



C.R.P.(MD)No.53 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.12.2023

PRONOUNCED ON: 12.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.53 of 2023

and

C.M.P.(MD)No.284 of 2023

Durairaj : Petitioner/Petitioner/
Appellant

Vs.

1.The Revenue Divisional Officer,
Dindigul,
Dindigul District.

2.The District Collector,
V.N.Campus,
Dindigul District,
Dindigul.

3.Ponnaiah

4.Sountharam

5.Ganesan

6.Sethu

7.Sagunthala

: Respondents/Respondents/
Respondents

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the Order and Decree, dated 02.11.2022,



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made in I.A.No.1 of 2021, in A.S.No.147 of 2018, on the file of the
Principal Sub Court, Dindigul.

For Petitioner : Mr.G.Gomathi Sankar

For Respondents : Mr.A.Baskaran
Additional Government Pleader
for R.1 and R.2

: Mr.K.Lakshmi Shankar
for R.4, R.6 and R.7

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.1 of 2021 in A.S.No.147 of 2018, dated 02.11.2022, on the file of the Principal Sub Court, Dindigul, dismissing the petitioner filed under Order 23 Rule 1 C.P.C.

2. The revision petitioner as plaintiff has filed a suit in O.S.No. 1388 of 2004 to declare that the suit property is belonging to them and for permanent injunction restraining the second defendant from issuing any patta or from effecting any changes in the revenue records in favour of the first defendant and for permanent injunction restraining the



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defendants 1, 3 to 7 from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. Pending suit, the first defendant has been exonerated and subsequently, the defendants 4 to 8 were impleaded. After filing of the written statement, the trial Court has framed issues and proceeded with the trial and passed the judgment and decree dated 01.08.2018 dismissing the suit.

4. Aggrieved by the dismissal of the suit, the second plaintiff / revision petitioner herein preferred an appeal and the same is pending in A.S.No.147 of 2018, on the file of the Principal Subordinate Court, Dindigul. Pending appeal, the appellant/second plaintiff has filed an application under Order 23 Rule 1 C.P.C., seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action.

5. The respondents 1 and 2 – Government Authorities have remained exparte. The respondents 3 to 7 have filed their counter statement raising objections. The learned appellate Judge, after enquiry,



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has passed the impugned order dismissing the said petition. Challenging the dismissal, the present Civil Revision Petition came to be filed.

6. The learned Counsel for the revision petitioner would submit that since the suit was filed with formal defects, the same could be rectified by way of withdrawing the suit and filed a fresh suit and the same will not prejudice the respondents/defendants, that since the first defendant was wrongly impleaded, he was exonerated subsequently, that the petitioner's brother – first plaintiff had died during the pendency of the suit proceedings and he could not implead the legal heirs of the deceased plaintiff, as they were not willing to conduct the suit along with the petitioner and as such, the petitioner has to file the suit separately, that the defendants 3 to 7 have not claimed any right in the property belonging to the revision petitioner and as such they are not necessary parties and that therefore, he was constrained to file the above application seeking permission to withdraw the suit with liberty to file a fresh suit.

7. The respondents, in their counter statement, have raised serious objections that an elaborate trial was conducted, that the defendants have



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taken several admissions from the witnesses examined by the plaintiff's side, that the trial Court has given findings in favour of the defendants and against the plaintiff and that therefore, the appellant cannot be permitted to defeat the rights that were accrued to the defendants through the judgment and decree passed by the trial Court.

8. At the outset, it is pertinent to note that it is not the case of the revision petitioner/appellant that the suit was dismissed on the ground that there were formal defects and were fatal to the suit. No doubt, as rightly contended by the learned Counsel for the revision petitioner, the petition under Order 23 Rule 1 C.P.C., seeking permission to withdraw the suit with liberty file a fresh suit, can be filed even at the appellate stage and there is no legal bar or prohibition for invoking the said provision before the first appellate Court or the second appellate Court.

