



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 09.07.2018**

**CORAM**

**WEB COPY**

**THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN**

C.R.P (MD) .No.287 of 2017 and  
CMP (MD) .No.1359 of 2017

S. Mathalaikumar ... Petitioner / 1<sup>st</sup> plaintiff

Vs.

1.S. Sakthivel Rajan  
2.S. Revathi  
3.S.Sundarrajan  
4.S.Jeyalakshmi  
5.S. Natarajan  
6.N.Kanagambal  
7.S.N.Mathalairajan  
8.M.Dhanuja  
9.N. Jayaganeshrajan  
10.J.Bapika  
11.N.Senthil Murukeshrajan  
12.S.Swathi Reka  
13.Seemati  
14.S.K. Kesavaraja  
15.Mathalaivani  
16.S.Meenatchi  
17.S.Sivakumar  
18.S. Bama

Defendants 1 to 15 / Defendants

Respondents 16 to 18 / plaintiffs 2 to 4

(Notice to respondents 2 to 4, 6 to 9  
10 to 12, 14 to 18 are given up as no relief claimed  
against them)

Prayer: This Petition is filed under Article 227 of the  
Constitution of India against the fixing of Advocate Fee in  
Decree and Judgment dated 15.03.2016 in O.S.No.26 of 2013 on the  
file of the Additional District and Sessions Court, Theni at  
Periyakulam.

For Petitioner

... Mr. B. Rajesh Saravanan

For R1 to R18

... Mr. S. Madhavan

**ORDER**

This Civil Revision petition has been filed against the Decree and Judgment, dated 15.03.2016 in O.S.No.26 of 2013 on the file of the Additional District and Sessions Court, Theni at Periyakulam, in and by which, a sum of Rs.51,517/- was fixed as Advocate Fee payable by the petitioner / plaintiff to the defendants 1, 5 and 13.

2. The revision petitioner, who is the 1<sup>st</sup> plaintiff, has filed a memo seeking the Court concerned to withdraw the suit in O.S.No. 26 of 2013, on the file of the Additional District and Sessions Court, Theni at Periyakulam. Considering his request, the Court below has permitted the petitioner to withdraw the suit and accordingly, the same was allowed on 15.03.2016. But, the trial Court has awarded a cost of Rs.51,517/-. Challenging the said order of Cost, the petitioner has filed the present Civil Revision Petition.

3. It is the case of the revision petitioner that in this case only issues were framed and the trial is yet to be commenced. Therefore, the Court can order 1/4<sup>th</sup> value of the entire cost and accordingly, it comes only Rs.12,878/-. But, the learned Judge without considering the same directed the petitioner to pay a total sum of Rs.51,517/- as cost, which is totally against the law.

4. The learned counsel appearing for the respondents submitted that though the suit has been withdrawn by the plaintiff he has to pay the entire cost of Rs.51,517/- in respect of the value of the suit property.

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. Once the Court has permitted to withdraw the suit filed by the plaintiff, even at the stage of the trial, the Court should pass order by awarding cost only 1/4<sup>th</sup> value of the entire cost. But, the Court below has ordered to pay the entire cost, which is totally wrong. Hence, this Court is inclined to allow this Civil Revision Petition.

7. In the result,

(a) This Civil Petition is allowed.

(b) The order passed by the Court below, dated 05.03.2016 made in O.S.No.26 of 2013 on the file of the Additional District and Sessions Court, Theni at Periyakulam is set aside in respect of Advocate Fee as Rs. 51,517/- and the petitioner is directed to pay sum of Rs.12,878/- (being 1/4<sup>th</sup> of Rs.51,517/-) as fee.



(c) No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

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/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Additional District and Sessions Judge,  
Theni at Periyakulam.

+ 1 cc TO Mr.B.Rajesh Saravanan , Advocate in SR No. 71886

trp

AE/SKN RSK/SAR4/30.07.2018/3P/3C

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