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C.R.P.No. 662 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.Pd.No.662 of 2024
and C.M.P.No.3312 of 2024

D.Jayakumar

... Petitioner

Vs

1. Rajalakshmi

2. The Assistant Engineer,
Town-II, TANGEDCO (TNEB),
Villupuram – 605 602

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 11.10.2023 passed in I.A.No.222 of 2023 in O.S.No 369 of 2010 on the file of the Additional District Munsif at Villupuram and grant leave for the petitioner to withdraw the suit O.S.No 369 of 2010 on the file of the Additional District Munsif at Villupuram with liberty to file fresh suit on the same cause action thereon.

For Petitioner : Mr.V.Rajendran

For Respondent-1 : Mr.L.Chandrakumar

For Respondent-2 : Mr.S.T.Raja
Standing Counsel



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ORDER

Challenging the dismissal of his application filed under Order XXIII Rule 1 and Section 151 of C.P.C to permit the petitioner to withdraw the Original Suit in O.S.No.369 of 2010 and file a fresh suit on the same cause of action, the plaintiff is before this Court.

2. Before the trial Court, the plaintiff had appeared as party-in person. In order to appreciate the impugned order, it is necessary to briefly set out the facts of the case.

3. The revision petitioner herein/plaintiff had filed O.S.No.369 of 2010 on the file of the Additional District Munsif, Villupuram as a party-in-person for permanent injunction restraining the respondents/defendants, their men, agents and servants from interfering with his peaceful possession and enjoyment of the suit property. It is his contention that the suit property belonged to the joint family of one V.P.Dayalan, his wife Manjula, his sons, Jayakumar(Plaintiff), Nandakumar, Vasanthkumar and his daughter, Geetha. The property in question was purchased in the name of Manjula, the plaintiff's mother as the Kartha of the family. The



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petitioner would submit that his mother has no source of income to purchase the property in her name on 23.09.2002.

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4. It is the further case of the petitioner that without his consent, the sale deed executed by the petitioner's mother in favour of the respondents is void abinitio. He would submit that he is in possession and enjoyment of the property and carrying on business in the name and style of "AEGATIA CARPENTARY WORKS". The property is given the electricity service connection No.480. Originally, the plaintiff was running an STD Booth business in the suit property.

5. The petitioner had issued a legal notice dated 10.08.2010 calling upon the 1st respondent to admit that the Sale Deed executed by her is null and void for which the 1st respondent had issued a reply notice dated 27.08.2010 to the petitioner containing false statements.

6. The petitioner would submit that the 1st respondent is a rich and affluent lady with considerable political influence. On 04.09.2010, the 1st respondent made an attempt to trespass into the suit property which was



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successfully prevented by the petitioner. Since the petitioner apprehends that he would continue in her attempt, he has come forward with the suit in question.

7. The petitioner would further submit that in total disobedience of the order passed by the Court, the electricity connection was disconnected on 27.11.2010. He was finding it extremely difficult to run the business on account of this.

8. The 1st respondent on entering appearance had filed a written statement denying the contentions made in the plaint regarding the title of the petitioner. She would submit that she purchased the property from the petitioner's mother, Manjula on 22.07.2010 for a valuable consideration of Rs.19,85,600/-. She would further submit that the suit property is not a joint family property but is the exclusive property of the said Manjula. Further, the petitioner, his father, brother and sister had entered into an oral partition on 07.10.1999 which was later confirmed by a Koor Chit family arrangement executed by the petitioner, his father, brother and sister on 04.03.2000. Therefore on 23.09.2002, when Manjula purchased



