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C.R.P.No.3431 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29..08..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.3431 of 2024

and

C.M.P.No.18647 of 2024

Paneerselvam

..... Petitioner

-Versus-

1.Kulanthaivelu

2.Jayamalai

3.Baskaran

4.Ravi

5.Rajathi

6.Ganesan

..... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 28.06.2024 passed by the learned Principal District Munsif, Kallakurichi, in I.A.No.319 of 2024 in O.S.No.307 of 2013.

For Petitioner : Mr.S.Mohamed Uduman



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ORDER

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This civil revision petition arises against an order dated 28.06.2024 passed by the learned Principal District Munsif, Kallakurichi, in I.A.No.319 of 2024 in O.S.No.307 of 2013.

2. O.S.No.307 of 2013 is the suit filed for declaration of title and for injunction. The suit is yet to see the trial. When the matter was listed for evidence of the plaintiff, he took out an application in I.A.No.319 of 2024 seeking for withdrawal of the suit with liberty to file a fresh suit on the same cause of action. The said application was predicated on the grounds that the plaintiff had left out a property namely, a pathway, in the description portion of the schedule and had also not impleaded his siblings as parties to the suit.

3. The learned I Additional District Munsif issued notice to the defendant. The defendant pleaded that since the suit has been pending for more than 12 years permitting the plaintiff to withdraw the suit and to file a fresh suit on the same cause of action would be prejudicial to his interest.

4. The learned Munsif dismissed the application holding that there is no “formal defect” for withdrawing the suit and filing a fresh suit on the same cause of action. Hence, the revision.

5. Mr.S.Mohamed Uduman would submit that the view taken by the I



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Additional District Munsif is contrary to the view settled by the Supreme Court in **V.Rajendran v. Annasamy Pandian** [(2017) 5 SCC 63]. According to him, a wrong description of a property would come within the scope of formal defect.

6. I have carefully considered the arguments of Mr.S.Mohamed Uduman and gone through the judgement cited by him.

7. For the withdrawal of a suit and filing a fresh suit on the same cause of action, the condition precedent is that the suit must suffer from a “formal defect”. In the absence of a formal defect, the court cannot permit the plaintiff to withdraw the suit. This is clear from the specific terms under Order XXIII, Rule 1 (3) of CPC.

8. A perusal of the judgement of the Supreme Court in **V.Rajendran v. Annasamy Pandian** (cited supra) shows that factually it is different from the case at hand. In that particular case, the suit had been filed against a wrong survey number in its entirety and, therefore, the court held that it is a formal defect. The present case is not a situation where there is an error in the identity of the suit property. The plaintiff pleads that he has left out a property namely, a pathway which is the access to the suit property and had failed to implead his siblings as co-plaintiffs.

9. The Code of Civil Procedure gives a solution to the plaintiff. If the



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pathway, which is the access to the property had been left out, the plaintiff is always entitled to invoke the provision of Order VI, Rule 17 of CPC and file an application to amend the suit schedule mentioned property. With respect to leaving out the siblings, though the law is equally clear that one co-owner represents the interest of all other co-owners. In case the plaintiff wants to implead his siblings either as defendants or plaintiffs, his remedy lies under Order I, Rule 10(2) of CPC. There is no necessity to withdraw the suit and file a fresh suit on the same cause of action as both do not come under the category of “formal defect”. However, I am inclined to grant liberty to the civil revision petitioner to move an appropriate application to amend the plaint and to include his siblings as co-plaintiffs or co-defendants to the suit.

In the result, the civil revision petition fails and the same is dismissed accordingly. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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29..08..2024

To

1.The Principal District Munsif, Kallakurichi, Villupuram District.
[Now Kallakurichi District.



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V.LAKSHMINARAYANAN.J.,
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