

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 5.7.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.(PD) No.2553 of 2017

S.Raveendran

Petitioner

vs.

1. Mr.S.Radhakrishnan

2. Mr.Palani

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decretal order dated 3.4.2017 passed in I.A.No.194 of 2017 in O.S.No.26 of 2015 on the file of the District Munsif Court, Tambaram.

For Petitioner : Mr.S.Silambanan, Senior Counsel for
M/.Kaavya Silambanan Associates

For R1 : Mr.S.Sairaman
For R2 : No appearance.

ORDER

The revision has been filed seeking to set aside the fair and decretal order dated 3.4.2017 in I.A.No.194 of 2017 in O.S.No.26 of 2015 on the file of the District Munsif Court, Tambaram.

2. Mr.S.Silambanan, learned Senior Counsel appearing for the revision petitioner would submit that the petitioner had filed a suit in

O.S.No.26 of 2015 against the respondents herein seeking for a declaration and mandatory injunction in respect of a common passage as described in the plaint 'B' schedule. The petitioner had purchased the property from one Vedavalli on 15.10.1993 and the full portion of the property was, in turn, had sold by him in favour of his wife. Subsequent to such sale, the petitioner had filed a petition under Order XXIII Rules (1), (3) and (2) read with Section 151 CPC seeking permission to withdraw the suit with a liberty to file a fresh comprehensive suit by appropriate parties on the basis of same cause of action for the suit property and the petitioner had sought liberty only for himself and not for his wife whereas the Trial Court, while granting permission to the petitioner to withdraw the suit, made a wrong observation that the petitioner cannot claim liberty for his wife.

3. The learned Senior Counsel would reiterate that it is the petitioner, who has filed the present suit and not his wife and liberty was sought only for the petitioner and not for his wife and he would only seek to clarify the observation with regard to the liberty in favour of the petitioner's wife.

4. The learned counsel Mr.S.Sairman, appearing for the contesting first respondent would submit that in respect of the very

same cause of action, the petitioner, alongwith his wife, filed O.S.No.213 of 2008 against the same respondents and in that suit, the petitioner and his wife sought for an injunction in I.A.No.939 of 2008 and the Trial Court, by order dated 1.12.2008, had dismissed the petition against which the petitioner and his wife filed C.M.A.No.4 of 2009 before the Sub Court, Tambaram and the same was also dismissed by order dated 24.3.2010 and against the dismissal of the Civil Miscellaneous Appeal, the petitioner and his wife filed C.R.P. (PD) No.4410 of 2010 and that was dismissed by this court on 18.7.2011. He would further submit that after the dismissal of the the said C.R.P., the petitioner and his wife had withdrawn the earlier suit in O.S.No.213 of 2008. Subsequently, in respect of the very same cause of action, the petitioner alone filed O.S.No.26 of 2015. When this was brought to the knowledge of the Trial Court, the petitioner had come up with the petition under Order XXIII Rule 1 (3) and (2) seeking to withdraw the suit with liberty to file a fresh comprehensive suit.

5. The learned counsel for the first respondent would further submit that the Trial Court, while granting liberty to withdraw the suit, refused to grant liberty to file fresh suit to his wife, finding that it was done with the oblique motive of dragging on the proceedings and

causing harassment to the defendants. He would also submit that there is no infirmity in the order.

6. Heard the learned counsel for the parties and perused order passed by the court below.

7. The petition in I.A.No.194 of 2017 had been filed seeking to withdraw the suit and the petitioner had only sought for a liberty to file fresh comprehensive suit and not liberty on behalf of his wife. When no request had been sought on behalf of wife, the observation by the Trial Court that liberty cannot be given to the petitioner's wife to file fresh suit is erroneous and thereby the particular portion of the order viz.,

"To file a fresh suit in the name of the petitioner's wife, the petitioner cannot claim liberty for his wife"

is expunged. Other than that, the order passed by the court below in I.A.No.194 of 2017 in O.S.No.26 of 2015 dated 3.4.2017 needs no interference.

The civil revision petition is disposed of accordingly. No costs.

Index: Yes/No.
Internet: Yes/No.
ssk.

5.7.2021.

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A.D.JAGADISH CHANDIRA, J.

Ssk.

To

District Munsif Court,
Tambaram.



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