



C.R.P(MD)No.2022 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 29.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.2022 of 2024
and
C.M.P(MD)No.11517 of 2024

Gnanaraj

... Petitioner / Petitioner / Plaintiff

Vs.

Glory

... Respondent /Respondent /Defendant

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.178 of 2024 in O.S.No.27 of 2023 on the file of the District Munsif Court, Sathankulam dated 07.06.2024.

For Petitioner : Mr.D.Venkatesh

ORDER

The plaintiff is the revision petitioner herein.



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2.He filed O.S.No.27 of 2023 on the file of District Munsif Court, Sathankulam seeking permanent injunction. Evidence on the side of the plaintiff had been closed. At that stage, he filed I.A No.178 of 2024 under Order 23 Rule 1 of CPC for withdrawal of the suit with liberty to file a fresh suit on the same cause of action. The Court below dismissed the IA vide order dated 07.06.2024. Challenging the same, this Civil Revision Petition has been filed.

3.The learned counsel for the revision petitioner reiterated all the contentions set out in the memorandum of grounds of revision and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.I am not swayed by the said submissions. A suit can be allowed to be withdrawn with liberty to file a fresh suit on the same cause of action only if it is shown that it suffers from some formal defect. The suit was in respect of two items of property. As regards the second item, the plaintiff had averred that it belonged to his mother and that she had patta pass book in her favour and that she had orally handed over the



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same to the plaintiff in the year 2020 and that since then, he is in possession and enjoyment of the same. As regards the first item, the plaintiff averred that it belonged to his grandfather Abraham vide sale deed dated 24.01.1956 (Doc No.179/1956). In the year 1965, the grandfather had orally handed over three acres of land in favour of the plaintiff's mother. The plaintiff's mother orally handed over 1 acre and 40 cents of land in the year 2020 and that he is in possession of the same.

5.In the written statement, the plaint averments had been controverted and it was pointed out that the plaintiff's mother had sold 1 acre and 60 cents vide sale deed dated 07.11.2008 (Doc No.1338/2008). The defendants pleaded that whatever was allotted to the plaintiff's mother had been sold in toto by her.

6.In the affidavit filed in support of I.A No.178 of 2024, the plaintiff stated that the plaint averments have been wrongly made and therefore, he may be permitted to withdraw the suit with liberty to file a fresh suit on the same cause of action.

7.The court below noted that the petition under Order 23 Rule 1



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CPC had been filed after the plaintiff's side evidence was over. It is well settled that a plaintiff can only seek to withdraw with liberty to file a fresh suit on the same cause of action. Leave must be granted by the court. It is a discretionary relief. The court below has given reasons as to why, it does not want to exercise discretion in favour of the plaintiff. That apart, the case of the plaintiff does not fall within the scope of the expression "formal defect". Formal defect is a defect of form prescribed by the rules of procedure. Erroneous plaint averments affecting the merits of the plea raised by either of the parties will not constitute formal defect. The order passed by the Court below does not warrant interference.

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

29.08.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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The District Munsif Court, Sathankulam.

G.R.SWAMINATHAN, J.

MGA

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