



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.04.2019

DELIVERED ON : 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.2703 of 2015

and

M.P. (MD) No.1 of 2015

K.Bheema

.. Petitioner/Petitioner/Plaintiff

Vs.

1.Jeyachandran

2.Jeyaguru

3.Jeyathiruvadi

4.Jeya Baskar

5.Jeyaravi

.. Respondents/Respondents/Defendants

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order fair and decreetal order made in I.A.No.705 of 2015 in O.S.No.190 of 2010 by the Additional District Munsif Court, Tenkasi dated 18.11.2015.

For Petitioner : Mr.D.Venkatesh

For Respondents 1, 3 and 4 : Mr.T.Selvan

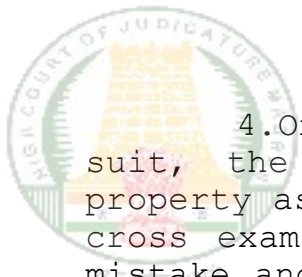
For Respondents 2 and 5 : No Appearance

ORDER

Heard Mr.D.Venkatesh, learned counsel appearing for the petitioner and Mr.T.Selvan, learned counsel appearing for the respondents 1,3 and 4.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.705 of 2015 in O.S.No.190 of 2010 dated 18.11.2015 on the file of the learned Additional District Munsif, Tenkasi.

3.The petitioner herein is the plaintiff and the respondents herein are the defendants in the suit. The petitioner herein has filed a suit in O.S.No.190 of 2010 for a relief of declaration with regard to the second schedule property and for possession of the second schedule property. The petitioner filed a petition in I.A.No.705 of 2015 for permission to withdraw the suit with liberty to file a suit on the same cause of action. The petition was dismissed by the trial Court. Against which, the petitioner has come forward with this revision petition.



4. On the side of the petitioner, it is stated that in that suit, the petitioner has wrongly mentioned the second schedule property as part of the first schedule property. Only at the time of cross examination of P.W.1, the plaintiff came to know about this mistake and the plaintiff filed a petition to withdraw the suit and to file a fresh suit to avoid the technical mistake.

5. On the side of the respondents 1, 3 and 4, it is stated that in the plaint, the petitioner has clearly stated that the second schedule property formed part of the first schedule property. Without any specific reasons, the plaintiff want to withdraw the suit. The suit was filed in the year 2010 and the written statement was filed in the year 2011. The father of the plaintiff executed an exchange deed on that basis. The defendants are enjoying the second schedule property. After a lapse of four years, the plaintiff has come forward with this revision petition at the stage of cross examination of the witness and prayed the petition to be dismissed.

6. The learned counsel appearing for the respondents 1, 3 and 4 relied upon the Judgment passed by this Court in the case of **Manivannan and Others v. P. Ambal Devi** reported in **2015(1) MLJ 564**, which reads as follows:

"Allowing petition to withdraw suit after case posted for arguments and after dismissal of amendment application would amount to abuse of process of law."

7. The learned counsel appearing for the respondents 1, 3 and 4 relied upon the Judgment passed by this Court in the case of **Annasamy Pandian (died) and another v. V. Rajendran and Another** reported in **2015(2) Law weekly 360**, which reads as follows:

"The failure of the plaintiffs to establish his case can not be the ground to allow him to withdraw the suit with liberty to file another suit on the same cause of action. The withdrawal of the suit contemplated under Order 23 of the Code of Civil Procedure can not be allowed to be misused by the parties."

8. In support of the contention, the Judgment passed by this Court in the case of **Athiappan and others v. Palaniappan and others** reported in **2013 (4) MLJ 315** is cited.

9. It is seen that the suit was filed in the year 2010 and the written statement filed in the year 2011. After the lapse of 4 years, the plaintiff has come forward with the petition to withdraw the suit with liberty to file a fresh suit with the same cause of action. The reasons stated by the plaintiff is that the plaintiff has mistakenly mentioned in the plaint that the second schedule property is a part of the first schedule property but no other reasons is stated in the petition. The petitioner can set right his mistake by way of filing a petition for amendment of the plaint. After the trial has commenced, the petitioner has come forward with this petition which is unnecessary.



10. In the above circumstances, this Civil Revision Petition is **dismissed** with liberty for the petitioner to file an amendment petition, if he is so advised. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

WEB COPY

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar (CS)

To:
The Additional District Munsif,
Tenkasi.

C.R.P. (PD) (MD) No. 2703 of 2015

CS: (03/06/2019) 3P 2C