



C.R.P(MD)No.1155 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.1155 of 2023

and

C.M.P(MD)No.5508 of 2023

- 1.Kaliyammal
- 2.Paneerselvam
- 3.Thangamani
- 4.Sumathi
- 5.Ananth
- 6.Shanmuga Valli
- 7.Palaniyammal
- 8.Pappathi
- 9.Maheshwari
- 10.Ayyappan
- 11.Rajalingam
- 12.Vairamani

... Petitioners /
Petitioners /
Plaintiffs



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Vs.

1.Rathi Devi

2.R.Manoharan

3.Karuppaiah

4.Akilambal

5.Krishnan

6.Balusami

7.Papayee

8.Thangavel

... Respondents /
Respondents/
Defendants

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.02.2023 made in I.A.No.1 of 2022 in O.S.No.307 of 2015 on the file of the Principal Subordinate Judge, Karur.

For Petitioners : Mr.Raguvaran Gopalan

For Respondents : Mr.K.Suresh for R.1 & R.2

No Appearance for R.2 to R.8



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ORDER

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The plaintiffs in O.S.No.307 of 2015 on the file of Principal Sub Court, Karur are the revision petitioners herein.

2.The suit was instituted seeking declaration that the suit mentioned sale deeds are null and void. In the said suit, the revision petitioners filed I.A.No.1 of 2022 seeking withdrawl of the suit with liberty to file a fresh suit on the same cause of action. The Court below vide order dated 10.02.2023 dismissed the IA. Questioning the same, this Civil Revision Petition came to be filed.

3.The learned counsel appearing for the revision petitioners submitted that the withdrawl has been sought to facilitate filing of a fresh suit by addition of parties and properties. In the affidavit filed in support of I.A.No.1 of 2022, few other reasons such as valuation and payment of Court fees have been set out. The learned counsel relied on the decisions reported in *(2000) 5 SCC 458 (K.S.Bhoopathy & Others Vs Kokila & Others)* and *(2017) 5 SCC 63 (V.Rajendran & Another Vs Annasamy Pandian (Dead) Through legal representatives Karthyayani Natchiar)*



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in support of this contention. He called upon this Court to set aside the impugned order and grant relief as prayed for.

4.Per contra the learned counsel appearing for the contesting respondents submitted that the impugned order is well reasoned and that it does not warrant interference.

5.I carefully considered the rival contentions and went through the materials on record.

6.Order 23 Rule 1(3) is as follows:

“3.Compromise of suit.—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties], or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:



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[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]”

The aforesaid provision has been considered in quite a few decisions. For abandoning a suit, permission is not required. But leave is required if the plaintiff wants to institute a fresh suit on the same cause of action.

7. Before granting leave, the Court must be satisfied that on account of formal defect, the suit is bound to fail. Permission can be granted if the Court is satisfied that there are sufficient grounds. The expression “formal defect” refers to defect in procedure. The Hon'ble Supreme Court in the decision reported in **(2017) 5 SCC 63 (V.Rajendran & Another Vs Annasamy Pandian (Dead) Through legal representatives Karthyayani Natchiar)** had held as follows:

“10. In K.S.Bhoopathy and Ors. v. Kokila, it has been held that it is the duty of the Court to be satisfied about the existence of "formal defect" or "sufficient grounds" before granting permission to withdraw the suit with liberty to file a fresh suit under the same cause of action.



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Though, liberty may lie with the Plaintiff in a suit to withdraw the suit at any time after the institution of suit on establishing the "formal defect" or "sufficient grounds", such right cannot be considered to be so absolute as to permit or encourage abuse of process of Court. The fact that the Plaintiff is entitled to abandon or withdraw the suit or part of the claim by itself, is no licence to the Plaintiff to claim or to do so to the detriment of legitimate right of the defendant. When an application is filed under Order 23 Rule 1(3) CPC, the Court must be satisfied about the "formal defect" or "sufficient grounds". "Formal defect" is a defect of form prescribed by the Rules of procedure such as, want of notice Under Section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, misjoinder of parties, failure to disclose a cause of action etc. "Formal defect" must be given a liberal meaning which connotes various kinds of defects not affecting the merits of the plea raised by either of the parties."

I am of the view that there cannot be any exhaustive or even illustrative cataloguing of formal defects in the abstract. The plaintiff must demonstrate to the Court below that the suit suffers from a formal defect and that it goes to the root of the matter and the suit is bound to fail on



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account of the said formal defect. It is true that in *(2017) 5 SCC 63 (V.Rajendran & Another Vs Annasamy Pandian (Dead) Through legal representatives Karthyayani Natchiar)* it was held that mistake in survey number will be a formal defect. This defect may not affect the suit in all cases. For instance, if the boundaries have been correctly given even if the survey number is erroneous, that would not affect the right of the plaintiff to enjoy the fruits of the decree.

8.It has been held that non-joinder of parties is not a formal defect. But mis-joinder of parties is a formal defect. In this case, the revision petitioners want to add parties. According to them, the suit is bad for non-joinder of parties. This is not a formal defect. Likewise, addition of properties is also not a formal defect.

9.More than anything else, the suit had been instituted way back in the year 2015. Written statement was filed in 2016 itself. The Interlocutory Application for withdrawal has been filed only in the year 2022. Of course, as rightly pointed out by the learned counsel for the revision petitioners, a suit can be allowed to be withdrawn even at the



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stage of second appeal. The stage of the suit may not really be material in that sense.

10. But I am not on that. I am more on the question of scope for the interference in exercise of jurisdiction under Article 227 of the Constitution of India. Order 23 Rule 1(3) opens with the expression “where the Court is satisfied”. In this case, the Court was not satisfied about the merits of the request made by the revision petitioners. Taking into account the reason set out above, I am of the view that interference with the discretion exercised by the Court against the revision petitioners does not arise at all.

11. This Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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To

The Principal Subordinate Judge,
Karur.

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