



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.2267 of 2016

and

C.M.P. (MD) No.12271 of 2016

WEB COPY

A.P.A.Meeyakhan (Died)
A.P.A.Malukkamali (Died)
A.P.A.Mytheen Beevi (Died)
Ahammed Meeral Beevi (Died)

1.K.Allah Pitchai
2.K.Malukkamali
3.K.Pakeer Muhammed
4.K.Nagooral Beevi
5.K.Pitchammal Beevi

..Petitioners 1 to 5/Petitioners
1 to 9/Plaintiffs 1 to 9

6.A.P.P.Ahemmed Meeran
7.A.P.P.Pakir Muhammed
8.A.P.P.Miyakhan

.. Petitioners 6 to 8/Petitioners
11 to 13/Plaintiffs 11 to 13

A.P.P.Varisai Meeral Beevi (Died)

9.A.P.P.Pitchammal Beevi
10.A.S.P.Seeni Muhaideen
11.A.S.P.Kattu Bava
12.A.S.P.Allah Pitchai
13.A.S.P.Kaanammal
14.A.S.P.Pitchammal Beevi
15.A.S.P.Mangalal Bakiral Beevi
16.A.S.P.Seeni Bakiral Beevi

.. Petitioners 9 to 16/Petitioners
15 to 22/Plaintiffs 15 to 22

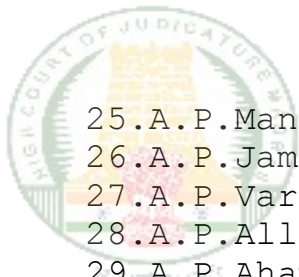
A.P.Varsai Meeral Beevi

17.K.M.Allah Pitchai
18.K.M.Nagoor Muhaideen
19.K.M.Allah Pitchai
20.K.M.Khan Muhammed
21.K.M.Seeni Muhammed
22.K.M.Pakir Muhammed
23.K.M.Sheik Malik

.. Petitioners 17 to 23/Petitioners
24 to 30/Plaintiffs 24 to 30

24.K.M.Pitchammal Meeral Beevi .. 24th Petitioner/32nd Petitioner/
32nd Plaintiff

A.S.A.Pakir Muhammed



25.A.P.Mangala Bakir Muhammed
26.A.P.Jamal Beevi
27.A.P.Varisai Meeral Beevi
28.A.P.Allah Pitchai
29.A.P.Ahammed Meeral Beevi .. Petitioners 25 to 29/Petitioners
34 to 38/Plaintiffs 34 to 38
30.Sindha Beevi
31.A.M.Pakir Muhammed
32.A.M.Sheik Abdul Kadar .. Petitioners 30 to 32/Petitioners
40 to 42/Plaintiffs 40 to 42
33.A.M.Pitchai Meeral Beevi .. 33rd Petitioner/44th Petitioner/
44th Plaintiff
34.A.M.Mytheen Beevi
35.K.N.Allah Pitchai .. Petitioners 34 & 35/Petitioners
46 & 47/Plaintiffs 46 & 47
36.K.N.Sheik Abdul Kadar
37.K.N.Nagoor
38.M.Bakir Mohammed
39.Malukkammal
40.A.M.Mytheen Beevi .. Petitioners 36 to 40/Petitioners
49 to 53/Plaintiffs 49 to 53

-vs-

1.K.A.Nagoor Mytheen .. 1st Respondent/1st Respondent/
K.A.Ali Asan (Died) 1st Defendant
2.K.A.Mitheen Beevi .. 2nd Respondent/3rd Respondent/
Esakkiammal (Died) 3rd Defendant
Vel Myil (Died)
3.Katchi Mytheen
4.Subbulakshmi
5.Manickaraj
6.M.Naggoral Beevi .. Respondents 3 to 6/Respondents
6 to 9/Defendants 6 to 9
7.K.M.Kansa .. 7th Respondent/31st Petitioner/
31st Plaintiff
8.A.P.Nagoor Mytheen .. 8th Respondent/39th Petitioner/
39th Plaintiff
9.A.M.Allah Pitchai .. 9th Respondent/43rd Petitioner/
43rd Plaintiff



10.A.M.Nagoor Meeral Beevi

.. 10th Respondent/45th Petitioner/
45th Plaintiff

11.K.N.Mangala Pitchai

.. 11th Respondent/48th Petitioner/
48th Plaintiff

WEB COPY

Prayer :- Petition filed under Section 115 of Civil Procedure Code to set aside the fair and decretal order dated 22.07.2016 made in I.A.No.303 of 2015 in O.S.No.27 of 2006 on the file of the Sub Court, Ambasamudram.

