

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.93 of 2017
and C.M.P.No.454 of 2017

C.Somasundaram ... Petitioner

Vs.

1. Gunasekaran @ A.Rajendran

2. Balakrishnan @ Balan

Respondents

Prayer :- Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the order dated 10.08.2016 made in I.A.No.577 of 2016 in O.S.No.190 of 2008 on the file of the learned District Munsif Court, Gobichettipalayam.

For Petitioner : Mr.N.Manokaran

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 10.08.2016 passed by the learned District Munsif, Gobichettipalayam in I.A.No.577 of 2016 in O.S.No.190 of 2008, thereby dismissing the petition seeking permission to withdraw the suit with liberty to file fresh suit on the same cause of action.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed suit in O.S.No.190 of 2008 for injunction in respect of the cart track described in the suit schedule property. When the matter was posted for cross examination of P.W.1, the petitioner filed petition in I.A.No577 of 2016, seeking permission to withdraw the suit with liberty to file fresh suit on the same cause of action. Since the trial Court dismissed the said petition, the petitioner filed this present Civil Revision Petition.

3. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner. Though notices served to the respondents no one is appeared either by person or through pleader.

4. On perusal of the affidavit filed in support of the above said petition, the petitioner stated that there are mistakes in the plaint particularly with the location of various survey fields indicated in the plaint plan as such, the petitioner did not want to proceed with the defective plaint. The trial Court dismissed the petition for the reason that the petitioner can very well file amendment petition to correct the plaint.

5. It is seen that the suit is filed for injunction in respect of the suit

cart track. Therefore, there is absolutely no prejudice would be caused to the respondents if the petition is allowed. Hence, the order passed by the Court below is perverse and liable to be set aside. Accordingly, the order dated 10.08.2016 passed by the learned District Munsif, Gobichettipalayam in I.A.No.577 of 2016 in O.S.No.190 of 2008 is hereby set aside. The petitioner is permitted to withdraw the suit with liberty to file fresh suit on the same cause of action.

6. Accordingly, the Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.03.2021

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

rts

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G.K.ILANTHIRAIYAN, J.

rts

To

1. The District Munsif,
Gobichettipalayam.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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