



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN

C.R.P. (PD) (MD) No.1038 of 2018

and

C.M.P. (MD) No.4467 of 2018

M.Rajasaraswathi

... Petitioner/Petitioner/Plaintiff
-vs-

T.Ponnudurai

... Respondent/Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 15.02.2018 made in I.A.No.751 of 2017 in O.S.No.59 of 2012 on the file of the Principal District Munsif, Ambasamuthiram and allow this Civil Revision Petition.

For Petitioner : Mr.G.Sridharan

ORDER

The revision petitioner is the plaintiff in O.S.No.59 of 2012 on the file of the Principal District Munsif, Ambasamuthiram and in the suit, the plaintiff sought for declaration, permanent injunction, etc. During pendency of the suit, the plaintiff filed an application in I.A.No.751 of 2017 for withdrawal of the suit with liberty to file a fresh suit for the same cause of action and the said application was dismissed, on the ground that no prima facie materials have been adduced in respect of the relief sought for in the application. Aggrieved by such finding, the revision petitioner/plaintiff is before this Court.

2. It is the case of the revision petitioner that she has been in possession of the suit schedule property from the date of purchase and in the property, there was a heap of sand for about 50 feet and the defendant illegally obtained patta for the said property and got permission for transportation of the sand from her property without her knowledge. It is the further case of the revision petitioner that she had preferred complaint about the illegal act of the defendant to the Revenue Officials and Police, no action has been taken against him and he had not stopped his illegal activities, which made her to file the above suit.

3. The revision petitioner states that in the written statement filed by the defendant, he had stated that the plaintiff has not been in possession of the property and as such, the suit for permanent injunction is not maintainable. Though the defendant had been stating that the property was purchased by him by way of



valid sale deed, no document had produced on his side, whereas the plaintiff is in possession of all documents to prove her case and therefore, as per the advice of her Advocate, it has become imperative for the plaintiff to withdraw the said suit and in its place, file a yet another suit for possession instead of declaration and permanent injunction. The Trial Court, without considering the factual involved in the case, has simply rejected the plea of the petitioner. Hence, it is prayed that the order of the Trial Court is liable to be set aside.

4. Heard learned counsel for the petitioner and perused the material documents available on record.

5. It is seen that the application was filed by the plaintiff under Order XXIII Rule 1 CPC, which stipulates as under:

(3) Where the Court is satisfied -

(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."

The Trial Court has mainly dismissed the application stating that sufficient reasons as mandated by the provisions have not been placed before it in respect of the relief sought for. However, a close scrutiny of the averments made in the plaint as well as application filed by the plaintiff would unfold that the plaintiff has narrated several steps taken by the defendant to alienate and misuse the subject property, namely, illegally extracting sand from the property for sale and obtained patta and other documents by illegal means. It is not known as to why the defendant had not adduced material particulars in support of his claim, except saying orally that the suit schedule property belongs to him and the plaintiff stated that some forged documents were created so as to defeat her interest in the property create a cloud over the property.

6. In the case on hand, it is averred by the plaintiff that initially, the suit was drafted with the prayer of declaration, permanent injunction and the subsequent development had unfolded her that she has to seek the relief of possession. Therefore, the plaintiff, in order to modify the prayer on the same pleadings, has filed an application for withdrawal as well as

<https://hcservices.gov.in> Civil Services, File the suit with the same cause of action, which, in the considered opinion of this Court, especially after going through the relevant provisions of CPC, is permissible and therefore, this



Court is of the view that the order dated 15.02.2018 made in I.A.No.751 of 2017 in O.S.No.59 of 2012 by the learned Principal District Munsif, Ambasamuthiram, has no legs to stand and is unsustainable.

WEB COPY 7. In the result,

a) this civil revision petition is allowed and the order dated 15.02.2018 made in I.A.No.751 of 2017 in O.S.No.59 of 2012 by the learned Principal District Munsif, Ambasamuthiram, is hereby set aside, subject to the condition that the petitioner shall pay a sum of Rs.5,000/- to the Tamil Nadu Mediation and Conciliation Centre, attached to this Court within a period of one week from the date of receipt of a copy of this order;

b) the petitioner, upon payment of costs and production of receipt before the Trial Court in proof thereof, is permitted to withdraw the present suit and is at liberty to institute a fresh suit on the same cause of action, if so desired.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To:

1. The Principal District Munsif,
Ambasamuthiram
2. The Record Keeper, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.
3. The Co-ordinator,
Tamil Nadu Mediation and Conciliation Centre,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.Sridharan, Advocate Sr.No.70276

AR

VB/KAK/SAR3/16.08.2018/3P/6C