



C.R.P. (MD) No. 2059 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	04.07.2023
Delivered on	19.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 2059 of 2022

and

C.M.P. (MD) No. 9420 of 2022

G.Maruthamuthu

... Petitioner/

Appellant

-VS-

K.Sathasivam (Died)

1.Sivapackiam
2.S.Karunanidhi
3.S.Selvam
4.S.Veerakumar
5.S.Hari

... Respondents/
Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 05.08.2022 in I.A.No.18 of 2022 in A.S.No.33 of 2009 on the file of the Additional Sub-Court, Thanjavur and allow this civil revision petition.

For Petitioner : Mr.K.Sekar

For Respondent : Mr.M.P.Senthil



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ORDER

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This Civil Revision Petition is filed against the order of the Additional Subordinate Judge, Thanjavur, made in I.A.No.18 of 2022 in A.S.No.33 of 2009. In the said application, the petitioner/appellant prayed for leave to withdraw the original suit itself with liberty to file a fresh suit with the declaratory relief. The same was dismissed.

2. The case of the plaintiff is that the suit survey numbers originally belonged to one V.Vadivelu and V.Kandasamy and their sisters Sundarambal and Magilambal. The aforesaid Vadivelu and one Nambi Murugesan as the power agent of the said Kadasamy, Sundarambal and Magilambal, through a registered Power of Attorney dated 09.12.1987, sold the property to one V.K.Ramasamy under a registered sale-deed dated 28.02.1988. In turn, the said Ramasamy sold the suit property to the plaintiff under a registered sale deed dated 20.05.2004. The defendant, who is the adjacent owner compelled the plaintiff to sell the suit property to him and when the plaintiff refused, the defendant and his men attempted to trespass into the property therefore, the plaintiff filed the present suit for a permanent injunction restraining the defendant and his men from in any way interfering with the plaintiff's peaceful



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possession and enjoyment of the suit schedule property.

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3. The defendant resisted the suit by filing a written statement. It is pleaded that the suit property does not belong to V.Vadivelu and others but, it originally belonged to one Thonthiveeran and after his demise, the properties were succeeded by his sons Aandi and Valaran. The suit property was thereafter allotted to Aandi and after his lifetime, it was succeeded by his son Mookan. The said Mookan sold the property to one Ammakannu and Shanmugam by way of a registered sale deed dated 22.03.1952. After the death of the said Ammakannu, her husband Shanmugam became the sole owner of the property and he in turn, sold the property to one Kalimuthu, by way of a registered sale deed dated 03.06.1956. The said Kalimuthu died in the year 1974 and the property was succeeded by his son Sadhasivam, the defendant herein and other sons Thangaraj and Saivaraj.

4. Based on the said pleadings, the Trial Court framed two issues.

(i) Whether the plaintiff's
possession of the suit property is
lawful;



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(ii) Whether the plaintiff is entitled to the relief of injunction and to what reliefs

In respect of the first issue, the Trial Court in paragraphs 10 to 15, went into the question of title in detail. The Trial Court found that the plaintiff did not prove how his vendors derived the title of the suit properties. The Trial Court, further said that even the Power of Attorney is not produced before the Court and therefore, the further transaction is also not proved. The Trial Court on the other hand agreed with the title of the defendant and found that the defendant's properties were included by the plaintiff and plotted out. After rendering the above finding, the Trial Court also in paragraph 16 as well as in paragraph 9 held that the plaintiff had omitted to pray for a relief of declaration and non-suited the plaintiff for any relief also on the said ground when it came to the answer of Issue No.2.

5. Aggrieved by the same, the plaintiff has filed the present A.S.No.33 of 2009. Pending the same, now the present application is filed in I.A.No.18 of 2022 for a leave to withdraw the suit. The lower appellate Court refused to grant such leave and dismissed the application. Against which, the present Civil Revision Petition is filed.

6. The law relating to withdrawal of the suit can be succinctly stated as



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follows:-

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(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 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;



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(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.



7. In this backdrop, the case of the petitioner has to be considered. The learned Counsel for the petitioner submitted that only because the petitioner did not pray for a relief of declaration, he was non-suited. Therefore, only because of the said formal defect, the suit failed and therefore, his prayer to withdraw the present suit with liberty to initiate a fresh suit must be granted. It is settled law that even in a suit for injunction if the title is duly adjudicated, then the same would be binding of the parties. (**Anathula Sudhakar -Vs- P. Buchi Reddy & others 2008 4 SCC 594** paragraph 21(c)).

8. Thus, is true that the plaintiff filed the suit only for a bare injunction and the Trial Court stated the same also one of the reasons to non-suit the plaintiff. However, it must be seen that that is not the only reason for non-suiting the plaintiff. The Trial Court, in the issue framed to determine whether the plaintiff is in lawful possession or not, went into the title in detail and has given very many findings against the plaintiff and his vendors' title and also given findings upholding the title on behalf of the defendants. Therefore, in the teeth of the same, if the withdrawal is permitted, the entire trial which is conducted and findings which are arrived by the Trial Court will be erased and destroyed. Therefore, the appellate Court at the appellate stage will not permit the party to withdraw the suit to wriggle out of such findings. The Judgment of the Hon'ble Supreme Court of India in **K.S. Boopathy (cited supra)** is on the identical fact situation of



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suing only for a bare injunction.

9. In view thereof, the prayer of the petitioner to withdraw the suit itself is unsustainable much less withdrawing with the liberty to file a fresh suit. If the petitioner, is so interested, he can conduct the appeal on merits. Therefore, the Civil Revision Petition is dismissed. Since the appeal is of the year 2009, the Trial Court is requested to dispose of the appeal as expeditiously as possible. Consequently, the connected Miscellaneous Petition is closed. No costs.

19.07.2024

NCC : Yes

PKN



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1. The Additional Sub-Court, Thanjavur.

2. The Section Officer,

Vernacular Records,

Madurai Bench of Madras High Court,

Madurai.



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D.BHARATHA CHAKRAVARTHY, J.

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