



C.R.P(MD)No.2758 of 2015(PD)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)No.2758 of 2015(PD)

and

MP(MD)No.1 of 2015

Saravanakumar

... Petitioner / Petitioner / Plaintiff

Vs.

1.Periyammal

2.Arukkani

3.Sulochana

4.Sudha

5.Pasupathi

6.Jeganathan

7.Arivince

8.Arumugam

9.Muthusamy

10.Varadharajan

... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, set aside the fair and executable order dated 05.10.2015 passed in I.A.No.905 of 2014 in O.S.No.394 of 2011 on the file of the Additional District Munsif Court, Karur, by allowing this Civil Revision Petition.



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For Petitioner : Mr.M.P.Senthil

For Respondents : No appearance

ORDER

The petitioner is the plaintiff before the trial Court. The petitioner filed an application under Order XXIII Rule 1(3)(b) of C.P.C., seeking withdrawal of the suit with liberty to file a fresh suit on the same cause of action. The trial Court dismissed the said application. As against the same, the present revision has been preferred.

2.Mr.M.P.Senthil, the learned counsel for the petitioner would state that the Court below ought to have allowed the application and given liberty as prayed for. He would also state that the relief prayed in the application became necessitated only in the view of the stand taken by the second defendant in the written statement and no prejudice will be caused to the respondents/defendants, if the plaintiff was given liberty to file a fresh suit on the same cause of action.

3. Even though notice was served to all the respondents and in respect of 10th respondent, paper publication has been effected, there is no representation for the respondents.



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4. I have heard the learned counsel for the petitioner and I have also perused the materials available on records including the impugned order.

5. I do not find any perversity and illegality in the order passed by the trial Court in rejecting the application filed under Order XXIII Rule 1(3)(b) of C.P.C. The trial Court has rightly found that there is no formal defect in order to give liberty to withdraw the suit and file a fresh suit on the same cause of action. The trial Court also observed that it is open to file an amendment petition and proceed with the present suit. There is no justifiable ground to interfere with the order passed by the trial Court. However, at the same time, the rights of the petitioner should not be adversely affected.

6. Therefore, in the event of the petitioner/plaintiff moving any application for amendment within 4 weeks from the date of receipt of a copy of this order, the trial Court shall, by taking into account the time spent by the petitioner in the Interlocutory application, viz., I.A.No.905 of 2014 as well as in the Civil Revision Petition, consider the same without putting the question of limitation against the petitioner.



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7. With the above observation, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
dss

04.12.2023

To

1. The the Additional District Munsif Court,
Karur.
2. .The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

dss

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and

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