



C.R.P.No.822 of 2020
and C.M.P.No.4371 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.822 of 2020

and

C.M.P.No.4371 of 2020

Shakila Begam

... Petitioner

Vs.

1.Thangarasu

2.Najima Begam

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 15.03.2019 passed in I.A.No.462 of 2018 in O.S.No.52 of 2018 on the file of the Additional District Munsif, Thittakudi.

For Petitioner	: Mr. V. Raghavachari
For R2	: Mr. J. Antony Jesus

ORDER

This petition has been filed against the fair and decreetal orders dated 15.03.2019 passed in I.A.No.462 of 2018 in O.S.No.52 of 2018 on the file of the Additional District Munsif, Thittakudi.



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2. The revision petitioner is the plaintiff in O.S.No.52 of 2018 on the file of the Additional District Munsif, Thittakudi. She filed the suit for a permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit property and for costs.

3.The defendants filed their written statement contending that the suit property and other properties originally belonged to one Ramasamy Konar and his brother Thangarasu Konar who sold the said properties through a registered sale deed dated 28.07.1988 in favour one Rahman Beevi and Kaja Mohideen. In an oral partition between Rahman Beevi and Kaja Mohideen the property in S.No.127/1 measuring 0.19 cents (in which the suit property lies) was allotted to the share of Rahman Beevi. The said Rahman Beevi sold 0.06 cents to the plaintiffs through a registered sale deed dated 11.10.2012 and on the same date he sold 0.12 cents to the defendants. It is further averred in the written statement that the northern boundary of the suit property is clearly indicated as the property of the defendants in the sale deed of the plaintiff. According to



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the defendants the plaintiff had in fact encroached the property of the defendants and wanted an Advocate Commissioner to be appointed to inspect the properties of the plaintiff and the defendants and to measure the same with the help of a taluk surveyor.

4. The plaintiff who filed a petition for appointment of an Advocate Commissioner in I.A.No.251/2018 withdrew the said petition subsequent to the filling of written statement by the defendants. Thereafter, the defendants filed a counter claim under Order VIII Rule 6A CPC for declaration of their title to their property and for recovery of possession after demolishing the superstructure put up by the plaintiff. The plaintiff thereafter filed an application in I.A. No.462/2018 under Order XXIII Rule 1 CPC praying to permit him to withdraw the suit with a liberty to file a fresh suit on the same cause of action. The 2nd defendant filed his counter and after full contest, the learned Additional District Munsif, Thittakudi, dismissed the said application vide his orders dated 15.03.2019, aggrieved over which the present Civil Revision Petition is filed by the plaintiff.



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5. Heard Mr. V. Raghavachari, learned counsel appearing for the revision petitioner and Mr. J. Antony Jesus, learned counsel appearing for the 2nd respondent.

6. At the outset, it may be observed that the suit was filed for a bare injunction by the plaintiff against the defendants contending that the suit property absolutely belonged to her. Now the plaintiff wants to withdraw the suit on the ground that since the defendants had denied her title to the suit property in their written statement, she has to seek for an amendment to include the prayer of declaration of title to the suit and if the plaint is amended, the District Munsif would not have pecuniary jurisdiction to try the suit and in the circumstances, she may be permitted to withdraw the suit filed under Order 23 Rule 1 and Section 151 CPC with liberty to file a fresh suit on the same cause of action.

7. It is pertinent to point out that the 2nd defendant in his written statement has not denied the title of the plaintiff over the suit property. His only contention is that he had purchased 0.12 cents from



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the vendor of the plaintiff in the same survey number. It is also pointed out by the 2nd respondent that even in the plaint schedule, northern boundary of the plaintiff's property is indicated as the property of the defendants. In fact, the plaintiff had prayed for an appointment of Advocate Commissioner to measure the property of the plaintiff and the defendants with the help of a taluk surveyor. Thereafter, the plaintiff withdrew the said application filed by her under Order XXVI Rule 9 CPC for appointment of an Advocate Commissioner. Subsequently, as already observed, the 2nd defendant filed a counter claim under Order VIII Rule 6A CPC wherein he has prayed for a declaration of his title to the property in Survey No.127/1a/2B measuring 12 cents out of the total extent of 19 cents. He also prayed for removal of construction put up by the plaintiff in his property and for recovery of possession. At that point of time, the plaintiff filed an application in I.A. No.462 of 2018 to withdraw the suit with liberty to file a fresh suit on the same cause of action.



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8. The question that arises in this case is whether the ground on which the withdrawal of the suit has been dismissed is such as is contemplated under Order XXIII Rule 1(2) CPC, 1908. Under that Sub Rule, the withdrawal of a suit with liberty to institute a fresh suit in respect of the same subject matter may be permitted to the plaintiff, where the court is satisfied

- i. that a suit must fail by reason of some formal defect, or
- ii. that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim.

9. In the instant case, the plaintiff has filed an application to withdraw the suit only subsequent to the filing of the counter claim of the defendants and as already observed, nowhere either in the counter claim or in the written statement the defendants had denied the title of the plaintiff to the suit property. Moreover, the plaintiff has not only sought for simple withdrawal of the suit but also for granting liberty to file a fresh suit on the same cause of action.



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10. It is settled law that a plaintiff even under Sub Rule 1 of Rule 1 of Order 23 CPC had no absolute right to withdraw the suit where some vested right had accrued to the defendants. There is also a provision under Sub Rule 3 of Rule 1 of Order XXIII that the plaintiff shall be liable for such costs as the court may impose for withdrawing the suit and the courts can also preclude him from instituting any fresh suit in respect of the same subject matter or part of the claim made by a plaintiff. But in the instant case, the counter claim has been filed. The plaintiff withdrew her petition filed under Order XXVI Rule 9 CPC for appointment of an Advocate Commissioner and thereafter filed an application to withdraw the suit itself after filing of a counter claim by the defendants. This aspect has to be taken into account before granting permission to withdraw the suit and this is exactly done by the learned Additional District Munsif and I do not find any infirmity in his orders.

11. In such view of the matter, the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is



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dismissed. The fair and decretal orders dated 15.03.2019 passed in I.A.No.462 of 2018 in O.S.No.52 of 2018 on the file of the Additional District Munsif, Thittakudi, is upheld.

02.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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