



C.R.P. (MD) No. 403 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2024

WEB COPY

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 403 of 2022

and

C.M.P. (MD) No.2148 of 2022

Sree Visalam Chit Fund Limited,

Through its Director,

C.T.Natarajan

... Petitioner/

Plaintiff

-VS-

1.L.G.Tyre and Trade Limited,
Through its Managing Director,
Door No.200, Trichy Road,
Singanallur Post,
Coimbatore District.

2.The Superintendent Engineer,
Wind Form Division, Tirunelveli District.

3.Jio Renewable Power Limited,
Through its Managing Director,
Door No.200, Trichy Road,
Singanallur Post,
Coimbatore District.

... Respondents/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.09.2016 made in I.A.No. 54 of 2016 in O.S.No.172 of 2008 on the file of the Additinoal District Munsif Court, Valliyoor.



WEB COPY



C.R.P. (MD) No. 403 of 2022

For Petitioner : Mr.K.Sudalaiyandi

For Respondents : Mr.S.Anand Chandrasekar for R1

No appearance for R2 and R3

ORDER

The Civil Revision Petition is filed aggrieved by the order dated 09.09.2016 in I.A.No.54 of 2016 in O.S.No.172 of 2008.

2. By the above interlocutory application, the plaintiff has prayed for the permission of the court to permit him to withdraw the suit with liberty to file a fresh suit on the same cause of action. It could be seen that the suit is instituted in the year 2008. The reason on which the permission is asked is that the property is not described properly and that the relief of declaration is not prayed for.

3. The learned Counsel appearing on behalf of the respondent would submit that as far as the description of the property is concerned, earlier itself they filed an application and they were permitted to amend the survey numbers and therefore, that should not cause any major prejudice to the plaintiffs. Secondly, as far as the praying relief of declaration is concerned, the learned Counsel would submit that all the averments relating to the title are already



C.R.P. (MD) No. 403 of 2022

made in the plaint and if they want to introduce a relief of declaration, they can very well seek an amendment in the present suit itself and therefore, for the said reason, when the parties have already gone into trial and evidence have already been recorded, the plaintiff cannot be permitted to wriggle out of the evidence that has already come on record.

4. In reply thereof, the learned counsel for the petitioner would submit that the defects which are pleaded in the application are formal in nature and therefore the trial court ought to have considered the same as sufficient reason.

5. I have considered the rival submissions made on either side and perused the material records of the case. Even though the plaintiff has a right to withdraw abandon the suit, however, when it comes to granting liberty to maintain a fresh suit in respect of the same cause of action, then discretion is vested in the Court as per Order XXIII Rule 1(3) of Code of Civil Procedure, 1908. The matter is no longer a *res integra*. It has been held that the expression formal defect can be liberally construed, even though there can be two meanings for the expression sufficient reason whether it would be governed by *ejusdem generis* or not. Useful reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in **V. Rajendran -Vs-**



C.R.P. (MD) No. 403 of 2022

Annasamy Pandian (2017 5 SCC 63) Paragraph -11.

WEB COPY

6. Considering the present application from the said background, it can be seen that the detailed averments relating to the title are already made. Parties have gone into trial and evidence is already recorded. In that view of the matter, exercising the discretion to grant liberty to the plaintiff to start all over again would cause prejudice to the respondents inasmuch as already by way of cross-examination of the witness and examination of their witnesses with reference to the question of title, the evidence has already come on record. Everything cannot be destroyed and erased out. More specifically, this Court takes into consideration that the present suit is filed in the year 2008 and the application is filed in the year 2016.

7. In view of all the above facts and circumstances of the case, the Civil Revision Petition is bound to fail and accordingly dismissed however with the above observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

25.07.2024

NCC : Yes
PKN



C.R.P. (MD) No. 403 of 2022

D.BHARATHA CHAKRAVARTHY, J.

PKN

WEB COPY

1. The Additinoal District Munsif Court, Valliyoor.

C.R.P. (MD) No. 403 of 2022

25.07.2024