

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**CRP.(PD). No.4406 of 2017
and CMP.No.20941 of 2017

F.Susai Raju

... Petitioner

Vs.

- 1.Joseph Annusamy Mudaliar
- 2.Lagadish
- 3.Marie Joseph Divi
- 4.Antony Raja
- 5.G.Latha

Rep by her Power of Attorney Agent,
V.Gopinath, S/o.Vasudevan,
Flat No.9, Door No.20, "Anu Avenue Apartment,
Anothoniar Koil Street,
Reddiarpalayam,
Pondicherry-605 010

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 05.06.2017 made in I.A.No.77 of 2017 in O.S.No.1034 of 2006 passed by the Principal District Munsif, Pondicherry.

For Petitioner : Mr.R.Thiagarajan

For Respondents : Mr.T.M.Naveen for R3

ORDER

According to the revision petitioner, the fifth respondent and the revision petitioner have filed a suit in OS.No.1034 of 2006 before the Principal District Munsif court, Pondicherry against the respondents 1 to 4 for permanent injunction. Written statement has been filed on 06.11.2006. Thereafter, additional written statement was filed on 09.08.2016. In the aforesaid additional written statement, defendants specifically stated that the plaintiffs can withdraw the suit for permanent injunction and file separate suit for declaration of title over the suit property. In view of the specific averments of the defendants in the written statement, the revision petitioner has filed an application in IA.No.77 of 2017 under Order 23 Rule 1 (3) of the Civil Procedure Code to withdraw the suit with liberty to file fresh comprehensive suit before the competent Civil Court. The said application was dismissed. Therefore, the revision petitioner has filed the present Civil Revision Petition before this Court.

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2. It is useful to extract the provisions under Order 23 Rule 1 (3) of the Civil Procedure Code, which reads as follows:

"(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."

3. According to the respondents, the petitioner has not been satisfied the above requirement by the revision petitioner. Therefore, the court below has rightly dismissed the said application.

4. According to the revision petitioner, in the additional written statement, the defendants specifically raised plea that the revision petitioner can withdraw the suit and file a fresh suit for declaration of title. The respondent has not objected for the withdrawal of the said suit. But the court below has erroneously dismissed the said application.

5. On perusal of the order passed by the trial court, the case is posted for cross examination of PW1. The prayer was amended as per order in IA.No.627 of 2016. The first petitioner / plaintiff who is the party to the suit in OS.No.1034 of 2006 filed CMA against the interim order passed by the trial court in the aforesaid suit and the same is pending before the Appellate court. Subsequently a Civil Revision Petition has been filed before this Court in CRP.No.1378 of 2012 and the same was disposed of with observations. Thereafter, at the time of cross-examination of PW1, the present application has been filed stating that the second petitioner / petitioner herein has not aware of the suit proceedings and subsequently, petitioner being the purchaser of the suit property was impleaded as a party / the second plaintiff in the said suit. Thereafter, the petitioner has filed a petition to permit him to act as a Power agent for the first plaintiff / the fifth respondent herein and the same was allowed. Thereafter, he presented the second application to implead himself as a party / the second plaintiff in the said suit. Hence, the present application has been filed to withdraw the suit.

6. When the petitioner has filed an application on behalf of the first petitioner, and the fifth respondent is a party to the suit

proceedings, and the petitioner has filed the instant application on his behalf and on behalf of the first plaintiff / fifth respondent herein for withdrawal of suit with liberty to file fresh suit. Therefore, no sufficient reason has been stated in the affidavit to satisfy the court under provisions Order 23 Rule 1 (3) of the CPC. Therefore, the court below has rightly dismissed the said application. Hence, there is no warrant to interfere with the orders passed by the court below.

7. In the result, the Civil Revision Petition fails and accordingly, the Civil Revision Petition is dismissed. However, it is open to the Revision Petitioner, to file a separate suit, if it is permissible under law before the competent court. Consequently, the connected miscellaneous petition is closed. No costs.

07.12.2017

Speaking / Non Speaking order
Index :Yes/No
Internet :Yes/No
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D.KRISHNAKUMAR.J,

lok

To
The Principal District Munsif Court,
Pondicherry.



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