



C.R.P(MD)No.78 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.12.2024
DELIVERED ON : 20.12.2024

CORAM:

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.78 of 2024
and
C.M.P(MD)No.389 of 2024

Kari Santhappan @ Chandran

... Petitioner

Vs.

Amuldas

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 13.12.2023 made in I.A.No.4 of 2023 in O.S.No.129 of 2012 on the file of the Additional District Munsif Court, Manapparai and pass such other orders.

For Petitioner : Mr.Raguvaran Gopalan

For Respondent : Mr.K.Palani Kumar



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ORDER

This Civil Revision Petition is preferred against the order made in I.A.No.4 of 2023 in O.S.No.129 of 2012 on the file of the Additional District Munsif Court, Manappari.

2. The facts of the case is that the suit in O.S.No.129 of 2012 on the file of the Additional District Munsif Court, Manappari was filed by the petitioner / plaintiff for permanent injunction against the respondent / defendant. Pending suit, the petitioner / plaintiff made an application in I.A.No.4 of 2023 for withdrawal of the suit with liberty to file a fresh suit. In the said petition, it is averred that the plaintiff is using the suit property as access to the main road from his rice mill and house. Since the respondent / defendant is interfering with the plaintiff's access in the above suit property, the petitioner / plaintiff was constrained to file the above suit for permanent injunction restraining the respondent / defendant from interfering the right to access of the petitioner / plaintiff in the suit property. While so, pending suit on 29.11.2012, the petitioner / plaintiff purchased the suit property from one Viyakulam. While so, the suit was dismissed for default and on 2/8



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application made by the petitioner / plaintiff, the suit was restored to file and posted for trial. At that stage, the petitioner took out an application for withdrawal of the suit with liberty to file fresh suit on the same cause of action. His contention is that since the suit property were purchased by him, the petitioner is having absolute right over the suit property and therefore, it is not possible for the petitioner to proceed with the suit claiming the relief of permanent injunction alone. The said application was resisted on the side of the respondent stating that the suit was filed in the year 2012 and the alleged sale deed is dated 29.11.2012. Therefore, it would reveal that at the time of filing the suit, the plaintiff was not having any right over the suit property. The above petition has been filed after lapse of 11 years after filing the suit, hence, the same is not maintainable and liable to be dismissed. The Trial Court in its order, dated 13.12.2023 dismissed the said application by stating that the application has been belatedly filed and by giving liberty to the petitioner for amending the plaint and that, such an application to withdraw the suit would be to the detriment of the defendant's valuable defence in the above suit.



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3. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent and perused the materials available on record.

4. Order XXIII, Rule 1 (3) of the Civil Procedure Code, 1908 states that a suit can only be withdrawn with permission to file a fresh suit, if the Court is satisfied that:

1. There is a formal defect,
2. There are other sufficient grounds for allowing the plaint to file a fresh suit. The Courts power to allow withdrawal of a suit is discretionary.

5. The principle behind Order XXIII, Rule 1 (3) of CPC is based on public policy to prevent the institution of a suit again and again on the same cause of action. However, the plaintiff should make a specific prayer for the Courts leave to institute a fresh suit in the withdrawal application. The plaintiff cannot claim or withdraw the suit to the detriment of the defendant's legitimate right.

6. I have considered the rival submissions carefully with regard to the facts and circumstances of the case.



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7. Under Order XXIII, Rule 1 (3) of CPC, if the Court is satisfied that the suit would fail by reason of some formal defect or if the Court feels that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of the suit or part of a claim, the Court may grant the plaintiff the permission to withdraw from such suit or such part of the claim with liberty to file a fresh suit in respect of the subject matter of said suit or such part of the claim. Therefore, it is very clear that the plaintiff is permitted to withdraw a pending suit and institute a fresh suit in respect of the subject matter of such suit, if the plaintiff is able to establish that there are some formal defects in the suit and therefore, the suit would be dismissed on the basis of those defects or if the plaintiff is able to make sufficient ground for allowing him to institute a fresh suit. There is no difficulty in deciding an application filed under Order XXIII, Rule 1 (3) of CPC, when the suit is pending before the Trial Court.

8. Now it is settled that such an application to withdraw the suit could be filed even at the appellate stage in view of the decision reported in ***AIR 1918 Madras 1287***. In the present suit, it has to be seen whether sufficient



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grounds were made out by the revision petitioner for getting the permission in I.A.No.4 of 2023 filed under Order XXIII, Rule 1 (3) of CPC. The prayer in the suit is for permanent injunction on the ground that the plaintiff has right to access in the suit property from his house and rice mill. Thereafter, it is the case of the petitioner / plaintiff that he purchased the suit property from one Viyakulam on 29.11.2012 and therefore, prayed for withdrawal of the suit with liberty to file a fresh suit on the same cause of action. However, the said application is filed after lapse of 11 years after filing the suit. No sufficient grounds established by the petitioner to file the said application after lapse of 11 years by adding trial. The grounds stated by the petitioner that a declaratory relief has to be added and therefore, it has become necessary to withdraw the suit with liberty to file a fresh suit is hardly sufficient in terms of the provisions of sub section 3 in Rule 1 of Order XXIII CPC, wherein, it is stated that the plaintiff should prove sufficient grounds for allowing him to institute a fresh suit.

9. I am of the view that the revision petitioner has not satisfied the Court that there is sufficient ground for allowing him to institute a fresh suit on the same cause of action. The Trial Court has rejected the application on



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the ground it is filed belatedly. Granting permission to withdraw the suit after 11 years with liberty to file fresh suit on the same cause of action leads to multiplicity of proceedings and the Courts are not in a position to afford trying such multiple proceedings in respect of the same cause of action. The Trial Court has rightly rejected the application. The same cannot be interfered by this Court. Hence, I do not find any merit in the above revision petition. The order of the Trial Court dismissing the said application in I.A.No.4 of 2023 do not suffer any infirmity or illegality. Consequently, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

20.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Additional District Munsif Court,
Manapparai.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
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20.12.2024