



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) (MD) No.2004 of 2016
and C.M.P. (MD) No.9407 of 2016

1. Jeyaseelan
2. K.Abisha
3. K.Jahen
4. K.Arul Inba Seelan ... Petitioners/Plaintiffs
(Petitioners 1 to 4 are represented
by Power of Attorney Holder
John Premkumar, S/o.John Rose)

-vs-

Ganesan ... Respondent/Respondent

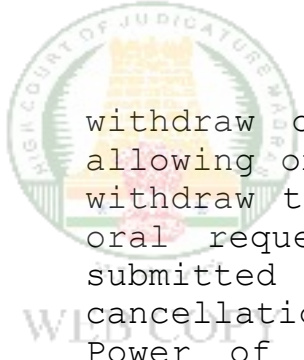
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order and decreetal order passed in O.S.No.97 of 2014 dated 12.07.2016 on the file of the District Judge, Kanyakumari at Nagercoil and allow the above Civil Revision Petition.

For Petitioners : Mr.K.Sreekumaran Nair
For Respondent : Mrs.J.Anandhavalli

ORDER

The revision petitioners are the plaintiffs in O.S.No.97 of 2014 dated 12.07.2016 on the file of the learned District Judge, Kanyakumari at Nagercoil and in the suit, the plaintiffs sought for recovery of money, etc. The said suit was dismissed as withdrawn on the basis of the oral statement made by the 2nd plaintiff. Challenging the order of dismissal, the petitioners/plaintiffs are before this Court.

2. It is the case of the revision petitioners that though one of the plaintiffs, namely, Abisha had made an oral request to withdraw the suit, the other plaintiffs were not given any notice by the Lower Court before dismissing the suit as withdrawn. It is the further case of the petitioners that as per the provisions of Order 23 Rule 1 (5) CPC, it is mandatory to put on notice upon other plaintiffs before permitting one of the plaintiffs to



withdraw or abandon the suit. Thus, the Lower Court erred in allowing one of the plaintiffs to withdraw the suit as well as to withdraw the Court fees paid in the suit, that too, based on the oral request without consent of other plaintiffs. It is also submitted that three months' prior notice was given before cancellation of the Power of Attorney as agreed in the deed of Power of Attorney and as such, the cancellation of Power of Attorney itself is invalid. Contending that the Trial Court ought to have rejected the request made by one of the plaintiffs to withdraw the suit, it is prayed that the order of withdrawal is liable to be set aside.

3. Learned counsel appearing for the respondent / defendant has contended that the plaintiffs are being represented by a Power of Attorney Holder and the submission of the plaintiffs 1, 3 and 4 that the suit was withdrawn behind their back by the 2nd plaintiff is highly unbelievable. The petitioners, by blaming one of the plaintiffs, have been attempting to reopen the suit, thereby not allowing the suit to attain finality. It is further contended that the main intention of the petitioners is to drag on the proceedings, due to which, the defendant in the suit is put to much hardship and irreparable loss and therefore, it is submitted that the order of withdrawal need not be interfered with and the petition is to be dismissed at the threshold.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. From the perusal of the averments set out in the petition, it is seen that the plaintiffs were represented by a Power Agent to prosecute the case and subsequently, it was claimed by the 2nd plaintiff before the Trial Court that the Power of Attorney was cancelled by all the plaintiffs and pursuant to the power given to her by the 1st plaintiff before the Consular General attached to the Indian Embassy at Saudi Arabia, she had decided to withdraw the suit. But, it is not known whether such withdrawal was with the knowledge of the plaintiffs 1, 3 and 4 and also the Power of Attorney Holder, namely, John Premkumar or not. A bare reading of the relevant provisions makes it very clear that notice is imperative to other plaintiffs, if one of the plaintiffs is withdrawing a case. Moreover, there are some procedures to be adopted before effecting cancellation of the Power of Attorney and the minimum period was not given for such cancellation in the present case.

6. As per the provision Order 23 Rule 1(4) and 1(5) of Civil Procedure Code, it states as follows:

"(4) Where the plaintiff-

<https://hcservices.ecourts.gov.in/hcservices/cas> abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim



without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs."

