



C.R.P(MD)No.2646 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.2646 of 2024

Inbaselvam

... Petitioner / 1st Defendant

Vs

1.Meenakshiammal

2.Jeyalakshmi

3.Muthuraj

4.Nageswari

5.Suresh

6.Selvi

... Respondents 2 to 6 / Plaintiffs 1 to 6

7.The Commissioner,
Tirunelveli City Corporation Office,
S.N.High Road,
Tirunelveli City.

... 7th Respondent / 2nd Defendant

Prayer : This Civil Revision Petition is filed under Section 115 of Civil Procedure Code to set aside the judgment and decree passed in O.S.No. 11 of 2015 on the file of the learned Principal District Munsif,

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Tirunelveli, dated 04.01.2024 in respect of granting liberty to the plaintiff to file a fresh suit alone and allow the Civil Revision Petition.

For Petitioner : Mr.S.Kumar

For R2 to R6 : Mr.Y.Prakash

ORDER

This Civil Revision Petition is filed to set aside the order and ex order passed in O.S.No.11 of 2015 on the file of the learned Principal District Munsif, Tirunelveli, dated 04.01.2024 in respect of granting liberty to the plaintiff to file a fresh suit alone and allow the Civil Revision Petition.

2. The suit in O.S.No.11 of 2015 was filed by the respondent herein against the revision petitioner and the Tirunelveli Corporation, seeking the relief of declaration that he is entitled for life interest in the property and for a consequential relief. On both sides, evidences were let in on the basis of the issue framed. On the side of the plaintiff, two witnesses were examined, seven documents were marked. On the side of the defendants one witness was examined, five documents were marked.



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At that stage, the plaintiff made an endorsement in the plaint to not press the suit. The trial Court dismissed the suit as not pressed, however liberty is granted to the plaintiff to file a fresh suit if necessity arises in future. Against which this Civil Revision Petition is preferred.

3. The grievance of the revision petitioner is that at the fag end of the trial process, all of a sudden, the respondents 1 to 6 herein, made the endorsement. Eventhough the revision petitioner cannot make any objection for the plaintiffs to withdraw the suit, but without hearing him, liberty was granted to the plaintiffs to file a fresh suit. So this portion of the order passed by the trial Court is *per se* illegal.

4. On what basis and on what ground, liberty is granted is neither mentioned by the respondent 1 to 6 herein, in the endorsement nor by the trial Court.

5. In this connection, under Order 23 Rule 1, 3 and 4 of CPC are extracted hereunder:



WEB COPY " ORDER XXIII - Withdrawal and Adjustment of Suits

1. Withdrawal of suit or abandonment of part of claim - (1) *At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:*

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule(1) shall be accompanied by an affidavit of the next friend and also, if the minor or such person is represented by a pleader by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied, --

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff --

(a) abandons any suit or part of claim under sub-rule(1), or



(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule(3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule(1), or to withdraw, under sub-rule(3), any suit or part of a claim, without the consent of the other plaintiffs.

2. ----

3. *Compromise of suit.* - *Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:*

4. *Proceedings in execution of decrees not affected.* - *Nothing in this Order shall apply to any proceedings in execution of a decree or order. "*



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6. In view of the above said provisions, I am of the considered view that the order passed by the trial Court is per se illegal. The matter is remitted back to the trial Court, granting liberty to the respondents 1 to 6 herein / plaintiffs, to file proper petition in this regard and if the petition is filed by the respondent, trial Court may consider the same on its own merits after affording opportunity to the revision petitioner to oppose.

7. With this above said liberty and direction, this Civil Revision Petition is allowed. The judgment and decree passed in O.S.No.11 of 2015 on the file of the learned Principal District Munsif, Tirunelveli, dated 04.01.2024, is set aside and the matter is remitted back to the file of learned Principal District Munsif, Tirunelveli, for fresh consideration. No costs.

22.01.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

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To

- 1.The Principal District Munsif, Tirunelveli.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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ORDER
IN
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