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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2025

CORAM

THE HON'BLE MR. JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.1122 of 2025

and

C.M.P(MD)No.6046 of 2025

P.Packiam (Died)

- 1.Sukumaran
- 2.Pushpam
- 3.Edison
- 4.Vanitha

...Petitioners 1 to 4/Petitioners 1, 2, 4 & 5/
plaintiffs 2, 3, 5 & 6

Vs.

- 1.S.Mony
- 2.Kalaiselvi

...1st Respondent/Respondent/Defendant
....2nd Respondent/4th Petitioner/4th plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 29-01-2025 passed in I.A. No.3 of 2019 in O.S.No.12 of 2019 on the file of District Munsif Court cum Judicial Magistrate, Bhoothapandy.

For Petitioners : Mr.M.P.Senthil

For Respondents : Mr.N.Dilip Kumar

* * * * *



ORDER

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The plaintiffs in O.S.No.12 of 2019, on the file of the District Munsif cum Judicial Magistrate Court, Bhoothapandy, have filed the present revision petition challenging dismissal of their application under Order 23 Rule 1 of C.P.C. seeking permission of the Court to withdraw the suit with liberty to institute a fresh suit on the same cause of action.

2.A perusal of the plaint averments reveal that the suit has been filed for the relief of permanent injunction not to disturb possession with regard to 2 cents of land in New S.Nos.376/2B,3, 4 and 5. The defendant had filed a written statement contending that the suit property belongs to Adi-Dravidar Welfare Department and an assignment order was issued in favour of the defendant with regard to Resurvey No.176/1. It was further contended that Door No.14/39A is not located within new Survey Nos.376/2B, 3 and 4.

3.The defendant had filed I.A.No.2 of 2019, seeking to incorporate another in S.No.176/1, apart from the existing S.Nos.376/2B,3,4 and 5. This amendment application was not pressed.

4.The plaintiffs, thereafter, has filed I.A.No.3 of 2019, under Order 23 Rule 1(3) of C.P.C. seeking permission of the Court that to withdraw the suit

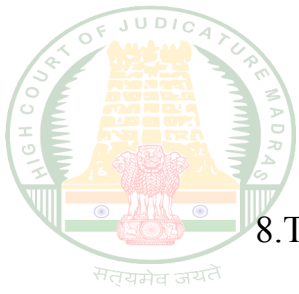


with liberty to file a fresh suit on the same subject matter. This application came to be dismissed by the trial Court. Challenging the same, the present revision petition has been filed.

5. According to the learned Counsel appearing for the revision petitioner, the trial Court ought to have granted liberty to file a fresh suit on the same cause of action. Though the suit was initially filed in S.No.370/2B,3,4 and 5, now the plaintiffs would like to prosecute the suit only against S.No.176/1, Therefore, this Court ought to have granted liberty.

6. Per contra, the learned Counsel for the respondents has pointed out that a perusal of the amendment application which was not pressed would clearly reveal that the plaintiff is not substituting S.Nos.376/2B, 3 and 4 with Survey No.176/1A. On the other hand, the plaintiffs are attempting to introduce a new Survey Number namely S.No.176/1 along with Survey Nos.376/2B, 3 and 4. If the plaintiffs intend to file a fresh suit only for Survey No.176/1, they need not seek liberty of the Court.

7. I have considered the submissions made on either side and perused the materials available on record.



8.The present suit for permanent injunction has been filed seeking relief in S.Nos.376/2B, 3, 4 and 5. According to the learned Counsel appearing for the plaintiffs, they seek liberty of the Court to file a fresh suit only with regard to a different Survey number namely S.No.176/1. In such circumstances seeking liberty is unnecessary.

9.In view of the above said deliberations, the trial Court has rightly rejected the request of the plaintiffs seeking liberty to file a fresh suit.

10.This Court does not find any reasons to interfere in the order passed by the trial Court. Therefore, there are no merits in the revision petition. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

17.04.2025

Internet:Yes/No
Index:Yes/No
RJR



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To

The learned District Munsif cum Judicial Magistrate,
Bhoothapandy.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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R.VIJAYAKUMAR, J.

RJR

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