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the property, there was no joint family between the plaintiff, his father, brother and sister. She would deny the contention that the petitioner is in possession of the property. Her vendor had leased out a portion of the property to the third parties and the petitioner. On 21.09.2003, her vendor had also leased out the front portion of the suit property to the petitioner and one Saravanan for running PCO and STD booths which fact has been cleverly suppressed by him. On 15.04.2006, the petitioner has vacated the premises and the same has been leased out to one Afkhan Hussain. On 27.11.2003, the 1st respondent's father has leased out the other portion to one P.Chinnathambi and the lease was renewed on 01.01.2005. As per the terms of the lease agreement, one A.Ravi who is the partner of Chinnathambi was to run the business in the absence of Chinnathambi. The petitioner has attested this document. Thereafter, on 05.07.2007 one Nagappan had executed a Lease Deed in favour of the 1st respondent's vendor Manjula. Since the said Nagappan had suffered a Paralytic stroke, he retired from the business. The other partner Ravi was unable to run the business and therefore, he surrendered the possession to 1st respondent's vendor Manjula on 24.05.2010. These documents would clearly establish the continuous possession of the 1st respondent's vendor

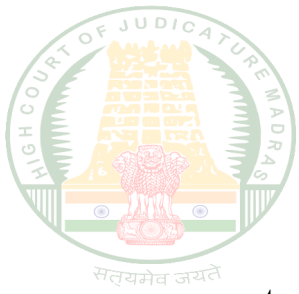


over the suit property.

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9. An additional written statement was filed by the 1st respondent *inter-alia* contending that the suit is bad for non-joinder of necessary parties. She would submit that since the petitioner was never in possession of the property, there is no question of his possession being disturbed.

10. Pending the suit, the petitioner / plaintiff has now come forward with I.A.No.222 of 2023 in O.S.No.369 of 2010 to withdraw the original suit in O.S.No.369 of 2010 with liberty to file a fresh suit on the very same cause of action. In the affidavit filed in support of his application, the petitioner would submit that in view of the illegal activities of the respondents, he was constrained to file several I.As one to amend the plaint, joinder of necessary parties, amendment to the prayers, etc. He would submit that in order to save time, he may be permitted to withdraw the suit with liberty to file a fresh suit on the same cause of action.

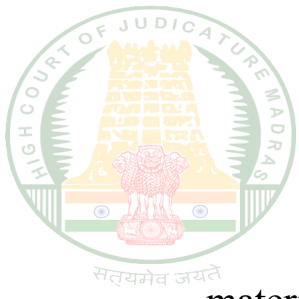


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11. The 1st respondent had filed a counter in the above said I.A contending that the claim of the petitioner that the property is a joint family property and that it was purchased in the name of the petitioner's mother is absolutely incorrect. It is incorrect to state that the petitioner's mother had only 5/16 share in the property. The petitioner has filed O.S.No.199 of 2012 for the very same relief and since steps were not taken to conduct the trial jointly, O.S.No.199 of 2012 was decreed, against which, an appeal has been preferred . This fact has also been suppressed in the present application.

12. The learned Additional District Munsif, Villupuram, on considering the arguments and the documents on record, held that there is nothing stated by the petitioner as to why he has taken 13 years to take out the above application and therefore, there was no necessity to file a new suit and at best, the petitioner could have taken out an application for amendment.



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13. Heard the learned counsels on both sides and perused the materials available on record.

14. The petitioner has filed a series of interlocutory applications, (i) to amend the plaint. (ii) to join necessary parties and (iii) to amend the prayers. A mere perusal of the same would indicate that the petitioner has been moving one application after another and after 13 years has now come forward to file an application to withdraw the suit O.S.No.369 of 2010 with liberty to file a fresh suit. The petitioner has consciously continued the suit seeking only the relief of injunction, despite the fact that the written statement was filed in the year 2011 and the additional written statement was filed in the year 2015. The petitioner has now come forward to file the applications invoking the provisions under Order XXIII Rule 1 and Section 151 of C.P.C. A mere perusal of the narration set out above makes it clearly evident that the petitioner after exhausting all his remedies has now come forward with the application by filings I.As and the application to withdraw the suit with liberty to file a fresh suit on the same cause of action. The learned trial Judge has rightly rejected the



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application and I see no reason to interfere with the same. Accordingly,
this Civil Revision Petition is dismissed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn

To,
The Additional District Munsif at Villupuram



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P.T.ASHA, J.,

srn

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