



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 25.05.2017

CORAM

THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN

C.R.P(PD) (MD) No. 2246 of 2015

and

M.P(MD) No. 1 of 2015 & CMP(MD) No. 4597 of 2017

Balambal

: Petitioner/Petitioner/Plaintiff

vs.

P.Duraisamy (Died)

Chandra Periamma (Died)

1.Chandra

2.Radha

3.Prema

4.Kannan

: Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 07.04.2015 passed in I.A.No.459 of 2014 in O.S.No.76 of 2005 on the file of the III Additional District Munsif, Tiruchirappalli.

For Petitioner : Mr.R.Sundar Srinivasan

For R1 and R3 : Mr.A.L.Kannan

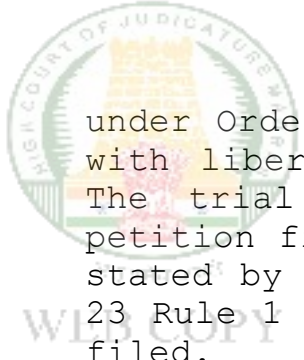
For 4th Respondent : Mr.K.Prabhakaran

For 2nd Respondent : No appearance

ORDER

The civil revision has been filed against the fair and decreetal order, dated 07.04.2015 passed by the III Additional District Munsif, Tiruchirappalli, in I.A.No.459 of 2014 in O.S.No.76 of 2005.

2.The case of the revision petitioner/plaintiff is that she has filed the suit against the respondents/defendants for the relief of partition and separate possession; that the defendants 1 and 2 are her parents and the defendants 3 to 6 are her children; that the suit properties are the ancestral undivided joint family properties; that during the pendency of the suit, her parents namely, the defendants 1 and 2 expired and after their demise, the entire property devolves upon the revision petitioner/plaintiff and that consequent to the demise of her parents, the suit relief has become otiose. Hence, the revision petitioner filed a petition



under Order 23 Rule 1 CPC seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action. The trial court, after hearing both side, has dismissed the petition filed by the revision petitioner holding that the reasons stated by the plaintiff does not satisfy the provisions of Order 23 Rule 1 of CPC. Aggrieved over the same, this civil revision is filed.

3.The learned counsel for the revision petitioner would submit that the suit properties are the ancestral undivided joint family properties and during the pendency of the suit, her parents expired and after their demise, the entire property devolved upon her and that the revision petitioner being the plaintiff is entitled to withdraw the suit at any point of time and as she wanted to file fresh suit on the same cause of action, she filed the application seeking the leave of the court to grant permission, but the court below without properly appreciating the facts and circumstances of the case has dismissed the petition filed by the revision petitioner. Hence, he prayed that the impugned order passed by the court below is liable to be set aside and the revision petition has to be allowed.

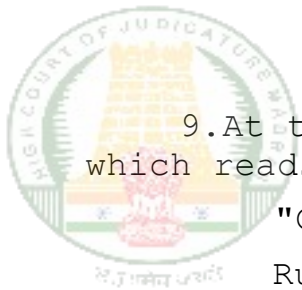
4.The learned counsel appearing for the respondents 1 & 3 and 4 would submit that the court below, after considering each and every facts and circumstances of the case, came to the correct conclusion that since, the reasons given by the plaintiff cannot be termed as sufficient cause, liberty cannot be granted to file a fresh suit, based on the same cause of auction and hence, they prayed that the Civil Revision Petition has to be dismissed.

5.Heard the rival submissions and perused the materials available on record.

6.It is seen from the records that the revision petitioner/plaintiff has filed the suit for partition and separate possession in the year 1998 before the Subordinate Court, Tiruchirappalli in O.S.No.112 of 1998 and due to jurisdictional reasons, the suit was transferred to the III Additional District Munsif, Tiruchirapalli and renumbered as O.S.No.76 of 2005.

7.It is an admitted fact that the parents of the revision petitioner/plaintiff expired during the pendency of the suit and hence, the defendants 3 to 6 were added as parties to the suit, who are claiming shares, by virtue of deeds of conveyance.

8.The main contention of the revision petitioner is that after the demise of her parents, there is no cause for partition of the suit properties and seeks permission to withdraw the suit with a liberty to file a fresh suit on the same cause of action.



9. At this juncture, it is useful to quote Order 23 Rule 1 CPC, which reads as follows:

"Order 23: Withdrawal and adjustment of suits:

Rule 1: Withdrawal of suit or abandonment of part of claim:

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(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.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.



(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs."

WEB COPY

10.A plain reading of the above sections, it is made clear as per the provisions of Order 23 Rule 1(3) of the Code of Civil Procedure, where the court is satisfied that a suit must fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh for the subject matter of a suit or part of a claim, the court can grant liberty to the plaintiff to withdraw the suit with liberty to file fresh suit on the same cause of action. In the case on hand, the court below, without appreciating provisions of law, has dismissed the application as if the plaintiff has no right to withdraw the suit at any point of time and he is not entitled to seek liberty to file a fresh suit, as the reasons given by the plaintiff cannot be termed as sufficient cause. Hence, the order of the court below is liable to be set aside.

11.In the result, this civil revision is allowed and the impugned order passed by the court below is set aside. The revision petitioner/plaintiff is permitted to withdraw the suit with liberty to file fresh suit on the same cause of action, within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(P & A)

/True Copy/

Sub Assistant Registrar

To,

The III Additional District Munsif,
Trichy.

C.R.P(PD) (MD) No.2246 of 2015
and

M.P(MD) No.1 of 2015 & CMP(MD) No.4597 of 2017
25.05.2017