

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 3165 OF 2018

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed by the petitioner-defendant challenging the order dated 27-04-2018 in I.A.No. 353 of 2018 in A.S.No. 7 of 2017 on the file of the Court of Principal District Judge, Kadapa (for short, 'the Court below').

2. The respondents filed O.S.No. 456 of 2013 for perpetual injunction claiming that they were in possession of the suit schedule property and later, they filed I.A.No. 502 of 2016 for converting the suit for injunction into suit for declaration of title but the same was dismissed by order dated 26-10-2016 and the said order became final. However, the suit was dismissed after full-fledged trial. Feeling aggrieved, the respondents preferred A.S.No. 7 of 2017 on the file of the Court below. During pendency of the appeal, the respondents filed I.A.No. 353 of 2018 under Order XXIII Rule 1 of C.P.C. seeking leave of the Court below to withdraw the appeal so as to enable them to file a comprehensive suit for declaration and recovery of possession on the ground that the suit was dismissed on the technical ground and therefore they intended to file a fresh suit for the reliefs stated above. The petitioner opposed the petition on the ground that the respondents earlier failed in their attempt to convert the suit from bare injunction to declaration of title in I.A.No. 502 of 2016 in O.S.No. 456 of 2013 and therefore they are now not entitled to claim the same relief at the belated stage. The Court below by the order under challenge allowed the petition. Feeling aggrieved, the petitioner filed the present revision.

3. As seen from the material on record, granting permission to withdraw the appeal is not objected by the petitioner and he only objected the permission granted by the Court below to file a fresh comprehensive suit for declaration of

title and recovery of possession on the ground of dismissal of earlier application. If the appeal is withdrawn without withdrawing the suit, which ended in dismissal, that would not serve any purpose and the judgment of the trial Court would remain even if the appeal is withdrawn. Therefore, withdrawal of appeal would not automatically amount to abandoning the claim in the suit. From the language used in Order XXIII Rule 1 of C.P.C., it is clear that 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. Since the appeal is continuation of the suit, the respondents can seek such relief under Order XXIII Rule 1 of C.P.C. The contention of learned counsel for the petitioner that at the stage of appeal the respondents cannot withdraw the appeal is without any substance in view of the language used in Order XXIII Rule 1 of C.P.C. and therefore on this ground, the order cannot be set aside.

4. Knowingly or unknowingly, the respondents sought for permission to withdraw the appeal only and the Court below also granted such relief while permitting them to file a comprehensive suit for declaration of title and recovery of possession. However, cause of action in a suit for declaration of title and recovery of possession is governed by Article 65 of the Limitation Act, 1963, and such plea can be raised at any time even in the suit proposed to be filed in pursuance of the permission granted by the Court below. Therefore, the permission would not come in the way of the petitioner to raise such plea. The observation made by the Court below in para No. 6 of the impugned order that the suit claim for declaration of title and consequential relief of possession is not barred by limitation is therefore liable to be set aside since this finding will have its own impact on the decision in the suit proposed to be filed and is accordingly set aside.

5. The civil revision petition is partly allowed to the extent indicated above.
Pending miscellaneous petitions, if any, shall stand closed in consequence.

Date: 29-06-2018.
JSK

M.SATYANARAYANA MURTHY, J.

