



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2018

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (MD) No.238 of 2018

and

C.M.P. (MD) .No.997 of 2018

Arulmighu Mutharamman Thirukovil,
Kulasekarapattinam,
Tiruchendur Taluk,
Thoothukudi District
through its Executive Officer.

.. Petitioner/
1st Respondent / 1st Defendant

vs.

1. Manimaran

.. 1st Respondent/ Petitioner/
6th Plaintiff

2. The District Collector,
Thoothukudi.

.. 2nd Respondents /
2nd Respondent/2nd Defendant

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No. 308 of 2017 in O.S.No.8 of 2013 dated 28.07.2017 on the file of the District Munsif Court, Tiruchendur.

For Petitioner : Mr.M.Muthugeethayan
For Respondent No.1 : Mr.H.Arumugam
for M/s.Senthil Sankaranatha Kumar

For Respondent No.2 : Mr.M.Karuppasamy
Government Advocate

ORDER

O.S.No.8 of 2013 was filed by one Ayyadurai Asari and four others, seeking certain reliefs against the management of Mutharamman Temple, Kulasekarapattinam and the Government. In the said suit, the first respondent herein, namely, one Manimaran got himself impleaded as the sixth plaintiff. The trial in the suit was yet to commence. At that stage, the first respondent herein filed I.A.No.308 of 2017 for withdrawing the suit with liberty to file a fresh one on the same cause of action. The said IA was allowed on 28.07.2017. This order is questioned by the temple management.

2. Heard the learned counsel on either side.

3. The learned counsel for the revision petitioner took this Court through the affidavit filed in support of the withdrawal application. No reason whatsoever has been set out in the said affidavit filed in support of the withdrawal application. A



plaintiff, who wants to withdraw the suit must establish that the plaintiff was suffering from some formal defect or that he had any substantial ground to seek the relief under Order 23 Rule 1 of CPC. In this case, no such ground has been made out. Yet, the Court below has granted the relief sought for by the first respondent herein simply for the asking. I am satisfied that the requirements set out in Order 23 Rule 1 of CPC have not been made out in this case. On this sole ground, the order impugned in this civil revision petition stands set aside.

4. But the matter cannot rest there. The learned counsel for the first respondent pointed out that the first respondent herein got himself impleaded, since he was of the view that the original plaintiffs 1 to 5 shared his interests in respect of the suit claim. But it turned out that the plaintiffs 1 to 5 were not interested in pursuing the matter.

5. The learned counsel for the first respondent pointed out that on 11.07.2017, the learned counsel for the plaintiffs 1 to 5 reported no instructions, leading to dismissal of the suit for default insofar as they are concerned. Probably, it is this, which impelled the first respondent to file I.A.No.308 of 2017. This Court is of the view that since the order, dated 28.07.2017, allowing the I.A.No.308 of 2017 has been set aside by this Court, the first respondent ought to be given opportunity to amend the plaint appropriately, in view of the subsequent developments that have taken place in this case. The Court below shall take note of the fact that the trial is yet to commence in this case and therefore, any pre-trial amendment has to be viewed liberally and favourably.

6. With these observations and liberty to the first respondent herein, the Civil Revision Petition stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The District Munsif,
Tiruchendur.

+1CC to Mr.M.Muthugeethayan Advocate in Sr.No .78056.

+1CC to Special Government Pleader in Sr.No.78132.

PJL

DS SKN RSK SAR-2;03.09.2018; 2P/4C