For Petitioners : Mr.D.Srinivasa Ragavan
for Mr.S.P.Maharajan
For RR4 & 6 : Mr.V.Meenakshi Sundaram
for Mr.D.Nallathambi
For R5 : Mr.S.A.Ganapathiraman

RR 1 to 3 & 7 to 11 - set exparte

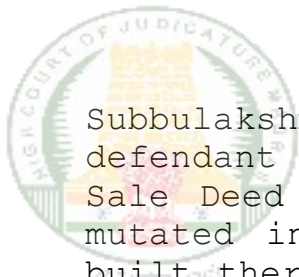
ORDER

The plaintiffs, whose application seeking to withdraw the plaint with a liberty to file a fresh plaint was partly allowed by the learned Subordinate Judge, Ambasamudram, are the petitioners herein challenging the order dated 22.07.2016. The learned Judge permitted the plaintiffs to withdraw the suit, but however, did not grant them a liberty for filing a fresh suit on the same cause of action.

2. The plaintiffs had filed the suit claiming partition and separate possession of their 23/24th share in the suit property. The plaintiffs would contend that the suit property originally belonged to one Backiyalakshmi. She sold an undivided $\frac{1}{2}$ share in the suit property along with other properties on 30.09.1938 to one A.Pakkir Muhammed. She thereafter, sold the remaining undivided $\frac{1}{2}$ share to the said A.Pakkir Muhammed by Sale Deed dated 05.04.1941. By way of these two Sale Deeds, A.Pakkir Muhammed had become the absolute owner of the entire property. A.Pakkir Muhammed had two sons and one daughter. On the death of A.Pakkir Muhammed, his legal heirs became entitled to the suit property and they have been in possession and enjoyment of the same. Plaintiffs 1 and 2 and defendants 4 to 8 had no right to the suit property at any point of time and they had not been in enjoyment of the same. Since A.Pakkir Muhammed had refused to sell the properties to defendants 4 to 8, they had started interfering with the peaceful possession and enjoyment of the property. Therefore, the suit.

3. The 9th defendant had filed a written statement in which she had contended that the suit property originally belonged to one

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Subbulakshmi, who has been shown as the 7th defendant and the 9th defendant had purchased the property from her under a registered Sale Deed dated 21.09.2005. The revenue records have also been mutated in her name and the house tax in respect of the house built thereon was also being paid only by the 9th defendant. The sale having been executed by a person having a marketable title, the suit filed by the plaintiffs is not maintainable. The 9th defendant would submit that the concept of a joint family or partition was unknown to Mahammaden Law and therefore, sought for dismissal of the suit.

4. The 7th and 8th defendants had filed a written statement *inter alia* denying the allegations contained in the plaint and submitted that the 7th defendant had purchased the suit property under two sale deeds from T.E.P.Katchimydeen and S.Velumayil under two Sale Deeds dated 10.10.1994. Thereafter, the 7th defendant had put up construction in the property, electrified the same and she has been paying the electricity charges as well as house tax in her name. Thereafter, the 7th defendant had sold the suit property along with the house for a valuable consideration to the 9th defendant under Sale Deed dated 21.09.2005 and possession was also handed over to her. The 7th defendant would submit that for over 50 years, she and her predecessor in title have been in continuous possession and enjoyment of the property without any break. The documents produced on the side of the plaintiffs do not relate to the suit schedule property and the plaintiffs had no right to the same.

