- 1.The Sub Registrar
Joint -I, Manjakuppam
Cuddalore - 1.
- 2.The Additional District Munsif Court,
Cuddalore.

C.R.P.(N.P.D.) No.2401 of 2014

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