

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.06.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD). No.1573 of 2018
and C.M.P.No.8482 of 2018

1. R.Shunmugam
2. D.Selvakumar

.... Petitioners

Vs.

Bhanu

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal Order dated 30.10.2017 passed in I.A.No.30 of 2016 in A.S.No.36 of 2014 by the learned Subordinate Judge, Chidambaran.

For Petitioners : Mr.L.Rajasekar

For Respondent :Mr.A.Muthukumar (For Caveator)

ORDER

The relief sought for in this revision petition is to set aside the fair and Decreetal order made in I.A.No.30 of 2016 in A.S.No.36 of 2014 dated 30.10.2017 on the file of the learned Subordinate Judge, Chidambaran.

2. The revision petitioners filed a suit in O.S.No.50 of 2012 before the learned District Munsif, Chidambaram for permanent Injunction. After the trial, the suit was decreed in part.

3. Feeling aggrieved with the order passed by the learned District Munsif, Chidambaram, dated 31.07.2014, the revision petitioners filed an appeal before the learned Subordinate Judge, Chidambaram in A.S.No.36 of 2014.

4. During the pendency of the appeal, the revision petitioners filed an application under Order XXIII Rule 1 of C.P.C in I.A.No.30 of 2016 in A.S.No.36 of 2014 to withdraw the suit in O.S.No.50 of 2012 with liberty to file a fresh suit in the same cause of action. After hearing both sides, the learned Subordinate Judge dismissed the application in I.A.No.30 of 2016 in A.S.No.36 of 2014.

5. Aggrieved against the said order dated 30.10.2017, the revision petitioners are before this Court.

6. Heard the learned counsel for the petitioners and the learned counsel for the respondent/ caveator and perused the available materials on record.

7. The learned counsel for the petitioners would submit that he has filed the Interlocutory application due to wrong mentioning of western boundary in the schedule of property. Subsequently, the trial Court granted the relief only for lesser extent. Due to that technical default, the petitioners want to withdraw the original suit and to file a fresh suit claiming for larger extent is under the challenge.

8. The learned counsel for the respondent submitted that there is no technical defect in the petition, when he filed the suit for larger extent since he has not produced the Patta for entire extent of the suit property. Therefore, he filed the petition for amendment that was allowed. After trial the revision petitioner admitted that he was in possession of lesser extent. Considering his oral and documentary evidence, the trial Court passed the decree for lesser extent. The petitioners have challenged the suit by way of an appeal against their own admission and pending appeal, filed an application to withdraw the suit on technical ground.

9. After hearing both sides, perused the records and also the order passed by the learned Subordinate Judge, Chidambaram, the first Appellate Court rightly dismissed the application on the ground that there is no technical defect.

10. A perusal of the records would show that the suit in O.S.No.50 of 2012, filed for larger extent and the suit was decreed for lesser extent. The learned Subordinate Judge has referred to the judgment of the Hon'ble Supreme Court reported in **(2005) 5 SCC 458** in the case of **K.S.Bohoopathy and others Vs. Kokila and others** the relevant portion in para 17 of the said Judgment is extracted here under:

"It is the duty of the Court to feel satisfied that there exist proper grounds/reasons for granting permission for withdrawal of the suit with leave to file fresh suit by the plaintiffs and in such a matter the statutory mandate is not complied with by merely stating that grant of permission will not prejudice the defendants. In case such permission is granted at the appellate or second appellate stage prejudice to the defendant in writ large as he loses the benefit of the decision in his favour in the lower Court"

11. The respondent counsel also placed his reliance on the very same Judgment. In this case, reading of the entire materials reveals that based on the evidence, the suit was decreed on merits for lesser extent. The petitioners filed an appeal and during the pendency of the appeal, they have filed the petition to withdraw the suit. They can very well withdraw the suit but they can not be permitted to file a fresh suit on the same cause of action, since it would cause prejudice to the respondent.

12. Therefore, there is no reason to interfere with the order passed by the subordinate Court. This Court does not find any illegality or infirmity in the order passed by the trial court and finds no merits in this revision.

13. In the result, the Civil Revision Petition is dismissed. consequently, connected Miscellaneous petition is closed. No costs.

08.06.2018

Index:Yes/No
Speaking order / Non speaking order
vum

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P.VELMURUGAN, J.,

vum

To
The Subordinate Judge,
Chidambaran .



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