



C.R.P.(MD)No.3274 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3274 of 2023

1.Dhanushnaidu
2.D.Venkateshan

: Petitioners/Petitioners/
Appellants

Vs.

G.Marichamy

: Respondent/Respondent/
Respondent

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed in I.A.No.4 of 2023, in A.S.No.11 of 2023, dated 18.10.2023, on the file of the Subordinate Judge, Theni.

For Petitioner : Mr.C.Godwin



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ORDER

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The Civil Revision Petition is directed against the order passed in I.A.No.4 of 2023 in A.S.No.11 of 2023, dated 02.11.2022, on the file of the Subordinate Court, Theni, dismissing the petition filed under Order 23 Rule 1(3) C.P.C.

2. The revision petitioners as plaintiffs have filed the suit claiming permanent injunction against the respondent/defendant and his men from any manner interfering with the Poojas being performed by the second plaintiff in the Kuruvaji Ammal temple situated in the suit property. The defendant has filed a written statement raising serious objections. The learned trial Judge, after framing the necessary issues has proceeded with the trial. During trial, the plaintiffs examined the first plaintiff as P.W.1 and one other witness as P.W.2 and exhibited 11 documents as Exs.A.1 to A.11. The defendant has examined himself as D.W.1 and three other witnesses as D.W.2 to D.W.4 and exhibited five documents as Exs.B.1 to B.5 and a witness document as Ex.X.1. One Amutha has been examined as Court witness and six documents have been exhibited as Court documents as Exs.C.1 to C.6. The learned trial Judge, upon considering



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the evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and decree, dated 19.11.2021 dismissing the suit. Aggrieved by dismissal of the suit, the plaintiffs have preferred an appeal in A.S.No.11 of 2023 and the same is pending on the file of the Subordinate Court, Theni. Pending appeal, the appellants/plaintiffs have filed an application under Order 23 Rule 1(3) C.P.C., seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action.

3. The respondent/defendant has filed his counter statement raising strong objections to the above petition. The learned appellate Judge, after enquiry, has passed the impugned order dated 18.10.2023 dismissing the petition. Challenging the order of dismissal, the appellants have preferred the present Civil Revision Petition.

4. The case of the revision petitioners, in the affidavit filed in support of the petition filed under Order 23 Rule 1(3) C.P.C., is that the learned District Munsif dismissed the suit for permanent injunction, as title cannot be decided without the relief for declaration, that since there is cloud over the tile of the parties, they should have filed a suit for



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declaration, that the petitioners' present Counsel, upon perusing of the records, has given his opinion that the declaratory suit has to be filed and that since the petitioners have to rectify the formal defect not claiming the declaratory relief, they may be permitted to withdraw the suit with liberty to institute a fresh suit in respect of the subject matter of the suit.

5. The defence of the respondent/defendant is that after examining the witnesses of both sides and on perusing the documentary evidence, the suit was dismissed, that the petitioners have nowhere stated about the nature of the declaratory relief to be claimed, that the trial Court, after considering the evidence, has given specific findings against the plaintiffs and in favour of the defendant and that the petitioners cannot be allowed to withdraw the suit by defeating or nullifying the decree already obtained by the respondent/defendant.

6. The main contention of the revision petitioners is that the suit was dismissed on the grounds that the suit property was not properly described as required under Order 7 Rule 3 C.P.C., and that they have not impleaded the necessary parties, which are formal defects and are fatal to



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the suit. But no doubt, as rightly contended by the learned Counsel for the revision petitioners, there is no bar or prohibition for filing an application under Order 23 Rule 1(3) C.P.C., in appeal proceedings.

7. At this juncture, it is necessary to refer the decision of this Court in ***Durairaj Vs. the Revenue Divisional Officer, Dindigul and others*** passed in ***C.R.P.(MD)No.3274 of 2023***, wherein this Court in a similar case, has observed as follows:

“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, 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:



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“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.”

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 proposition, a plaintiff can at any time withdraw a suit, but whether the parties have entered into



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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



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appellate stage when rights have accrued to the respondents under the decree.

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 given to the parties to the suit under the decree cannot be taken away unless very strong



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reasons are shown that the withdrawal would not affect or prejudice anybody's vested rights and the relevant passages are extracted hereunder:

“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



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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.

....

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."



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8. The legal position above referred is squarely applicable to the case on hand also. The learned trial Judge, by observing that the plaintiffs have not proved that they are the hereditary poojaris of Guruvaji Ammal temple, that they have suppressed their relationship with the defendant by saying that the defendant was not known to them and as such, they have approached the Courts with unclear hands, has given a specific finding that the plaintiffs are not entitled to get the relief of permanent injunction. No doubt, as rightly contended by the learned Counsel for the revision petitioners, the trial Court has also commented that the plaintiffs have not complied with Order 7 Rule 3 C.P.C., in describing the suit property properly and that the suit is also bad for non-joinder of necessary parties.

9. As rightly contended by the respondent in their counter statement and observed by the learned trial Judge, the defendant had 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 visited with the defendant under the decree, the impugned order



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dismissing the petition filed under Order 23 Rule 1(3) 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.

10. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

13.12.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1. The Subordinate Court, Theni.

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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