



CRP.No.5465 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.5465 of 2025 and
CMP.No.27510 of 2025

Rajendran

... Petitioner

Vs.

Selvakumari

...Respondent

PRAYER :Civil Revision Petition filed Article 227 of Constitution of India, praying, to set aside the dismissal order made in I.A.No.06 of 2023 in O.S.No.20 of 2009 dated 22.01.2024 passed by the learned Additional District Munsif Court, Jayankondam.

For Petitioner

: M/s.G.Pugazhenth

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner seeking to withdraw the suit with liberty to file a fresh suit on same cause of action.



WEB COPY

2. The petitioner/plaintiff filed a suit for declaration that he is the owner of 7 cents of land in Survey No.246/2B and for mandatory injunction directing the defendant to demolish the superstructure put up by her to an extent of 1 cent out of 7 cents and to vacate the illegally occupied property. The petitioner also sought for a declaration that the property situated in Survey No.246/2B covered by sale deed dated 31-10-1994 in favour of defendant was a different property.

3. The suit was filed in the year 2009 and the present application seeking permission to withdraw the suit was filed after 14 years mainly on the ground that the defendant's vendor noting that he had no right over the subject property to convey the same to the defendant. The vendor of the defendant has not been impleaded in the suit.

4. It is settled law that application under Order 23 Rule 3 of CPC to withdraw the suit with liberty to file a fresh suit can be filed only if there is a formal defect in the suit or there are any other sufficient ground for allowing the plaintiff to institute a fresh suit on same cause of action. In the case on hand, the petitioner has not pointed any formal defect in the suit. Even according to the petitioner, the above said Moorthy already sold the property to the defendant.



CRP.No.5465 of 2025

Therefore, his presence may not be required. Secondly, if the defendant claims right under the above said Moorthy, it is for him to prove that he purchased the property from the person who has got title. The petitioner seeks declaration of title based on a registered document and he has to prove his title independently de hors the weakness in the title of the defendant. Therefore, I do not find anything to permit the petitioner to withdraw the suit with liberty to file a fresh suit on the same cause of action that too after 14 years. The trial court rightly appreciated the scope of the petition filed under Order 23 Rule 3 of CPC and dismissed the same. Accordingly, the Civil Revision petition stands dismissed. Consequently, the Connected Miscellaneous Petition is closed. No costs.

07.11.2025

Index : Yes / No

Internet : Yes / No

nr

To

The learned Additional District Munsif Court, Jayankondam.

S.SOUNTHAR, J.

nr



WEB COPY



CRP.No.5465 of 2025

CRP.No.5465 of 2025 and
CMP.No.27510 of 2025

07.11.2025