

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.04.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

C.R.P(PD)No.1438 of 2018

and

C.M.P.No.7680 of 2018

V.Padma

...Petitioner/Plaintiff

Versus

1. Devikumari

...Respondent/1st defendant

2. V.Krishnamurthy

3.V.Anuradha

4.V.Saikumari Muthusamy

5.S.Srividya

6.The Corporation of Chennai
Rep. by its Commissioner,
Ribbon Buildings,
Chennai – 600 003.

7. The Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
Thalamuthu Natarajan Maaligai,
Egmore, Chennai – 600 008.

...Respondents/2 to 7 Defendants

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to call for the Suit in O.S.No.8583 of 2005 pending on the file of the Learned XII Assistant Judge, City Civil Court, Chennai and dismiss the Suit in O.S.No.8583 of 2005.

ORDER

1. The short question involved in this case is that plaintiff has laid a suit for permanent injunction against the defendants 1 to 5 from putting up any construction over the 'C' Schedule property and also for a relief of mandatory injunction restraining the defendants 6 and 7 from taking any steps dealing with any unauthorized construction.

2. The defendants have filed their written statement and the trial of the case too has commenced. The plaintiff is in the box and she has been partly cross examined. In this scenario, the first respondent has filed I.A.No.13785 of 2017 for initiating action under Section 340 of Cr.P.C. The revision petitioner/plaintiff too has filed I.A.No.13786 of 2017 for withdrawal of the suit.

3. In this petition, the revision petitioner expresses his grievance that I.A.No.13786 of 2017 which he has filed for withdrawing the suit has not yet been disposed of by the Trial Court.

3. Mr.Richardson Wilson, the learned counsel appearing for the revision petitioner would argue that the right of the plaintiff to withdraw the suit is unfettered and that cannot be restrained by the pendency of a petition filed to initiate action under Section 340 of Cr.P.C.

4. Primarily, it may have to be stated that the right of the plaintiff to withdraw a suit or abandon the claim is unfettered and absolute. The cause for initiating action under Section 340 Cr.P.C stands on a slightly different footing, where, an action is initiated by the Court on an application made for the purpose for any offence falling under Section 195 I.P.C. An action initiated under Section 340 I.P.C can continue even after the disposal of the case in which an offence under Section 195 I.P.C is said to have been committed.

5. In the light of what is observed hereinabove, the Trial Court is required to dispose of the I.A.No.13786 of 2017. It is made clear that withdrawing the suit will be no defence to the maintainability of I.A.No.13785 of 2017.

6. In the conclusion, this Civil Revision Petition is allowed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

17.04.2018

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<http://www.judis.nic.in>

Index : Yes / No

Note: Issue Order Copy on 17.04.2018

N. SESHASAYEE, J.,

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To

The Assistant Judge No.XII,
City Civil Court,
Chennai.



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