



IN THE HIGH Court OF JUDICATURE AT MADRAS

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Order reserved on : 05.12.2025

Order pronounced on : 12.12.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJICRP.No.6070 of 2025

G.Mangayarkarasi

... Petitioner

Vs.

1.Elizabeth Amirthakannu
 2.Marie Joseph Divi
 3.Lagadeesh Gnanassamy Annoussmy
 4.The Director,
 Land and Survey Department,
 Puducherry, Kamaraj Salai,
 Sakthi Nagar, Saram, Puducherry.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair order dated 26.08.2025 passed in I.A.No.08 of 2024 in O.S.No.537 of 2023 on the file of the II Additional District Munsif Court, Puducherry and consequently to dismiss I.A.No.08 of 2024 in O.S.No.537 of 2023.

For Petitioner : Mr.D.Senthil Kumar

For Respondents : Mr.T.M.Naveen for RR1 to 3



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ORDER

The defendant in O.S.No.537 of 2023 is the revision petitioner. The revision petition has been filed, challenging the grant of leave to the plaintiff to institute a fresh suit on the same cause of action.

2.I have heard Mr.D.Senthil Kumar, learned counsel for the revision petitioner and Mr.T.M.Naveen, learned counsel for the contesting respondents.

3.The learned counsel for the petitioner, taking me through the order passed in the interlocutory application in I.A.No.131 of 2023 as well as the affidavit filed in support of I.A.No.08 of 2024, being the application filed under Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908, as well as the impugned order, would submit that the affidavit seeking leave to file a fresh suit on the same cause of action did not disclose any formal defect, warranting leave to be granted in the first place.

4.He would further submit that the trial Court has without giving a



finding that the defect was formal or that for other reasons, leave had to be given to the plaintiff, has erroneously allowed the application. The learned counsel would place reliance on the decision of the Division Bench of this Court in *Kavitha v. C Prabakar rep. By his Power of Attorney Dr.A.Chandrasekaran*, reported in (2012) 5 CTC 587.

5.Per contra, Mr.T.M.Naveen, learned counsel appearing for the respondents would submit that the plaintiff had given sufficient reasons, pointing out formal defects, entitling him to leave and the trial Court had rightly exercised discretion in favour of grant of leave. He would also place reliance on the decision of the Hon'ble Supreme Court in *V. Rajendran and Another v. Annaswamy Pandian (dead) through Lrs*, reported in (2017) 5 SCC 63. Relying on the said decision, Mr.T.M.Naveen would contend that the dispute in the present case would also constitute a formal defect, thereby entitling the plaintiff to seek permission to withdraw the suit, with liberty to file a fresh suit on the same cause of action. He would therefore pray for the revision being dismissed.



6.I have carefully considered the submissions advanced by the learned counsel on both sides. I have also gone through the order of the Principal District Munsif Court, Puducherry, granting leave to the respondents/plaintiffs to file a fresh suit on the same cause of action.

7.The suit has been instituted for the relief of a permanent injunction to restrain the defendant/revision petitioner from interfering with the plaintiffs' enjoyment of the suit property and for a mandatory injunction to remove the compound wall constructed on the southern side of the plaintiffs' property. Along with the suit the respondent also moved an interlocutory application in I.A.No.131 of 2023, and after contest, the said interlocutory application came to be dismissed, holding that the plaintiff is not entitled to the relief of interim injunction as prayed. Admittedly the said order is under appeal in C.M.A.No.9 of 2024 before Principal Sub-Judge, Puducherry.

8.Mr.T.M.Naveen, the learned counsel for respondents would submit that the injunction was refused only on account of complex triable issues arising in the suit and the relief sought for in the interim injunction application, as well as in the main suit being one and the same, the trial



Court thought it fit to dismiss the injunction application. He would therefore state that the dismissal was not on consideration of the facts put forth on either side.

9.No doubt, there is an observation made by the trial Court that the relief sought for in the interim application and the main suit being one and the same, the plaintiff was not entitled to any temporary relief. However, I find from the order passed in I.A.No.131 of 2023 that the trial Court has also found that no *prima facie* case has been made out for seeking an interim injunction and to effectively decide the application, a mini trial would have to be conducted. Ultimately, the trial Court found that the plaintiff is not entitled to the relief of an interim injunction and dismissed the application. Aggrieved by the same, admittedly the respondent/plaintiff has filed an appeal, which is pending in C.M.A.No.9 of 2024.

10.It is also seen that the revision petitioner has taken out an application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 and the same is also pending adjudication before the



trial Court. In such circumstances, it is to be seen whether the respondents war well within his rights to invoke Order XXIII of the Code of Civil Procedure, 1908 and seek permission of the Court to withdraw the suit, with liberty to file a fresh suit on the same cause of action.

11. Order XXIII Rule 1(3) of CPC, no doubt, enables the plaintiff to seek such a liberty however, such liberty cannot be granted on the mere asking. The plaintiff has to satisfy the Court that there is a formal defect, which would come in the way of the plaintiff, succeeding in the suit ultimately or even in the event of succeeding, not being able to put the decree to execution successfully.

