



C.R.P.(PD).No.1307 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1307 of 2021

and

C.M.P.No.10218 of 2021

Sivaraji

... Petitioner

VS

1.Krishnaveni

2.Saravanakumar

3.Sathyaraj

4.Arunagiri

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decreetal order in I.A.No.01 of 2020 in O.S.No.80 of 2016 dated on 25.01.2021 passed by the Additional District Munsif, Tirupattur, Vellore District.

For Petitioner : Mr.R.Jaikumar
M/s.T.Fenn Walter Associates

For Respondents : Ms.Vinupriya

ORDER



C.R.P.(PD).No.1307 of 2021

WEB COPY The Civil Revision Petition is filed challenging the order passed by the Court below allowing the application filed by the respondents/plaintiffs seeking permission to withdraw the suit with liberty to file fresh suit on same cause of action.

2. The respondents herein filed a suit seeking declaration of their title and permanent injunction. The respondents filed an application in I.A.No.1 of 2020 seeking leave of the Court to withdraw the suit with liberty to file fresh suit. In the affidavit filed in support of the said petition, it was stated by the respondents that the description of suit property was not properly given in the plaint and the respondents had given description of a larger extent of the property than the one which was under dispute.

3. Further, it was stated pending suit, the petitioner herein encroached the suit property and put up construction. Therefore, the original prayer sought for in the suit has become inappropriate and as a consequence, the petitioner wanted to file a fresh suit with new suitable prayer. In view of the



C.R.P.(PD).No.1307 of 2021

same, they sought for withdrawal of the suit with liberty to file fresh suit with same cause of action. The said application was allowed by the Court below granting liberty as prayed for. Aggrieved by the same, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner submitted that if there is mis-description in the schedule of property, it is always open to the respondents to file appropriate amendment application and instead of adopting that course, the respondents filed an application to withdraw the suit with liberty to file fresh suit with same cause of action. The learned counsel further submitted that if the respondents are allowed to file a fresh suit, it will result in multiplicity of proceedings and unnecessarily the litigation will get dragged on.

5. Under Order 23 Rule 1 (3) of the Civil Procedure Code, the plaintiffs are entitled to withdraw the suit with liberty to file a fresh suit on the same cause of action in case of formal defect. The mis-description in the schedule of property and the improper prayer in the suit can be treated as a formal defect



C.R.P.(PD).No.1307 of 2021

in framing of the suit. Therefore, the respondents are entitled to withdraw the suit with liberty to file fresh suit by giving proper description of the suit property and the suitable prayer. The allowing of the application filed by the respondents seeking leave of the Court to withdraw the suit will not cause any prejudice to the petitioner herein. Taking into consideration the time spent by the petitioner in answering the present suit, the Court below also awarded cost in favour of the petitioner. In these circumstances, I do not find any error or illegality in the order passed by the Court below.

6. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

24.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



C.R.P.(PD).No.1307 of 2021

To

The Additional District Munsif,
Tirupattur, Vellore District.



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C.R.P.(PD).No.1307 of 2021

S.SOUNTHAR, J.

dm

C.R.P.(PD).No.1307 of 2021

24.01.2024