

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.11.2020

Delivered on: 10.12.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRP.(PD).No.1712 of 2015

and

MP.No.1 of 2015

Kaliamman Sivan Koil,
Serakuppam,
Kurinjipadi Taluk represented by its
President/Trustee A.Thangaraj ...Petitioner

Vs.

1.K.P.Ramalingam
2.Asokan ...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order of the learned Additional District Munsif, Cuddalore, dismissing I.A.No.812 of 2014 in O.S.No.388 of 2010 by order dated 20.01.2015.

For Petitioner : Mr.R.Gururaj
For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the dismissal of the application in I.A.No.812 of

2014 in O.S.No.388 of 2010 on the file of the Additional District Munsif, Cuddalore, dated 20.01.2015.

2. The petitioner had filed an application in I.A.No.812 of 2014 in O.S.No.388 of 2010 on the file of the Additional District Munsif, Cuddalore, under Order 23 Rule 1 of CPC, seeking permission of the Court to withdraw the suit with liberty to file a fresh suit on the same cause of action. The learned Additional District Munsif, Cuddalore, by the order dated 20.01.2015 had dismissed the said application. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petition.

3. When this matter came up for hearing on 16.10.2020, the learned counsel for the petitioner submitted that he is ready for arguments, but, the learned counsel for the respondents not connected through Video Conferencing. Hence, the matter was adjourned to 09.11.2020. On 09.11.2020 also, the learned counsel for the petitioner appeared through Video Conferencing and submitted that he is ready for arguments, but, the learned counsel for the respondents not appeared and hence, the matter was adjourned and posted on 20.11.2020 under the caption “for orders.” On 20.11.2020 also, the learned counsel for the

respondents has not appeared. Hence, after hearing the arguments of the learned counsel for the petitioner and perusing the materials filed along with the petition, order is being passed in this petition.

4. The learned counsel for the petitioner has submitted that the petitioner herein had filed a suit in O.S.No.388 of 2010 on the file of the Additional District Munsif, Cuddalore, for the relief of declaration of title and for recovery of possession. He further submitted that the petitioner had filed the said suit on behalf of the Temple as a trustee and hence, he is not having the records with regard to the Temple properties. He further submitted that the petitioner had filed the said suit by relying upon 'A' Register, which has been maintained by the Village Administrative Officer, but, there are mistakes in the said register. He further submitted that only after filing the records by the respondents/defendants, the petitioner could find out that there were mistakes in the Survey number and even the revenue records also not clear and hence, the petitioner had filed an application to amend the plaint and the same was allowed. However, in view of the confusion in the revenue records, he filed an application in I.A.No.415 of 2014 for appointing an Advocate Commissioner to inspect and measure the suit property with the help of a Surveyor, but the said application was

dismissed by the trial Court and the Civil Revision Petition filed by the petitioner in CRP.No.2659 of 2014 also has been dismissed.

5. He further submitted that there is a confusion in the survey number. Under the said circumstances, if the suit is proceeded with, even if it is decreed, there may not be a clear picture and ultimately, the Temple will be prejudiced. Hence, the petitioner proposed to have the properties surveyed privately and thereafter, if necessary, he will file a fresh suit with correct particulars. He further submitted that the respondents also have taken a stand that they are not in possession of any portion of the Temple properties and hence, the petitioner had filed an application in I.A.No.812 of 2014 seeking permission of the Court to withdraw the suit with liberty to file a fresh suit on the same cause of action but, the learned trial Court had dismissed the said application on the ground that already evidence has been adduced on both sides and the said application has been filed belatedly.

6. He further submitted that since under Order 23 Rule 1 of CPC, at any stage of the suit, the suit can be withdrawn by the plaintiff

and the Court cannot compel the plaintiff to contest the suit. He further submitted that only in a case, where the plaintiff wants to withdraw the suit with liberty to file a fresh suit in respect of the same cause of action, he has to obtain the permission from the Court. He further submitted that in this case, the petitioner has clearly stated the reason for seeking permission to file a fresh suit but, without considering the same, the trial Court had simply dismissed the said application as highly belated and the said order is not sustainable in law and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned Additional District Munsif in I.A.No.812 of 2012 and allow the said application.

7. The learned counsel for the petitioner in support of his contention, relied upon the decision in ***Baniram and others Vs. Gaiind and others, AIR 1982 SC 789.***

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8. In the aforesaid case before the Hon'ble Supreme Court, the learned counsel for the appellant after arguing for some time had made a submission that he wants to withdraw the suit with liberty to file a fresh suit on the same of cause of action or on a differing cause of action and

after considering the same, the Hon'ble Supreme Court held as follows:-

“...Having considered the fact that non-pleading may prove a technical impediment and may result in the dismissal of the appeal which may impede a fresh adjudication if a point is to be made though belated, we consider it just and proper in the interests of justice to permit the appellant -plaintiff to withdraw the suit with liberty to file a fresh suit as stated herein above. We accordingly grant the permission subject to the condition that the appellant shall pay Rs.1,000/- by way of costs in this Court within two months from today in addition to any costs paid already under the orders of the High Court”

9. From the aforesaid decision, it is clear that the plaintiff can seek permission of the court to withdraw the suit with liberty to file a fresh suit on the same cause of action even when the appeal is pending before the Apex Court.

10. In this case, the petitioner had filed the suit on

behalf of the Temple for declaration and recovery of possession of the suit property. According to the petitioner, he filed the said suit based on the revenue records but, the revenue records also not clear and hence, if the suit is proceeded further with the available materials and even if the suit is decreed, at the time of executing the decree, a problem may arise with regard to the identity of the property and hence, he wants to withdraw the suit and thereafter, he will measure the property with the help of a private Surveyor and if necessary, he will file a fresh suit with correct particulars. This Court is of the view that if the said relief is granted that would not cause any prejudice to the respondents. Hence, this Court is inclined to allow this Civil Revision Petition.

11. In the result, this Civil Revision Petition will be allowed on payment of costs of Rs.3,000/- to the respondents either directly or through their counsel, who appeared before the trial Court within a period of three weeks from the date of receipt of a copy of this order, failing which, this petition shall stand dismissed automatically, without further reference to this Court. If the petitioner complies with the aforesaid condition within the stipulated time, the trial Court shall allow the application in I.A.No.812 of 2014. Consequently, connected Miscellaneous Petition is also closed.

10.12.2020

Index :Yes/No

Internet : Yes/No

dna

To

The Additional Munsif Court,
Cuddalore.



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P.RAJAMANICKAM.J.,

dna



**Pre-Delivery Order in
CRP.(PD).No.1712 of 2015
and MP.No.1 of 2015**

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10.12.2020

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