9. Let us begin with the old decision of our High Court in ***E.T.Dharma Raja Vs. K.M.Pethur Raja and Others*** reported in ***AIR 1924 Madras 79***, wherein the plaintiff had obtained decree against the defendants against which, only one defendant had filed an appeal, while the rest of them did not challenge that decree and at the appellate stage,



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the plaintiff/respondent wanted to withdraw the suit against the appealed defendant, so that the decree which had already been passed against the other defendants who had not appealed may be enjoyed by him, this Court while rejecting the petitioner filed under Order 23 Rule 1 C.P.C., has held as follows:

“The provision of law relied on by the plaintiffs-respondents is Order 23, Rule (1) of the Code of Civil Procedure, which provides for the withdrawal of a suit by a plaintiff and abandonment of part of his claim. This the rule gives as a matter of right and it is not disputed that a similar privilege is inherent in an appellant as regards his appeal : but we have not been referred to any ruling or provision of law which would extend this privilege to a plaintiff-respondent, nor can we see any reason why when the litigation has reached the stage of an appeal, the respondent should be allowed the right to defeat the appeal and prevent its being heard by the simple process of withdrawing his suit as against the appellant. It may of course be argued that, although this is not a right of the appellant, nevertheless it is in the discretion of the Court to allow him to do so but that will depend on considerations which, we think, have not been appreciated by the lower appellate Court.”



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10. In ***Tukaram Mahadu Tandel Vs. Ramachandra Mahadu Tandel*** reported in ***AIR 1925 Bombay 425***, wherein it has been observed that though as a general preposition, a plaintiff can at any time withdraw a suit, but whether the parties have entered into a compromise and the defendant has acquired the right under the compromise, it would not be open to the plaintiff who had consented to the compromise, afterwards to annul its effect by withdrawing the suit under Order 23 Rule 1 r/w Rule 3 C.P.C.

11. A Division Bench of Allahabad High Court in ***Vidhydhar Dube and Others Vs. Har Charan and Others*** reported in ***AIR 1971 Allahabad 41*** has specifically held that the right of the plaintiff to withdraw the suit at the appellate stage is not an absolute right, but is subject to the rights acquired by the defendant under the decree.

12. In the case of ***Kanhaiya and Others Vs. Dhaneshwari and Others*** reported in ***AIR 1973 Allahabad 212***, it has been again held that the plaintiff does have an unqualified or unfettered right under Order 23 Rule 1(1) C.P.C., to withdraw the suit at the appellate stage when rights have accrued to the respondents under the decree.



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13. The Punjab and Haryana High Court in ***Shri Guru Maharaj Anandpur Ashram Trust Guna Vs. ChanderParkash and Others***

reported in ***1986(1) 89 Punjab Law Reporter 319***, has held as follows:

“Once the decree is passed by the trial Court, certain rights are vested in the party in whose favour the suit is decided. Thus, the plaintiff is not entitled to withdraw the suit as a matter of course at any time after the decree is passed by the trial court. In these circumstances, the lower appellate Court has acted illegally by allowing the plaintiffs to withdraw the suit after setting aside the judgment and decree of the trial court dismissing the suit.”

14. It is necessary to refer the judgment of the Hon'ble Supreme Court in ***R.Rathinavel Chettiar and another Vs. Sivaraman and Others*** reported in ***(1999)4 SCC 89***, wherein the Hon'ble Apex Court has held that the rights which have been given to the parties to the suit under the decree cannot be taken away unless very strong reasons are shown that the withdrawal would not affect or prejudice anybody's vested rights and the relevant passages are extracted hereunder:



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“In another Allahabad decision in Jutha Ram vs. Purni Devi and others, ILR 1970 (1) Allahabad 472, the plaintiff compromised the suit with certain defendants at the appellate stage and gave an application to withdraw the suit against those defendant-respondents. The Court refused permission to withdraw the suit as the withdrawal would have the effect of depriving the other respondents of the benefit of the lower courts' adjudication in their favour. This decision, incidentally, applies squarely to the facts of the present case as in this case also the plaintiff compromised with one of the respondents and gave an application for withdrawal of suit. Obviously, the intention was to deprive the appellants of the benefit which had accrued to them on account of a declaratory decree having been passed in favour of the plaintiff who incidentally was their predecessor-in- interest.

