

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.10.2021

Pronounced on : 02.11.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(PD).No.4101 of 2016

and

C.M.P.No.20728 of 2016

A.Jayaram Reddy

... Petitioner

Versus

1.P.Umapathy

2.P.Mahindra Reddy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree, dated 08.09.2016 made in I.A.No.92 of 2015 in O.S.No.212 of 2008, on the file of the District Munsif Court, Sholinghur, by allowing the present Civil Revision Petition.

For Petitioner : Mr.Gowthaman

For Respondents : Mr.Prabhu

ORDER

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This Civil Revision Petition is filed against an order dated 08/09/2016 passed in I.A. No. 92 of 2015 in O.S.No. 212 of 2008, on the file of the District Munsif, Sholinghur, whereby, the learned District Munsif had refused an application filed by the plaintiff under Order XXIII Rule 1, for withdrawing the suit with liberty to file fresh suit.

2.The plaintiff has filed the above suit for declaration of his right and title over the suit properties and for consequential permanent injunctions. The plaintiff's case is that the suit properties were his ancestral properties and he had partitioned the properties with his brothers, originally by a *koorchit*, dated 25/08/1964, followed by a registered partition deed, dated 26/02/1974.

3.The case of the defendants is that the properties belonged to their paternal grand father *P. Veerasami Reddi*, and after his life time, his father namely *Mr. P. Krishandoss Reddi*, inherited the same and that the plaintiff has no right title or interest over the same.

4.The trial of the suit had commenced and the plaintiff side evidence was over and the defendants have also let in their evidence. It is at this stage the above application is filed by the plaintiff stating that only during the course of the trial, the plaintiff realized that the (i) defendant is right that the properties originally belonged to *Mr. P. Veerasami Reddy*, (ii) but however, the plaintiff's predecessors in title were possessed of 8 different survey numbers of property, which are not the suit properties and that they had exchanged the same with the said *Mr.P. Veerasami Reddy*, in

lieu of suit schedule properties and then even the exchanged properties are dealt with by the defendants' father *Krishnadoss* and his brother *Seetharaman* in the partition deed between them; (iii) as such, he cannot proceed with the present suit with this defective pleading and therefore prayed that he be permitted to withdraw the suit with liberty to file fresh suit.

5.The defendants resisted the application by filing their counter. Apart from denying that there was exchange of properties as alleged by the plaintiff, they have also detailed in paragraphs 6 to 8 as to how their predecessors in title got the said 8 items of properties by mentioning the title deeds including purchase from third parties. No reply whatsoever has been filed by the plaintiff to the said counter affidavit.

6.The Learned Trial Judge considering the fact that the application was filed at the fag end of the proceedings and following the dictum of this Court in *Duraikannu & others -Vs- Malayammal*¹, held that the suit can be permitted to be withdrawn with liberty to file a fresh suit only for the reason if there is any formal defect or such other sufficient grounds, which are also formal in nature, thereby applying the principle of *ejusdem generis* to clause (b) of Order XXIII, Rule 3, dismissed the

application by the Order impugned in the present Civil Revision Petition.

7.The Learned Counsel for the petitioner, *Mr. A. Gouthaman*, after taking this Court through the reasons, for which, the plaintiff filed the application, submitted that the case in ***Rajamanickam -vs- P. Dhandapani & others***² this Court has taken a contra view taken in ***Duraikannu -Vs- Malayammal*** and prayed that the Civil Revision Petition be allowed.

8.The Learned Counsel for the respondent, *Mr. Prabhu*, would take this Court through the order of the Learned Trial Judge and supported the Order.

9.As per Order XXIII Rule 3, it may be seen that the suit can be permitted to be withdrawn with liberty to file a fresh suit on the same cause of action for two reasons, namely, (a) that the suit must fail by reason of some formal defects, or (b) that there are sufficient grounds for allowing the plaintiff, to institute a fresh suit for the subject matter of a suit or part of a claim.

10.The Hon'ble Supreme Court of India, has in ***V.Rajendran -Vs- Annasamy Pandian (Died) through Lrs***³, has recorded in paragraph No.11

² 2013 (5) CTC 385

³ 2017 (5) SCC 63
<https://www.mhc.tn.gov.in/judges>

of the said judgment that at present two divergent views are being taken. The first view is the expression 'sufficient grounds' in clause (b) should be construed also as relating to formal defect by applying the principle of *ejusdem generis*. The second view is that clause (b) is an independent clause and the expression 'sufficient grounds' shall be given a wider meaning.

11. It is seen that the High Courts of Calcutta⁴, Kerala⁵, Delhi⁶ and Orissa⁷, etc., have taken the second view that the 'sufficient grounds' to be given a wider meaning.

12. It is true that as far as this Court is concerned, the aforesaid judgments in **Rajamanickam and Duraikannu**, taken contra views. As a matter of fact, a third view is also taken by the His Lordship *Hon'ble Justice M. Srinivasan (as he then was)* in **A.P.S. Bahurudeen and Anr -Vs- Antony And Ors**⁸, stating that *ejusdem generis* is not applicable, however, the expression 'Sufficient grounds' shall be not be given a wider meaning, but a slightly restricted meaning of 'analogous reasons' as that of formal defect. It is also true that all three Judgments has been quoted and followed in the later judgments, making the legal position as far as the Madras High

4 AIR 2019 Cal 165 – Archana Roy – Vs – Dipanjan Bhattacharjee

5 2020 SCC Online Ker 4230 – Sabu Issac – Vs – Antony Chacko

6 2021 SCC Online Del 4728 – Mohd Naved & Ors – Vs – Farha Rahman

7 AIR 1986 ori 58 – Duryodhan Jena – Vs – Satyabadi Samal & Ors.,

8 1992 (2) MLJ 563

Court fluid.

13.However, as far as the present case is concerned, by following any of the three views, the plaintiff cannot succeed because, (a) firstly, it is not due to any formal defect; (b) the reasons mentioned in the affidavit filed along with petition that there is exchange of 8 properties is very bald and does not contain any details as to the exchange deeds, neither it is mentioned that it was oral and is bereft of details. When the plaintiff knows that he has filed the application at the fag end of the trial, he should have given particulars as to the manner of exchange and just on the vague averment, the defendants cannot be put to the ordeal of a fresh suit; (c) Even regarding the 8 items of the properties mentioned in paragraph 3 of the affidavit, the respondents have given details of title including furnishing of the sale deed particulars as to how those properties are not vested in them by exchange in paragraphs 6 to 8 of the counter affidavit and the plaintiff did not even choose to file any reply to the same.

14.Under the above circumstances, the plaintiff has not made out a case so as to interfere with the Order of the Trial Court. Hence, the Civil Revision Petition stands dismissed. However, there shall be no order as to

costs. Consequently, the connected miscellaneous petition is closed.

15.Considering the suit is of the year 2008, the Trial Court is requested to disposed off the same, as expeditiously as possible, in any event, within a period of three months, from the date of receipt of a copy of this order.

02.11.2021

Index : yes/no
Internet :yes/no
Speaking/Non-Speaking order

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To

The District Munsif Court, Sholinghur.

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D.BHARATHA CHAKRAVARTHY, J.,

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Pre-Delivery Order in
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