



C.R.P.[NPD].No.4572 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 13.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].No.4572 of 2024

Kamalavathi

. . Petitioner

Versus

G.Balasundar

. . . Respondent

PRAYER : Petition filed under Article 227 of Constitution of India to set aside the Order and decretal Order dated 13.02.2023 passed in I.A.No.2 of 2022 in O.s.no.999 of 2019 on the file of the XIII Assistant Judge, City Civil Court, Chennai by allowing the Revision and also dismiss I.A.No.2 of 2022 in O.S.No.999 of 2019.

For petitioner : Mr.P.N.george Graham
for Devadason & Sagar



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ORDER

Challenging the impugned Order granting permission to the respondent to withdraw the suit and file a fresh suit on the same cause of action, the present revision petition has been filed.

2. The respondent has filed a suit for bare injunction claiming to be in possession of the property. The respondent claim right over the property on the basis of an unregistered Will dated 31.08.2010 said to have been executed by his grand father and he is in possession of the property. However, the defendant made an attempt to encroach over the property in the year 2919. Hence, the respondent filed the suit for permanent injunction. The suit was contested by the defendant and P.W.1 in his evidence has admitted that he was not in possession of the property from the year 2014. At this stage, an application has been taken out by the respondent to withdraw the suit with liberty to file a fresh suit on the same cause of action. The said application has been allowed by the trial Court. Challenging the same, the present Civil Revision Petition has been filed.



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3. The learned counsel appearing for the petitioner submitted that the very application filed for withdrawal of the suit itself is against his own admission in his pleadings, wherein he has pleaded that he was forcefully evicted from the suit property. Whereas in the evidence before the trial Court, the respondent has admitted that he was not in possession of the property from the year 2014. Therefore, it is his contention that the trial Court permitting the respondent to withdraw the suit for filing a fresh suit on the same cause of action is not valid in the eye of law. Fresh suit cannot be filed on the same cause of action since the cause of action alleged in the suit for injunction is only for an alleged trespass. Whereas, the evidence of the respondent indicate that he was not in possession of the property from the year 2014 onwards. Hence, the respondent cannot be permitted to withdraw the suit and file a fresh suit on the same cause of action.

4. Heard the learned counsel for the petitioner and perused the entire materials available on record.



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5. It is relevant to note that under Order XXIII Rule 1 of Code of Civil Procedure, the Court may permit at any time after the institution of the suit, for withdrawal of the suit and such withdrawal is not automatic and only when the Court is satisfied that there are sufficient grounds for allowing the plaintiff to file a fresh suit in respect of subject matter of the suit or part of a claim, the Court may grant permission to the plaintiff to withdraw the suit. A perusal of the pleadings, this Court is of the view that the respondent now seeks to withdraw the suit which has been filed for bare injunction and to file a fresh suit for recovery of possession. In such view of the matter, this Court is of the view that since the present suit has been filed for bare injunction, there is no need for seeking withdrawal, as suit for recovery of possession cannot be filed on the same cause of action. Whereas, in the application filed for withdrawal, a stand has been taken by the respondent that he has been evicted from the property in the year 2019 itself. Whereas, in his evidence, he has clearly admitted that he is not in possession of the property from the year 2014, which is contrary to his pleading in the plaint.



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Be that as it may.

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6. Though the trial Court had permitted the defendant to file a fresh suit on the same cause of action, that Order cannot be valid in the eye of law considering the fact that the suit for recovery of possession is a different cause of action and it is for the respondent to exercise his right as per law within the period of limitation. In such suit, the revision petitioner can take advantage of the admission of the respondent in his own pleadings and evidence.

7. With the above observations, this Civil Revision Petition is disposed of. No costs.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

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