

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.858 of 2018

ORDER

This petition under Article 227 of the Constitution of India is filed questioning the order dated 16.10.2017 passed in I.A.No.11 of 2017 in O.S.No.165 of 2012 by the II Junior Civil Judge, City Civil Court, Hyderabad, whereby the petition filed under Order 23 Rule 3 of CPC to permit the petitioner to withdraw the main suit with liberty to file a fresh suit, was dismissed.

2. The petitioner filed suit in O.S.No.165 of 2012 for perpetual injunction based on the cause of action that arose on 22.12.2011 when the respondents were trying to dispossess her from the suit schedule property. The suit is being contested and pending for adjudication. It is stated that the petitioner is the sister of defendants and that her father, late Syed Kundmir, has gifted the ground floor portion of suit schedule property under oral Hibba on 12.12.2004 during his life time and since then, she is in possession of the same as owner. After the death of her father, the defendants are trying to dispossess her from the suit schedule property. It is stated that the petitioner being daughter is entitled to share in the property and therefore, she intends to file a separate suit on different cause of action.

3. The second respondent filed counter contending that the petitioner filed suit projecting her as tenant in occupation of the suit

schedule property by paying monthly rent @ Rs.2,000/- per month and that she filed a false suit against the respondents.

4. The trial Court dismissed the petition assigning its own reasons.

5. At the time of admission, the counsel for petitioner fairly conceded that the petitioner is not going to file a comprehensive suit on the basis of same cause of action, which she referred in the suit. However, he requested this Court to grant leave to the petitioner to file a fresh suit for comprehensive relief.

6. According to order 23 Rule 1 of CPC, at any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim. Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court. Therefore, for withdrawing the claim against the defendants, no permission is required and the plaintiff is entitled to file a fresh suit on different cause of action without obtaining leave of the Court. Therefore, the petitioner is not required to obtain permission to file a suit based on different cause of action for comprehensive relief. The trial Court did not accept this contention on erroneous appreciation of law.

7. Hence, the Civil Revision Petition is allowed, while permitting the petitioner to withdraw the suit in O.S.No.165 of 2012 on the file

of II Junior Civil Judge, City Civil Court, Hyderabad and she is at liberty to file a fresh suit on different cause of action for comprehensive relief. The respondents are at liberty to raise any factual or legal pleas in the separate suit, if any, filed by petitioner on different cause of action. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

14th February, 2018

sj

