



C.R.P.No.4836 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Civil Revision Petition No.4836 of 2023
and
Civil Miscellaneous Petition No. 28660 of 2023

1. Suseela

2. G. Leela

...

Petitioners

Vs

Arivazhagan (died)

1. Selvarani

2. Palanisamy

3. Kandasamy

4. Prakash

5. Megala

...

Respondents



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Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set-aside the fair and decreetal order dated 21.09.2023 in I.A.No.4 of 2022 in O.S.No.13 of 2020 on the file of District Munsif Court, Sendhamangalam.

For Petitioner : Mr Krishna Prasad R.
For Sarvabhauman Associates

ORDER

Challenging the order of dismissal passed by the learned District Munsif, Sendhamangalam in I.A.No.4 of 2022 in O.S.No.13 of 2020, the Civil Revision Petition has been filed.

2. The fact of the case is that the petitioner/plaintiff had initially filed a suit in O.S.No.70 of 2008 before the District Munsif Court, Namakkal for declaration and permanent injunction and later, the same was transferred to District Munsif Court, Sendhamangalam due to bifurcation of jurisdiction and renumbered as O.S.No.13 of 2020. Pending suit, the petitioners/plaintiff had filed an application in I.A.No.730 of 2015 stating that they came to know



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about the trespass committed by the defendants and the shed put up in a portion of second schedule mentioned property, which was dismissed by the Trial Court and the same was also confirmed by this Court in CRP No. 2378 of 2016 on 12.03.2020. Subsequently, they had filed an application in I.A.No.4 of 2022 to withdraw the suit with regard to part of the claim pertaining to second item of the schedule mentioned property measuring 8041 sq.ft alone, and the Trial Court, by an order dated 21.09.2023 dismissed the same by passing the impugned order. Hence, it is under challenge.

3. The learned counsel further submitted that the petitioners had filed the suit for declaration and permanent injunction. Now, portion of the property, i.e, the second item of the schedule mentioned property was trespassed and occupied by the defendants. The amendment petition seeking to add a prayer for recovery of possession has been dismissed and hence, even if he got a decree for declaration, he may not get the possession of the second item of the schedule mentioned property from the defendant. Under these circumstances, the petitioners had no way, except seeking permission to withdraw part of the claim of the suit pursuant to the second item of the property concerning 8041



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sq.ft., and the trial Court without considering the fact that fresh cause of action arose with respect to 8041 sq.ft of the land only since the respondents encroached the same pending suit. Hence, prays to allow the revision.

4. I have considered the submission of the learned counsel for the petitioner and perused the materials on records carefully.

5. On perusal of records it is seen that the petitioners herein had filed the suit in O.S.No.70 of 2008 before the District Munsiff Court, Namakkal and it was transferred to District Munsiff Court, Sendhamangalam due to bifurcation and renumbered as O.S.No.13 of 2020, in which, the petitioners/plaintiffs had filed an application in I.A.No.730 of 2015 to amend the plaint seeking to add a relief with regard to recovery of possession of 8041 sq.ft. of second item of the schedule mentioned property. Since the said petition was dismissed by the Trial Court, revision has also been filed before this Court in CRP(PD) No.2378 of 2016, which was also dismissed on 12.03.2020. Thereafter, the petitioners/plaintiffs had filed a petition in I.A.No.4 of 2022 to withdraw the suit in respect of the above said 8041 sq.ft.



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of land, which is alleged to have been trespassed by the respondents/defendants, and seeks permission to file a fresh suit with regard to the same. Since the said petition was dismissed on 21.09.2023, the present revision has been filed.

6. Order XXIII Rule 1 of CPC permit to withdraw part of the suit claim, but not permitting to withdraw the suit with regard to a portion of the claim. On perusal of the plaint, it is noticed that declaration has been sought with regard to the claim of the second plaintiff pursuant to the second item of the entire properties. The Court cannot permit the petitioner to withdraw a portion of the suit schedule property as claimed by petitioner. However, the petitioner can file a petition before the Trial Court to withdraw the suit claim pertaining to the second plaintiff's claim of declaration with regard to the second item of the suit property. Hence, this Court give liberty to the petitioner to that effect.

7. Accordingly, this Civil revision petition is dismissed with liberty to the petitioner to file a fresh petition under Order XXIII Rule 1 before the Trial Court to withdraw the suit pertaining to the second plaintiff's claim of



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declaration regarding the second item of the suit property. On filing that application, the Trial Court is hereby directed to decide the same on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

05.01.2024

Index: yes/no
Internet:yes/no
mrp

To

The District Munsiff,
District Munsiff Court,
Sendhamangalam.



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V. SIVAGNANAM, J.

mrp

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