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CRP.No.5305 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.5305 of 2025 and
CMP.No.26717 of 2025

1. Suseela
2.G.Leela

... Petitioner

Vs.

Arivalagan (Died)

1. Selvarani
2. Palanisamy
3. Kandasamy
4. Prakash
5. Mekala

...Respondents

PRAYER : Civil Revision Petition filed Article 227 of Constitution of India,
praying, to set aside the order dated 23.07.2025 passed in IA No. 6 of 2024 in
OS No. 13 of 2020 in the file of District Munsif Court, Sendamangalam.

For Petitioner

: Mr.Samjayaraj Houston
for M/s. Sarvabhauman Associates



ORDER

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The Civil Revision Petition is filed challenging the order passed by the court below dismissing the application filed by the petitioners seeking to withdraw the suit regarding item 2 of the suit property with liberty to file a fresh suit.

2. The petitioners herein filed a suit for declaration of title and injunction in respect of 3 items of suit properties. According to the petitioners, the 1st plaintiff is the owner of the 1st item of the suit property and half of the 3rd item of the suit property. The 2nd plaintiff is the owner of the 2nd item of the property and half of the 3rd item of the suit property. Pending suit, there was trespass by the defendants over 8041 Sq.feet of land in the portion of the item 2 of the suit property. Therefore, the petitioners filed application seeking amendment of the plaint to include prayer for recovery of possession in respect of the trespassed portion. The said amendment application was dismissed by the trial court and aggrieved by the same, the petitioners preferred a revision in CRP.No.2378 of 2016 and the same was dismissed by this Court on the ground of limitation. Thereafter, the petitioners filed a fresh application before the trial court seeking to withdraw the suit in respect of encroached portion



alone with liberty to file a fresh suit. The said application was dismissed.

Aggrieved by the same, the revision was filed before this Court in CRP.No.4836 of 2023. The said civil revision petition was dismissed with liberty to the petitioners to file a fresh application under Order 23 Rule 1 of CPC seeking to withdraw the suit in respect of 2nd item of the suit property in its entirety. Based on the said liberty, the instant application has been filed by the petitioners seeking to withdraw the suit in respect of 2nd item of the suit property with liberty to file a fresh suit. The said application was also dismissed by the trial court on the ground that the petitioners have not pointed out any formal defect in the plaint. Aggrieved by the said order, the petitioners have come before this court.

3. The learned counsel for the petitioners submitted that the present application has been filed by the petitioners based on the liberty granted by this Court in earlier CRP and without appreciating the same in proper perspective, the trial court dismissed the application.

4. A perusal of the averments contained in the affidavit filed in support of the instant application would indicate that the petitioners pleaded that there was a trespass by the defendants pending suit in respect of portion of the 2nd



CRP.No.5305 of 2025

item of the suit property. If the petitioners seek to recover possession in respect of the encroached portion which according to them had taken place pending suit, it is a separate cause of action. Therefore, there is no question of granting liberty to the petitioners to file a fresh suit on the same cause of action. Therefore, the petition filed by the petitioners under Order 23 Rule 1 of CPC seeking liberty of the Court to file a fresh suit on the same cause of action is misconceived. It is also stated that the petitioners already instituted a separate suit in OS.No.312 of 2022 on the file of District Munsif Court, Namakal for declaration of title and recovery of possession of item 2 of the suit property. In such circumstances, I do not find any error in the impugned order passed by the court below when the alleged trespass is a subsequent cause of action. Hence, the civil revision petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

31.10.2025

Index : Yes / No
Internet : Yes / No
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CRP.No.5305 of 2022

To
The District Munsif Court, Sendamangalam.

S.SOUNTHAR, J.

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