



CRP(PD)(MD).No.2357 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P(PD)(MD)No.2357 of 2023

and

C.M.P.(MD)No.12067 of 2023

Kitheriyan

: Petitioner/Petitioner
Plaintiff

Vs.

Little Marry alias Pitchammal

: Respondent/Respondent
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and executable order, dated 23.12.2022 in I.A.No.1 of 2022 in O.S.No.117 of 2019 on the file of the District Munsif cum Judicial Magistrate Court, Radhapuram.

For Petitioner : Mr.J.Barathan

ORDER

The Civil Revision Petition is directed against the order, dated 23.12.2022 in I.A.No.1 of 2022 in O.S.No.117 of 2019 on the file of the



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District Munsif cum Judicial Magistrate Court, Radhapuram, dismissing the petition filed under Order XXIII Rule 3 C.P.C.

2. The learned counsel for the petitioner would submit that the petitioner has filed the above suit to declare that he is entitled to 2 ½ feet space on the western wall of his house and for mandatory injunction, directing the defendant to remove the structure put up by them abutting north - south western wall of the petitioner/plaintiff's house.

3. Pending suit, the petitioner/plaintiff has filed the above application, seeking permission to withdraw the suit with liberty to file fresh suit on same cause of action. In the affidavit filed in support of the above application, the petitioner has stated that due to inadvertance some important material facts were not pleaded in the pliant; that the said defects were formal in nature and that therefore, he was constrained to file the above application.

4. Order 23 Rule 1 (3) C.P.C., contemplates for 'a withdrawal from the suit with liberty to bring a fresh suit and for that, the plaintiff must asks for relief and makes out a case within clause (a) or (b) and that the



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Court has no jurisdiction to allow such withdrawal with liberty unless the condition in either of the clauses i.e., the existence of a formal defect fatal to the suit is satisfied.

5. Admittedly, the petitioner has pleaded nothing and he has not even chosen to specify the existence of any formal defect or any other sufficient ground warranting withdrawal of the suit. Since the petitioner's affidavit is bereft of any particulars, the learned trial Judge considering the objections raised by the other side, has rightly dismissed the above petition. Hence, this Court is not inclined to interfere with the dismissal order passed by the trial Court. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.10.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
das



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To

- 1.The District Munsif cum Judicial
Magistrate Court, Radhapuram.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

das

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