



CRP(MD)No.2625 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.2625 of 2022
and
CMP(MD)No.12796 of 2022

1.Rasool Beevi

2.Atham Mallick

: Petitioners

Vs.

1.S.Hidayadullah

2.Jesudhas

3.M.Pandian

4.Samsukani

5.M.Lukman Siddique

: Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 23.11.2022 passed by the learned Additional District Munsif, Tirumangalam, in I.A.No.6 of 2022 in O.S.No.592 of 2012 and set aside the same.



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For Petitioners : Mr.R.Aravindan

For Respondents : Mr.T.K.Gopalan

ORDER

The petitioners, as plaintiffs, have filed a suit in O.S.No.592 of 2012 before the Additional District Munsif Court, Tirumangalam, for declaring the suit property as a common road and for other reliefs. Pending the suit, they moved an interlocutory application in I.A.No.6 of 2022 under Order XXIII Rule 1(3) CPC to withdraw the suit with liberty to file a fresh suit, in case of necessity. The trial Court, by order dated 23.11.2022, dismissed the application with costs and aggrieved over the same, the petitioners have moved the instant revision petition.

2.According to the petitioners, only at the end of the trial, they came to know about the judgment passed in O.S.No.655 of 2017 on the file of the Sub Court, Tirumangalam, instituted by the second respondent herein, wherein the very same suit schedule property was declared as a common road. Therefore, the petitioners sought to withdraw the present suit with liberty to file a fresh suit, in case of necessity.



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3.Learned Counsel for the petitioners, by relying upon the decision of this Court in ***K.P.Selvah v. Atlee*** [2019 (5) LW 110], submitted that the liberty to file fresh suit alone can be rejected by the trial Court and that the Court cannot reject the request of withdrawal.

4.Order XXIII Rule 1(3) CPC reads as follows:-

“1. Withdrawal of suit or abandonment of part of claim

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.”

5.In the decision in ***K.P.Selvah***'s case (referred supra), this Court has held that a petition under Order XXIII Rule 1(3) CPC can be allowed on satisfaction of either of the two sub-rules and if any of the such condition is satisfied, the Court may grant withdrawal, but such withdrawal has to be coupled with liberty or permission to institute a fresh suit, which means withdrawal alone cannot be



granted. Therefore, the argument advanced by the petitioners' Counsel based on this decision is not acceptable. The relevant portion from the said decision is extracted as under:-

“68. Therefore, once the Court satisfies either on the ground of the first limb, i.e., clause (a) of sub-rule (3) or under the ingredients of the second limb, i.e., clause (b) of sub-rule (3), the Court can permit the plaintiff to withdraw the suit, of course with liberty to institute a fresh suit.

69. In other words, once the Court satisfies either under clause (a) or (b) of sub-rule (3), Court, while permitting the plaintiff to withdraw the suit, shall also give the liberty to institute a fresh suit in respect of the subject matter of such suit.

70. Suppose without filing an application and without getting a liberty to file a suit as contemplated under clause (3), if the plaintiff either abandons the suit under sub-rule (1) of Rule (1) or withdraws the suit under sub-rule (3), the plaintiff shall, not only be liable for such cost, as the Court may award, but also shall be precluded from institution of any fresh suit.

71. Therefore sub-rule (3) should be read in conjunction with sub-rule (4), where it makes mandatory that, while withdrawing the suit, the plaintiff must get permission or liberty to file a fresh suit.

72. When such permission or liberty is sought for and Court is satisfied under sub-rule 3(a) or 3(b) to give such permission to withdraw, it is coupled with liberty or permission to institute a fresh



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suit. In other words, when the Court grants permission to withdraw the suit under Order XXIII Rule (1) (3), such permission shall go with liberty or permission to institute a fresh suit in respect of the same subject matter.”

6.The suit is at the final stage and after ten years of litigation, the petitioners cannot be permitted to withdraw the suit at their will, causing prejudice to the other side. This Court does not find any infirmity in the order of the trial Court that warrants any interference. If the petitioners are satisfied with the earlier suit and are inclined to abandon the present suit or their claim, they are at liberty to invoke Order XXIII Rule 1(1) CPC.

Accordingly, this revision petition stands dismissed. No costs.
Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
gk

09.02.2023

To

The Additional District Munsif,
Tirumangalam.



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B.PUGALENDHI, J.

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