

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5254 of 2016

ORDER:

1) The present Civil Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the order dated 26.08.2016 passed in I.A.No.57 of 2015 in A.S.No.99 of 2011 on the file of the VIII Additional District Judge, Chittoor, wherein an application filed under Order XXIII Rule 1 of C.P.C. to permit the petitioner to withdraw the appeal A.S.No.99 of 2011 by permitting her to file a fresh comprehensive suit, on the same cause of action was rejected.

2) An application under Order XXIII Rule 1 of C.P.C. came to be filed seeking permission of the Court to withdraw the appeal filed by the petitioner by permitting her to file a fresh comprehensive suit on the same cause of action. Initially, the petitioner herein filed a suit for bare injunction, which was dismissed on the ground that plaintiff has not sought for the relief of declaration of title. Aggrieved by the same, the petitioner herein filed A.S.No.99 of 2011. Five years thereafter, the present application came to be filed seeking withdrawal of the appeal. The reason for withdrawal of the appeal is that there is some formal mistake in the plaint.

3) A counter came to be filed by the respondent contending that it is the duty of the petitioner to mention as to what the formal mistake in the plaint and is why he kept quiet all these days without rectifying the said mistake by way of amendment.

The petitioner is well aware about the denial of her right, title and possession over the suit properties much prior to filing of the suit. But inspite of the same, she has filed a suit for bare injunction. It is also stated that there are no cogent and bonafide reasons for the petitioner to withdraw the appeal.

4) After considering the rival submissions made, the lower Court dismissed the said petition. Challenging the same, the present Civil Revision Petition is filed.

5) A reading of the affidavit filed in support of the I.A. would show that the petitioner sought for withdrawal of the appeal only on the ground that there was a formal mistake in the plaint. The affidavit is silent as to what the mistake is. A bald application, with one sentence came to be filed stating that there is some formal mistake. The petitioner ought to have mentioned what is the mistake that crept in the plaint. Without giving the reasons as to what the mistake is, definitely the request of the petitioner cannot be considered. It is to be noted that the appeal was filed in the year 2011 and for five years the petitioner herein is kept quiet without seeking any relief. Obviously when the matter is taken up for hearing, the present request seems to have been made.

6) The judgment relied upon by the learned counsel for the petitioner ie. *Bijivemula Venkata Subba Reddy v. Jangam Satya*

*Babu and others*¹ will not apply the case on hand since it was a case where the request was made for withdrawal of the suit.

7) Similarly, another judgment relied upon by the learned counsel for the petitioner ie. *Jajala Narayana Reddy v. K.Mohan Reddy and another*² also would not apply to the case on hand, since it was a case where initially the suit was filed for perpetual injunction. Pending the suit an application came to be filed seeking withdrawal of the suit.

8) Situation on hand is totally different. The suit filed for injunction was rejected. Aggrieved by the same, the petitioner filed an appeal challenging the judgment and decree in the said suit. In the appeal, the present application is filed under Order XXIII Rule 1 of C.P.C. seeking permission to withdrawal of the appeal by permitting her to file a fresh comprehensive suit on the same cause of action without giving any valid reasons. In view of the above, I see no illegality or irregularity in the order passed by the lower Court.

9) Accordingly, the Civil Revision Petition is dismissed.

10) Miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

23.02.2017
gkv

¹ (2009) 2 ALD 154

² (2004) 6 ALD 694