12. The Honourable Supreme Court in *V. Rajendran's case*, cited supra, took note of the fact that subsequent to liberty being granted a fresh suit had also been filed and the same was pending, which the High Court did not take note of while disposing off the revision. It was also a case where the suit had been filed describing the suit property as being comprised in a particular survey number but however, after filing of the suit it came to the plaintiff's



knowledge that the survey number was different and based on the different survey number, mutation of records had taken place and alienations has also been made. In such circumstances, the Honourable Supreme Court taking note of the fact that because of the change in survey number and the subsequent alienation, confusion would prevail with regard to the identification of the suit property, restored the order of the trial court granting leave, setting aside the decision of the High Court, on facts.

13.The Honourable Supreme Court in *K.S.Bhoopathy v. Kokila*, reported in (2000) 5 SCC 548, has held that though liberty may lie with the plaintiff to withdraw the suit at any time, after institution of the suit on establishing a “formal defect” or on "sufficient grounds”, such right is not absolute and cannot be misused to permit or encourage abuse of process of court. The Honourable Supreme Court held that the Court must be satisfied about the existence of formal defect or such other sufficient grounds. Formal defect has been held to be a defect of form prescribed by the rules of procedure such as want of Notice under Section 80 Code of Civil Procedure,



1908, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, misjoinder of parties, failure to disclose the cause of action etc. The Honourable Supreme Court has held that a formal defect must be given a liberal meaning which connotes various kinds of defects, not affecting the merits of the plea raised by either of the parties.

14. Coming to the facts of the present case, the trial Court has granted leave finding that there is a formal defect. However, the trial Court has not assigned even a single reason as to what is the formal defect which entitles the plaintiff to leave under Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908. The trial Court has merely repeated the averments in the affidavit and stating that the plaintiff has alleged a formal defect, has proceeded to blindly accept the request and allowed the application.

15. It is the duty of the court to ascertain whether the request made by the plaintiff falls within the parameters of formal defect or such other

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sufficient grounds. In the present case, the only ground on which the plaintiff seeks liberty to withdraw the suit and file a fresh suit on the same cause of action is that the suit was initially framed with 10 items of properties and that the plaintiff has now come to know that insofar as the suit filed against the first defendant the reliefs sought by mentioning 10 items of suit properties was not necessary to adjudicate the issue. In my considered opinion this will not constitute a formal defect enabling the plaintiff to leave under Order XXIII Rule 1 of Code of Civil Procedure, 1908.

16. The Honourable Division Bench of this court in *Kavitha's case*, relying on the decision of the case of the Honourable Supreme Court in *Bakhtawar Singh and another vs. Sada Kaur and another*, reported in *AIR 1996 SC 3488*, held that the court has no jurisdiction to allow withdrawal with liberty to file a fresh suit, unless the condition of formal defect or sufficient grounds is made out and satisfied. A duty is cast on the Court to state reasons for holding that the request falls within the ambit of Order XXIII Rule 1(3)(a) or (b) of the Code of Civil Procedure, 1908. As already discussed there is absolutely no reason set out by the trial Court as to what is



the formal defect which entitles the respondent to liberty as prayed for.

17. At the risk of repetition, for grant of leave envisaged in Order XXIII Rule 1(3) of the Code of Civil Procedure, 1908 the court has to exercise its discretion judiciously and the relief cannot be granted in a routine manner. In fact even before the Honourable Division Bench, the Division Bench found that the order granting leave did not record any reasons or satisfaction about existence of “formal defect” or “sufficient grounds” to permit withdrawal with liberty and under such circumstances, the order granting leave was in fact, set aside.

18. Keeping the ratio laid down by the Honorable Supreme Court as well as the Honourable Division Bench of this court in mind and testing the present request of the respondent/plaintiff, I find that mere inclusion of several items of properties in order to seek relief against the first defendant does not qualify to be a “formal defect” contemplated under Order XXIII Rule 1(3) Code of Civil Procedure, 1908. The plaintiff can always amend the plaint and bring the plaint to conformity with his relief. Therefore, when



there is no formal defect which relates to a form or procedure, it does not entitle the plaintiff to grant of leave invoking the provisions of Order XXIII of CPC. Equally, the trial Court has also not recorded any reasons or its satisfaction which is mandatory before grant of leave. Therefore viewed from any angle, the order passed by the trial court is clearly unsustainable and liable to be set aside.

19. In fine, the Civil Revision Petition is allowed and the order dated 26.08.2025 in I.A.No.08 of 2024 in O.S.No.537 of 2023 on the file of the II Additional District Munsif Court, Puducherry, is set aside. However, the dismissal of the application for leave to institute a fresh suit on the same cause of action, shall not come in the way of the respondent/plaintiff seeking necessary amendments to the plaint, in a manner known to law. There shall be no order as to costs.

12.12.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
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To
The II Additional District Munsif Court, Puducherry.



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P.B. BALAJI,J.

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Pre-delivery order made in
CRP.No.6070 of 2025

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