

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED : 14.12.2023****CORAM****THE HON'BLE MRS.JUSTICE T.V.THAMIL SELVI****CRP.No.4554 of 2023**

Dhansekaran

... Petitioner

Vs.

1. Balaraman

2. Ilavenil

3. Punitha

4. Jothi

5. Saritha

6. Thatchayini

7. Rajendiran

8. Natarajan

9. Chittibabu

10. Govindan

11. Vanathaai

12. Raja

13. Ramakrishnan

14. Radha Ammal

15. Ravi

16. Rangan

17. Vijaya

18. Parimala

19. Latha

20. Devi

21. Murugan

... Respondents



**Prayer :** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 14.09.2022 made in I.A.No.257 of 2022 in O.S.No.276 of 2015 on the file of the learned Additional District Munsif Court, Tindivanam particularly Para No.8 of the said order and as a consequence thereof direct Additional District Munsif, Tindivanam to delete the name of the 21st defendant Murugan in O.S.No.276 of 2015 from the array of the defendants in as much as there is a memo filed by the revision petitioner in February 2023 mentioning that the plaintiff is not pressing the suit against the 21st defendant by allowing this Civil Revision Petition.

For Petitioner : Mr.Sugumar R.Rajulu

For Respondents : No appearance

### **ORDER**

The petitioner has filed this application to set aside the decretal order dated 14.09.2022 made in I.A.No.257 of 2022 in O.S.No.276 of 2015 on the file of the Additional District Munsiff Court, Tindivanam.

2. Before the trial Court the plaintiff has filed a suit for declaration, injunction and other consequential reliefs. The 21 st defendant contested the case. Now, the trial has begun and the evidence was recorded, at that time, the plaintiff has filed I.A.No.257 of 2022, under Section 23(4) of Civil Procedure



Code to delete Item 2 and 3 of the Schedule properties and also not inclined to proceed with D21. The said application was partly allowed by the learned trial Judge by deleting item Nos. 2 and 3, but not permitted to relieve D21 from contesting the case. Aggrieved by the said findings, the revision petitioner has preferred this revision.

3. The learned counsel for the revision petitioner submitted that as a plaintiff he filed a suit. When he is not inclined to prosecute the suit in respect of some of the properties, he is entitled to withdraw the suit and to relieve the 21st defendant from the array of parties, but the learned trial Judge has failed to appreciate the same and erroneously permitted D21 to contest the case though the plaintiff is not inclined to proceed with the case against him.

4. On seeing the entire plaint averments, the plaintiff had filed a suit in the year 2015 praying for the relief of declaration, injunction and to declare the sale deeds stands in the name of D21 as null and void. In the plaint, 3 items of the properties were shown in the schedule, now he wants to delete Item Nos.2 and 3 of the suit. But admittedly, D21 contested the case, stating that he is the owner of the property. Even as per the plaint averments D21



purchased the property in the year 2004 from one Rasulbevi. Therefore, as on date, he is the owner as per the contention of the plaintiff. If at all, in the declaration suit the contesting defendant is not permitted to proceed with the matter, his valuable right to defend the case will be defeated. Therefore, the order passed by the learned trial Judge needs no interference.

5. However, when D21 is permitted to contest the case pertaining to item Nos. 2 & 3, the order passed in I.A.No.257 of 2022 is also an erroneous one. Therefore, this Court is not inclined to set aside the order passed by the learned trial Judge and direct the Court below to proceed with the trial on merits.

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

14.12.2023

Index : Yes/No  
Speaking order / Non speaking order  
Neutral Citation: Yes/ No  
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- To
- 1.The Additional District Munsif Court, Tindivanam.
  - 2.The Section Officer, VR Section,  
High Court of Madras.



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**T.V.THAMIL SELVI, J.**

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