



C.R.P(MD)No.1051 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1051 of 2019

M.Subbukutty

... Petitioner/Petitioner
Plaintiff

Vs.

1.Manthiram @ Mani

2.Bagavathi

3.Manthiram

4.Ganesan

... Respondents/Respondents
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.600 of 2018 in O.S.No.119 of 2012, dated 28.11.2018 on the file of the Additional District Munsif Court, Valliyoor by allowing this Civil Revision Petition.



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For Petitioner : Mr.T.Selvan
for Mr.S.B.Kamalanathan

For R-1 & R-2 : Mr.A.Arumugam

For R-3 & R-4 : No appearance

ORDER

The present Civil Revision Petition has been filed by the plaintiff in O.S.No.119 of 2012 challenging an order passed in I.A.No.600 of 2018, wherein the Trial Court has permitted the plaintiff to withdraw the suit, but rejected the request of the plaintiff to file a fresh suit on the same cause of action.

2. The revision petitioner herein as plaintiff has filed the above suit for the relief of declaration that he is entitled to half share to the suit schedule property and as a consequence, he is entitled to draw half share from the Well. He has further prayed for an interim injunction that such a right should not be disturbed. The plaintiff has further prayed for a



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declaration that the partition deed entered into between the plaintiff and the defendants 3 and 4 on 18.06.2001 is null and void and it will not affect the rights of the plaintiff. The plaintiff has further prayed for a declaration that the sale deed in favour of the defendants, dated 12.07.2004 is null and void and it will not affect the rights of the plaintiff.

3. In the above said suit, the plaintiff's side evidence was closed and it was posted for cross-examination of the defendant. At the relevant point of time, the plaintiff had filed I.A.No.600 of 2018 to withdraw the above said suit with liberty to file a fresh suit on the same cause of action alleging that there are formal defects in the suit.

4. After considering the submissions made on either side, the Trial Court has partly allowed the application granting permission to the plaintiff to withdraw the suit but has rejected the request of the plaintiff to grant permission to file a fresh suit on the same cause of action. Challenging the same, the present revision petition has been filed.



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5. A perusal of the affidavit filed in support of I.A.No.600 of 2018

reveals that the petitioner has simply mentioned that there are formal defects in the suit without specifically mentioning what is the nature of defect. Only when the nature of defect is pointed out, the Court can arrive at a finding whether it can be cured by way of amendment of the plaint or the suit can be permitted to be withdrawn with liberty to file a fresh suit on the same cause of action. Therefore, the affidavit is as vague as it could be. However, the Trial Court was not right in permitting the plaintiff to withdraw the suit without granting permission to file a fresh suit on the same cause of action.

6. This Court in a judgment reported in **2006 (1) CTC 700 [Rajasundari Vs. Gowri @ Avaduai Ammal]** has held that either the Court has to accept the application in entirety or to reject the same in entirety. However, the Trial Court has partly accepted the application. Therefore, this order is liable to be set aside.



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7. Accordingly, the order passed by the Trial Court in I.A.No.600 of 2018 in O.S.No.119 of 2012 is hereby set aside and the suit is restored to the file. The plaintiff is at liberty to proceed with the said suit.

8. With the above said observation, this Civil Revision Petition stands allowed. There shall be no order as to costs.

05.06.2024

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

To

- 1.The Additional District Munsif Court,
Valliyoor.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
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