

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.01.2017

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.4073 of 2016

Nagamani

... Petitioner

vs.

1. The District Registrar
The District Registrar Office
Gandhi Nagar
Tiruvannamalai.

2. The Sub Registrar
The Sub-Registrar's Office
Arni.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 16.11.2016 passed by the learned District Court, Tiruvannamalai in I.A.No.117 of 2016 in I.A.No.92 of 2016 in O.S.No.45 of 2016.

For Petitioner : Mr.K.Goviganesan

ORDER

Heard the learned counsel for the petitioner.

2. The revision is directed against the order refusing to grant injunction in an application filed under Order 23 Rule 1 of the Code of Civil Procedure.

3. The plaintiff is the revision petitioner. He filed the suit for partition and permanent injunction against his brother. The plaintiff has also asked for mandatory injunction as against the fourth and fifth defendants/respondents herein, who are the registrational authorities not to register any documents with respect to the suit A and B scheduled property. The plaintiff also had filed I.A.No.92 of 2016 for dispensing with Section 80 CPC notice.

4. It is the case of the plaintiff that he decided to abandon the suit relief of mandatory injunction against 4th and 5th defendants. Therefore, he filed I.A.No.117 of 2016 under Order 23 Rule 1 of CPC. The said application was dismissed by the learned District Judge, Tiruvannamalai. Aggrieved by the same, the above revision is filed.

5. Order 23 Rule 1 of CPC deals with withdrawal of suit or abandonment of part of the claim. The plaintiff is permitted at any time, after the institution of the suit, to abandon his suit or abandon part of his claim, against all or any of the defendants. Excepting

where the party is a minor, such abandonment should be only with the leave of the Court.

6. A perusal of the record shows that the said fourth and fifth defendants have also made their endorsement expressing their 'no objection' for the abandonment of the claim against them. However, on an erroneous view, the court below has dismissed the application filed by the plaintiff, on a misconception that the petition was filed under Order 23 Rule 1 (3) of the CPC.

7. Inasmuch as the provision under Order 23 of CPC is clear that at any time, after the institution of the suit, the plaintiff can give up his claim against one or all the defendants, the order dated 16.11.2016 passed by the Court below in I.A.No.711 of 2016 in I.A.No.92 of 2016 in O.S.No.45 of 2016 is set aside. Further as prayed for by the plaintiff in the application in I.A.No.711 of 2016, he is permitted, to withdraw I.A.No.92 of 2016 and another I.A., which has not been numbered, as mentioned in the said application.

PUSHPA SATHYANARAYANA.J

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8. With the above direction, this Civil Revision Petition is allowed. No costs.

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Index: Yes/No

Internet: yes

To

1. The District Judge, Tiruvannamalai.

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