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C.R.P.(PD)No.3360 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3360 of 2024

Raju

.. Petitioner

Vs.

1.Palanisamy
2.Ganesan
3.The Thasildar,
Sendurai Taluk Office,
Sendurai, Ariyalur District.

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.8 of 2023 in O.S.No.324 of 2019 on the file of the learned District Munsif cum Judicial Magistrate, Sendurai, Ariyalur District dated 06.04.2024 by allowing the above Civil Revision Petition.

For Petitioners	: Mr.M.Saravanakumar
For R3	: Mr.B.Balaji for M/s.Abishek Murthy, Government Advocate



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ORDER

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2.O.S.No.324 of 2019 is a suit for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the property. On service of summons, the defendants entered appearance and filed a written statement denying the title of the plaintiff. Therefore, the plaintiff has filed an Application to withdraw the suit and to file a fresh suit for declaration on the same cause of action. The learned trial Judge dismissed the petition and hence, the Revision.

3.Heard, Mr.M.Saravanakumar, counsel for the Civil Revision Petitioner and Mr.B.Balaji for M/s.Abishek Murthy, Government Advocate for the third respondent.

4.The basic principle relating to withdrawing a suit and filing a fresh



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suit on the same cause of action is that the suit presented should suffer from some 'formal defect'. Unless and until the 'formal defect' is identified, the withdrawal with liberty cannot be allowed. The plea of the plaintiff for withdrawal is that instead of seeking for a relief of declaration of title or such larger relief, he had filed a suit only for permanent injunction. This cannot be considered as a 'formal defect'. In case the plaintiff feels that he has to seek for a relief of declaration of title, he has to file an Application under Order VI Rule 17 of CPC. His remedy is not to withdraw the suit and file a fresh suit on the same cause of action.

5.In the light of the above discussion, the Civil Revision Petition is dismissed, granting liberty to the petitioner to file an amendment petition. No costs.

21.08.2024

Tsg

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

The learned District Munsif cum Judicial Magistrate,
Sendurai, Ariyalur District.

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21.08.2024