



WEB COPY



C.R.P.(PD).No.5015 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.5015 of 2024
and
C.M.P.No.28171 of 2024

1.Chinappa

2.Nanjappa

... Petitioners

..Vs..

1.Krishnappa

2.Sonnappa

3.Muniraj

4.Narayanappa

5.Subramani

6.Ramaiah

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and Docket order dated 02.12.2023 passed in I.A.No.6 of 2023 in O.S.No.25 of 2022 on the file of the Additional District Judge, Hosur.



WEB COPY

C.R.P.(PD).No.5015 of 2023.



For Petitioners : Mr.C.Prabakaran

ORDER

This civil revision petition challenges the order passed by the learned Additional District Judge at Hosur in I.A.No.6 of 2023 in O.S.No.25 of 2022 dated 02.12.2023.

2. O.S.No.25 of 2022 is a suit for declaration and for consequential reliefs.

3. A detailed written statement was presented by the civil revision petitioners/defendants. The defendants also presented O.S.No.40 of 2022 against the plaintiffs herein.

4. The plaintiffs noticed that the plaint contained several mistakes. They had included the properties which they had been sold by them in favour of third parties as subject matter of the suit. Apart from that, even the name of the first plaintiff's father had been incorrectly stated. As the plaint was riddled with mistakes and errors, they decided to file an application to



withdraw the suit and to file a fresh suit on the same cause of action. This application was received in I.A.No.6 of 2023.

5. It was opposed by the defendants stating, in case, mistakes had crept into the plaint, it is always open to the parties to file applications for amendment to rectify the error. The objections seem to be based on the fact that the plaintiffs are attempting to withdraw the suit on account of the strong defence that has been taken by the defendants, as well as the presentation of O.S.No.40 of 2022 on the file of the Additional District Judge at Hosur.

6. The learned Additional District Judge came to a conclusion that where there is a formal defect, permission can be granted to withdraw the suit and file a fresh suit on the same cause of action, subject to the period of limitation. Consequently, the learned Judge allowed the application. Hence this revision.

7. I heard Mr.C.Prabakaran for the civil revision petitioner.



WEB COPY

8. Mr.C.Prabakaran reiterated the contentions that had been placed by his counterpart before the Court below. In addition, he points out that pursuant to the liberty granted by the learned Additional District Judge by the impugned order, the plaintiffs have also filed O.S.No.65 of 2024 on the file of the learned Additional District Judge at Hosur.

9. I have carefully considered the submissions of Mr.C.Prabakaran.

10. The right to present the suit or withdraw the same is entirely at the discretion of a party. The objection that has to be considered, when he seeks to withdraw the suit and file a fresh suit on the same cause of action, is whether the application falls within the scope of Order XXIII. Under Order XXII Rule 3 of the Code a party is entitled to withdraw a suit and file a fresh suit on the same cause of action when the plaint suffers from a “formal defect”, or from such other sufficient cause to the satisfaction of the Court.

11. Reading of the plaint shows that it has been poorly drafted by



including properties which the plaintiffs are not owners as part to the suit schedule. Apart from that, even the name of the father of the parties, through whom they claim title, has been wrongly given. These aspects go to the root of the matter.

12. The Supreme Court held in *[V.Rajendran v. Annasame Pandian (2017 (5) SCC 63)]* that where there has been a mis-description of the property and / or a wrong property has been shown as belonging to the plaintiffs, it will amount to a “formal defect” entitling the plaintiffs to withdraw a suit and file a fresh one.

13. Apart from Order XXIII Rule 3(a), if “sufficient grounds” are made out for withdrawal of the same, even then, the Court can grant such permission.

14. The learned Additional District Judge seems to be convinced that the plaint, which is riddled with errors, factual as well as legal can be withdrawn and a fresh suit be filed. When the discretion is available to the



C.R.P.(PD).No.5015 of 2024.

Court and it has been rightly exercised by the learned Additional District Judge and when the suit it suffers from several errors which are “formal defects”, I am not inclined to interfere with the order.

15. Mr.C.Prabakaran states that the cost of Rs.10,000/- ordered by the impugned order has been deposited by the plaintiffs/respondents to the credit of the Additional District Court at Hosur.

16. The civil revision petitioners are entitled to withdraw the cost of Rs.10,000/-. Since the plaintiffs have exercised their right under the said order and filed a fresh suit, they will not be entitled to oppose the application for withdrawal of the said amount.

17. Accordingly, the order of the learned Additional District Judge stands confirmed. The revision is dismissed. No costs. Consequently, the connected miscellaneous petition stands closed.

18.12.2024



C.R.P.(PD).No.5015 of 2022.

WEB COPY

ssi

Index : Yes

Internet : Yes

Neutral Citation Case: Yes/No

To

1.The Additional District Judge,
Hosur.

V.LAKSHMINARAYANAN, J.

ssi



WEB COPY



C.R.P.(PD).No.5015 of 2024

C.R.P.(PD).No.5015 of 2024
and
C.M.P.No.28171 of 2024

18.12.2024