5. After arguments were heard in the above suit and the suit was posted for judgment, the plaintiffs had come forward with the impugned application under Order 23 Rule 3(A) to withdraw the suit in O.S.No.27 of 2006 with a liberty to file a fresh suit on the same cause of action.

6. The 9th defendant had filed a counter *inter alia* contending that the application is a vexatious one and an attempt to start a second round of litigation. The 9th defendant has already in a very great detail set out the Sale Deed under which she had purchased the respective properties and asserted her independent title to the same. Without taking any steps to amend the plaint, the plaintiffs proceeded with the suit over a decade and now, when the suit was posted for judgment, the present application has been filed, which is nothing but an abuse of process of Court. The 9th defendant in her counter had further submitted that the earlier suit in O.S.No.518 of 1994 filed by the plaintiffs and his predecessors in title on the file of the District Munsif, Ambasamudram, had been dismissed as abated on 02.07.1996. That apart, the plaintiffs had moved two applications in I.A.Nos.262 and 263 of 2016, which were dismissed by the Court and now the



plaintiffs have come forward with this application, which is not maintainable.

7. The learned Subordinate Judge, Ambasamudram, by his order dated 22.07.2016, dismissed the said application stating that the plaintiffs had not specified any formal defect, nor sufficient grounds to withdraw the suit with a liberty to file a fresh suit on the same cause of action as contemplated under Order 23 Rule 1 (3)(a). The learned Judge had stated that this is nothing but a dilatory tactics adopted by the plaintiffs. However, the learned Judge permitted the plaintiffs to withdraw the suit, without giving other relief to file a fresh suit on the same cause of action. Aggrieved by the fact that liberty was not given to file a fresh suit, the plaintiffs are before this court.

8. Heard the learned counsel on both sides.

9. As rightly pointed out by Mr.V.Meenakshi Sundaram, learned counsel appearing for respondents 4 and 6, the plaintiffs have not made out any formal defect, which allows them to seek to have the suit withdrawn with liberty and neither has sufficient grounds been made out for granting this relief. He would submit that the reasons given for seeking to withdraw the suit with liberty to file a fresh suit does not spell out either the formal defect or the sufficient grounds that existed in order to permit the same. He would rely on the judgment in the case of **Rajendran and another vs. Annasamy Pandian (D) Thr. Lrs., Karthyayani Natchiar** reported in **2017-5-L.W.201** to state that unless either of the two ingredients are satisfied the plaintiffs cannot seek to file a fresh suit on the same cause of action after withdrawing the original suit. In this regard, he would rely on paragraph 11 of the judgment, which is extracted hereinbelow:-

"11. In terms of Order XXIII Rule 1(3) (b) where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. In interpretation of the word "sufficient grounds", there are two views: One view is that these grounds in clause (b) must be "ejusdem generis" with those in clause (a), that is, it must be of the same nature as the ground in clause (a) that is formal defect or at least analogous to them; and the other view was that the words "other sufficient grounds" in clause (b) should be read independent of the words a 'formal defect and clause (a). Court has been given a wider discretion to allow withdrawal from suit in the interest of justice in cases where such a prayer is not covered by clause (a). Since in the present case, we are



only concerned with "formal defect" envisaged under clause (a) of Rule (1) sub-rule (3), we choose not to elaborate any further on the ground contemplated under clause (b) that is "sufficient grounds".

10. Importing the ratio of the said judgment into the case on hand, it is seen that the plaintiffs have not satisfied either of the ingredients. Therefore, no exception can be taken to the order under revision and the order dated 22.07.2016 passed in I.A.No.303 of 2016 in O.S.No.27 of 2006 is confirmed. Consequently, the Civil Revision Petition fails and is dismissed. However, there shall be no order as to costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

Note:- In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Subordinate Judge, Ambasamudram.

Copy to

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.P.MAHARAJAN, Advocate (SR-37534[F] dated 07/12/2021)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-37853[F] dated 08/12/2021)

C.R.P. (PD) (MD) No.2267 of 2016
06.12.2021

KS (CO)

SB(11.01.2022) 6P 6C