



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

WEB COPY

C.R.P. (NPD) (MD) No. 1226 of 2018 and
C.M.P. (MD) No. 5201 of 2018

1. Subburaj
2. Padma
3. Gopinath
4. Karpagaselvi
5. S. Vijaya Kumar
6. Janaki

... Petitioners/Respondents/
Defendants

Vs.

R. Shantha Devi

... Respondent/Petitioner/
Plaintiff

PRAYER : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to call for the records of the trial Court and allow this Revision petition and set aside the fair and decreetal order dated 07.02.2018 passed in I.A.No.72 of 2017 in O.S.No.546 of 2016 on the file of the learned Additional District Munsif, Madurai Town.

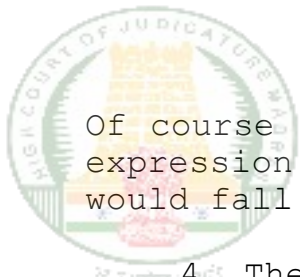
For Petitioners	: Mr.M.Muthukumaran
For Respondent	: Mr.M.Senthil Kumar

ORDER

The respondent herein filed O.S.No.546 of 2016 on the file of the learned Additional District Munsif, Madurai.

2. The suit is for bare injunction. In the said suit, the Revision petitioners filed their counter claim. Thereafter, the plaintiff/respondent herein filed I.A.No.72 of 2017 for getting leave to withdraw the suit with liberty to file a fresh one on the same cause of action. The reasons set out in the said application was that it would help to avoid multiplicity of litigation. The Court below allowed the said application and the suit was dismissed as withdrawn in toto. This order dated 07.02.2018 is under challenge in this Civil Revision petition.

3. The learned counsel appearing for the Revision petitioners contended that when counter claim has been filed, the same would survive notwithstanding the withdrawal of the suit filed by the plaintiff. But in this case, this aspect of the matter has not been taken note of by the Court below. He also pointed out that the suit can be dismissed as withdrawn, if it suffers from a formal defect.



Of course in the said provision, namely, Order 23 Rule 1(3)(b), the expression "sufficient grounds" is mentioned. The case on hand would fall under neither category.

4. The learned counsel appearing for the respondent pointed out that as per the leave granted by the Court below, he has filed a fresh suit in O.S.No.199 of 2018. He has also paid a higher Court fee. He therefore submitted that if this revision is allowed, he would be put to much difficulty and hardship.

5. This Court does not want to adopt a technical approach in these matters. The trial was yet to commence in O.S.No.546 of 2016. Therefore, the respondent could not be accused of having dragging on the proceedings. Since a fresh suit has also been filed and taken on file, this Court does not wish to interfere with the order impugned in this Civil Revision petition. But then, as rightly pointed out by the Revision petitioners, their counter claim could not have been closed along with the withdrawal of the suit. It would have an independent life. Accepting the aforesaid submission, this Court is of the view that interest of justice, the counter claim filed by the Revision petitioners ought to be restored and then transferred to be tried along with the suit in O.S.No.199 of 2018.

6. The learned counsel for the respondent submits that he would file the written statement to the said counter claim. Both the suit filed by the respondent in O.S.No.199 of 2018 before the Principal Subordinate Court, Madurai and the counter claim filed by the Revision petitioners in O.S.No.546 of 2016 on the file of the learned Additional District Munsif, Madurai Town, shall be jointly tried and disposed of together.

7. With these observations, the Civil Revision petition stands partly allowed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The Principal Sub.Judge, Madurai.

2.The Additional District Munsif, Madurai Town.

+1CC to Mr.M.Senthil Kumar, Advocate, SR.No.78066

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