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C.R.P. No. 2653 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No. 2653 of 2023

and

C.M.P.No.16400 of 2023

V. Chinnarasu

...Petitioner

.Vs.

1. Anbu @ Anbazhagan

2. The Dharmapuri Municipality
Represented by its Commissioner,
Dharmapuri Town,
Dharmapuri District.

...Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair and Final order dated 02.03.2023 made in I.A.No.1300 of 2022 in O.S.No.306 of 2010 on the file of the learned District Munsif Court, Dharmapuri by allowing this Civil Revision Petition and pass orders.

For Petitioner : Mr. N. Manoharan



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ORDER

This petition is filed to set aside the the Fair and Final order dated 02.03.2023 made in I.A.No.1300 of 2022 in O.S.No.306 of 2010 on the file of the learned District Munsif Court, Dharmapuri.

2. The case of the petitioner is that he has filed O.S.No.306 of 2010 for mandatory injunction and perpetual injunction against the respondents. Issues were framed and the trial has been commenced, at that stage the petitioner sought to withdraw the suit with liberty to file a fresh suit, as there was defect in the plaint, for which he filed I.A.No.1300 of 2022 in O.S.No.306 of 2010 and the same was dismissed vide order dated 02.03.2023. Aggrieved over the same, the petitioner has filed this petition.

3. The learned counsel for the petitioner submitted that the petitioner has every right to withdraw the suit with liberty to file a fresh suit for the same cause of action. He further submitted that the Court below erroneously dismissed the I.A. No.1300 of 2022 in O.S.No.306 of 2010 . Hence prays to allow this petition.



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4. On going through the impugned order, it is seen that the suit is of the year 2010 and the petitioner has filed the above I.A in the year 2022 i.e., after 12 years of the filing of the suit, which is not acceptable. Further more, the trail has been commenced at that stage the petitioner has sought to withdraw the suit with liberty to file a fresh suit for the same cause of action, which is not permissible as per law. Therefore, there is no necessity to interfere with the impugned order passed by the Court below.

5. In view of the above, the order dated 02.03.2023 made in I.A.No.1300 of 2022 in O.S.No.306 of 2010 on the file of the learned District Munsif Court, Dharmapuri is confirmed. Accordingly this Civil Revision Petition is dismissed. No order as to costs. Consequently, the connected miscellaneous petition is closed.

03.08.2023

smn

Index : Yes/No

Internet: Yes/No

To.

The District Munsif Court, Dharmapuri



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V.BHAVANI SUBBAROYAN,J.
Smn

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