In view of the above discussion, it comes out that where a decree passed by the trial court is challenged in appeal, it would not be open to the plaintiff, at that stage, to withdraw the suit so as to destroy that decree. The rights which have come to be vested in parties to the suit under the decree cannot be taken away by withdrawal of suit at that stage unless very strong reasons are shown that the withdrawal would not affect or prejudice anybody's vested rights. The impugned judgment of the High Court in which a contrary view has been expressed cannot be sustained.



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As a desperate bid to save the lost battle, learned counsel for plaintiff-respondent No. 1 contended that since the appellants had obtained the sale-deed by fraud, which would not have the effect of conveying any title to them, they cannot, in the matter of withdrawal of suit, intervene nor can they be heard to oppose withdrawal. We are not entering into the legality of the sale-deed as it is not the subject matter of the suit under appeal. Since appellants had already been impleaded as respondents in the appeal on the basis of that sale-deed, they have a right to be heard in the matter of withdrawal of suit.

For the reasons stated above, the appeals are allowed. The impugned judgment passed by the High Court is set aside, the application for withdrawal of suit is rejected and the appeals are remanded to the High Court for deciding it on merit in accordance with law. The parties shall bear their own cost."

15. The learned Counsel for the petitioner has relied on the decision of this Court in Ameen Bi and two others Vs. Ameer Bia and 5 others reported in 1997(2) MLJ 320, wherein this Court has held as follows:



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“ Civil Procedure Code, 1908, Sections 100, 107, 108 and 151 and Order 23, Rule – Withdrawal of suit – Power of Appellate Court to permit withdrawal of suit – Second appeal against the decree of the lower Appellate Court refusing to grant injunction – After filing the second appeal and before the grant of leave under Section 151 to withdraw the suit with permission of the Court of the file it again – Whether the withdrawal of suit should be allowed at this stage, especially when the plaintiff failed to succeed to get a decree – The suit was only for an injunction where the only question was whether the plaintiff is in possession not – Immediately after the filing of Second Appeal, plaintiff has also filed a comprehensive suit for declaration of title and recovery of possession, making all the persons interested in the properties as parties to the suit and the parties also joined the issue regarding title – It was represented that a decree has also been obtained in the subsequent suit by the plaintiff – Held that, when the parties are already at issue and they have been fighting tooth and nail on the question of title the plaintiff should not be debarred from withdrawing the suit with liberty to get necessary relief in the subsequent suit – Suit permitted to be withdrawn accordingly – Appeal dismissed as having become inductions.”



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16. In the above case, the suit filed was for permanent injunction and during the pendency of the second appeal, the petition seeking permission to withdraw the suit was filed and this Court, taking note of the facts that after filing of the second appeal, the plaintiff has filed another comprehensive suit for declaration of title and recovery of possession making all the persons interested to the suit as parties to the suit and a decree has also been obtained in the subsequent suit by the plaintiff and by observing that when the parties are also at issues and they have been fighting tooth and nail on the question of title, the plaintiff should not be debarred from withdrawing the suit with liberty to get necessary relief in the subsequent suit, has granted permission and thereby permitted the plaintiff to prosecute the subsequently instituted suit and also permitted her to seek the relief which is asked for in that suit.

17. The above decision cannot be applied to the case on hand. As already pointed out, the learned trial Judge, considering the evidence available on record, has given the specific findings to all the issues framed and on that basis, by holding that the suit property is not belonging to the second plaintiff and he is not in possession of the entire



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suit property and as such, he is not entitled to get the reliefs of declaration and injunction, dismissed the suit.

18. As rightly contended by the learned Counsel for the respondents/defendants, the defendants have acquired some rights under the decree and as such, the same cannot be defeated by withdrawing the suit. Considering the legal position above referred and also taking note of the fact that the rights came to be vested with the defendants under the decree, the impugned order dismissing the petition filed under Order 23 Rule 1 C.P.C., cannot be found fault with. Consequently this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

19. In the result, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

12.12.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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1. The Principal Subordinate Court, Dindigul.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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