7. It is no doubt true that the Code of Civil Procedure permits the plaintiffs to withdraw the suit at any time, but at the same time, in case of several plaintiffs involved, the Trial Court must see whether the grant of permission would prejudice them or not and this should be a factor that should weigh with the Court in considering the grant of the permission for withdrawal as per the salutary provision of Sub-Rule (4) of Rule 1 of Order 23. As per the decision of this Court in the case of **M.E.Hameed and others vs. K.M.Sheriff Rowther and another** reported in **1971 (1) MLJ 79**, where the Court has refused permission to one of the several plaintiffs to withdraw from the suit, but he is unwilling to continue the suit, he should be transposed as a defendant. In the case of *M.E.Hameed and others vs. K.M.Sheriff Rowther and another in para-11 it is stated as follows:*

"11. We are inclined to adopt the view expressed by the Bench of this Court in Ramaswami Chettiar v. Rengan Chettiar (1933) 65 M.L.J. 693 : A.I.R. 1933 Mad. (sic). The observations of the Bench imply that their view was that Order 23, Rule 1(4) must be read as a qualification of Order 23, Rule 1(1). The Bench said that what is enunciated in Sub-Rule (4) is a perfectly valid principle, and it finds support in the terms of Sub-Rule (1) of Order 23, which says that the plaintiff "may withdraw". They also observed that the expression, 'plaintiff' in Sub-Rule (1) must be read as all the plaintiffs, collectively, and not so as to include one only amongst several plaintiffs. From this point of view, it is possible to view Sub-Rule (1) of Rule 1 of Order 23 as laying down a proposition that where there is only one plaintiff, he may withdraw from the suit, and where there are several plaintiffs all of them acting together can also withdraw. But there may arise special difficulty in a case when there are several plaintiffs and all of them I do not desire to withdraw, but only one or some of them desires to withdraw, but not the rest. Sub-Rule (4) of Rule (1) of Order 23, lays down a salutary provision to meet this difficulty. It says that in such cases, the Court must find out whether the remaining plaintiffs have given their consent or not and



whether the grant of permission would prejudice them or not and this should be a factor that should weigh with the Court, in considering the grant of the permission for withdrawal. It is relevant to observe that even the judgment of the Calcutta High Court and the Judgment of the single Judge (Krishnaswami Aiyangar, J.) have ultimately laid stress on the inherent powers of the Court to refuse permission to one of several plaintiffs to withdraw without the consent of others, if such a course would cause prejudice to the remaining plaintiffs. Even if we give weight to the view of the Calcutta High Court and the view of the single Judge of this Court, it will be necessary to consider in any event, whether the grant of permission to the first plaintiff in this case to withdraw from the suit will prejudice the remaining plaintiffs and whether the Court should not grant such permission. Unfortunately, the learned Subordinate Judge has not at all adverted to this aspect of the matter in the present case, namely, whether the grant of permission to the first plaintiff to withdraw would prejudice the co-plaintiffs. It is a matter of regret that he did not do so. He has referred to the allegations of the other plaintiffs that the first plaintiff has been won over by the defendant that the remaining plaintiffs are equally interested in the proper administration of the wakf and that the first plaintiff's unwillingness to continue the suit is no ground to grant permission to withdraw the suit and that if necessary he may be transposed as a defendant."

8. From the above, it is clear that the consent of all the plaintiffs is immaterial, in absence of which, such withdrawal would be prejudicial to other plaintiffs. The Trial Court, without adhering to such course and looking into the factual matrix, had simply allowed the 2nd plaintiff to withdraw the suit as well as Court Fee, which is un-sustainable and the said orders is liable to be reversed.

9. In the result,

a) this civil revision petition is allowed, by setting aside the order dated 12.07.2016 passed in O.S.No.97 of 2014 by the learned District Judge, Kanyakumari at Nagercoil and thereby restoring the suit to its original file and the matter is remanded back to the learned District Judge, Kanyakumari at Nagercoil for fresh consideration;

b) the learned District Judge, Kanyakumari at Nagercoil is directed to consider the request made by the plaintiffs, by giving notice to all the parties, including the Power of Attorney Holder and thereafter proceed with the suit and dispose of the same within a period of four weeks from the date of receipt of a copy of this order.



No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-IV)

To:

The District Judge,
Kanyakumari at Nagercoil.

+ 1 CC TO Mr.K.SREE KUMARAN NAIR, ADVOCATE IN SR No. 73701
+ 1 CC TO Mrs.J.ANANDHAVALLI, ADVOCATE IN SR No. 73920

AR

TE/RP/SAR-4 : 12/10/2018 : 5P/4C

C.R.P. (NPD) (MD) No.2004 of 2016
18.07.2018
(1/2)