



C.RP(MD)No.2054 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:23.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

**C.R.P(MD)No.2054 of 2022
and
C.M.P(MD)No.9393 of 2022**

1.Chockalingam
2.Shanmugasundaram
3.Baskar

..Petitioners/Respondents/
Respondents

Vs.

Sakthivel

..Respondent/Petitioner/
Appellant

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 27.02.2019 in I.A.No.168 of 2018 in A.S.No.116 of 2017 passed by the Sub-Court, Aranthangi.

For Petitioner :Mr.R.Paranjothi
For Respondent :Mr.D.Ramesh Kumar



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ORDER

The Civil Revision Petition is directed against the fair and decreetal order dated 27.02.2019 made in I.A.No.168 of 2018 in A.S.No.116 of 2017 passed by the learned Subordinate Court, Aranthangi.

2.By the said order, the lower appellate Court had allowed the appellant/plaintiff to withdraw the suit itself.

3.In the application, it is mentioned that the plaintiff did not describe the Schedule 1 to 9 properties properly by giving four boundaries and the other particulars and there were also certain legal flaws in making the claim and therefore, since the defects are formal in nature, the plaintiff prayed for withdrawal of the suit at the appellate stage.

4.The said application was resisted by the defendants by stating that the trial Court has gone into in detail as to the title of



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the parties with reference to the schedule one to nine of the suit properties and has held in favour of the defendants by analyzing the entire evidence on record and therefore, the entire thing cannot be now undone or destroyed by pleading to withdraw the suit itself. As a matter of fact, even in respect of two properties decree has been granted in favour of the plaintiff, as against which, a cross appeal is filed by the respondents and the same is pending.

5.I have considered the submissions made on either side and perused the medical records of the case.

6.This Court had an occasion to encapsulate the law relating to withdrawal of the suit at the appellate stage in C.R.P(MD)No 2058 of 2022 and the relevant portion is extracted hereunder:

“6. The law relating to withdrawal of the suit can be succinctly stated as follows:-

(i) If the suit is pending, as per Order XXIII Rule 1 of Code of Civil Procedure, 1908, the plaintiff can abandon the whole or part of his claim and the same is the right of the plaintiff;

(ii) When the plaintiff wants withdrawal of the suit with leave to file a fresh suit on the same cause



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of action, then such leave can be granted only if the suit is bound to fail because of some formal defect or if there are sufficient grounds for grant of such a leave;

*(iii) The term 'formal defect' has to be liberally construed conferring wider powers on the Court to permit withdrawal with liberty. There are two views possible in respect of the term 'sufficient grounds' and whether it would be governed by the 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- Annasamy Pandian (2017 5 SCC 63)** Paragraph -11;*

(iv) As far as the appellate stage is concerned, the right of the plaintiff, with or without liberty to file a fresh suit is not absolute, it is only at the discretion of the Court;

*(v) While granting leave to withdraw, and the appellate stage, the Court has to see if the withdrawal is made, to destroy the entire decree and to wriggle out of the findings and merits rendered during the trial and if only a strong case is made out, withdrawal can be permitted. It cannot be for the party to start once again on a clean slate while there would be findings in favour of the defendant on merits. A useful reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in (i) **Rathinavel Chettiar & others -Vs- Sivaraman & others (1994 4 SCC 89)** Paragraph 22; (ii) **K.S. Boopathy & Others -Vs- Kokila & others (2000 5 SCC 458)** Paragraphs 13 -15."*



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7. Thus, it can be seen that at the appellate stage, it is not the right of the plaintiff, but the discretion of the Court. The Court has to see whether the permission which is granted would result in destroying the evidence and the decree granted in favour of the other party and thus, undoing the entire trial itself and in such a case, withdrawal cannot be permitted. Further, on a perusal of the judgment of the trial Court, it can be seen that in respect of the suit item Nos.1 to 9 properties, the trial Court made observations relating to boundaries as contained in the title documents and not with reference to any defect in the suit schedule as described by the plaintiff.

8. In that view of the matter, the Civil Revision Petition is allowed on the following terms:

(i) The order dated 27.02.2019 in I.A.No.168 of 2018 in A.S.No.116 of 2017 shall stand set aside.

(ii) The A.S.No.116 of 2017 is restored to the file of the Subordinate Court, Aranthangi and if the respondent chooses to,



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he can continue to prosecute the appeal;

(iii)The cross appeal which is said to have been filed by the respondent shall also be numbered and be taken up together for disposal.

(iv)The appeal and the cross appeal shall be decided on its own merits without being influenced by any of the averments or findings made in the process of permitting the petitioner to withdraw the suit itself or in the present Civil revision petition.

(v) No costs. Consequently connected miscellaneous petition is also closed.

23.07.2024

NCC:Yes/No
Ns
To
The Sub-Court,
Aranthangi.



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D.BHARATHA CHAKRAVARTHY, J.

Ns

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