

(2022) 11 MAN CK 0020

In the Manipur High Court

Case No : Civil Revision Petition No. 1 Of 2015, Miscellaneous Case (Civil Revision Petition) No. 4 Of 2019

Hemam Ongbi Ibeni Devi & Ors

APPELLANT

Vs

Philem Noren Singh & Ors

RESPONDENT

Date of Decision : 11-11-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 115

Code Of Civil Procedure, 1908 — Order 23 Rule 1 (3)

Citation : (2022) 11 MAN CK 0020

Hon'ble Judges : Sanjay Kumar, CJ

Bench : Single Bench

Advocate : H. Ishwarlal, S. Sachindra, N. Rameshwor

Final Decision : Allowed/ Disposed Of

Judgement

Sanjay Kumar, CJ

This revision petition, filed under Section 115 CPC, arises out of the order dated 13.10.2014, passed by the learned Civil Judge (Senior Division), Bishnupur, in Judl. Misc. Case No. 71 of 2014 (Ref: O.S. No. 39 of 2010/10 of 2010/35 of 2013). The said miscellaneous case was filed by the plaintiffs in the suit under Order 23 Rule 1 (3) CPC praying for leave to withdraw the suit with liberty to file a fresh representative suit. However, by its order dated 13.10.2014, the Trial Court dismissed their application. Hence, this revision.

Heard Mr. H. Ishwarlal, learned senior counsel, appearing for the petitioners/ plaintiffs; and Mr. N. Rameshwor, learned counsel, representing Mr. S. Sachindra, learned counsel for the respondents/defendants.

O.S. No. 39 of 2010 was filed for a declaration that the plaintiffs had perfected their title over the suit land by adverse possession along with other declarations in relation to proceedings of the authorities and for the consequential relief of a perpetual/permanent injunction. By way of the subject miscellaneous case, the

plaintiffs stated that they ought to have filed the suit in a representative capacity and, as such, there was a formal defect in the suit, as framed and filed. The defendants in the suit contested the miscellaneous case, asserting that the plaintiffs had not shown any formal defect in the suit. The Trial Court noted the legal position that the Court, if it was satisfied that the suit may fail by reason of some formal defect or where there are sufficient grounds to allow the institution of fresh suit, may grant permission to the plaintiff(s) to withdraw a suit with liberty to file a fresh suit. However, the Trial Court ultimately accepted the plea of the defendants that there was no formal defect in the suit and held that sufficient grounds were not made out to permit its withdrawal with liberty. The miscellaneous case was accordingly dismissed.

Mr. H. Ishwarlal, learned senior counsel, would contend that the Trial Court was incorrect in adopting a hidebound approach and ought to have permitted withdrawal of the suit with leave to file a fresh suit as the same did not cause any prejudice to the other side.

Mr. N. Rameshwor, learned counsel, would now state that his clients are also not interested in opposing the plea of the petitioners /plaintiffs to withdraw the existing suit with liberty to file a fresh one.

As no prejudice is shown to have been caused to the defendants in the suit by the withdrawal thereof at this stage with liberty to file a fresh suit, this Court is inclined to take a lenient view of the matter. However, as the defendants in the suit have been put to the inconvenience of contesting the existing suit till date, the petitioners/plaintiffs would have to be put on terms for granting them liberty as prayed for.

CRP No. 1 of 2015 is accordingly allowed, setting aside the order dated 13.10.2014 passed by the learned Civil Judge (Senior Division), Bishnupur, in Judl. Misc. Case No. 71 of 2014. In consequence OS No. 39 of 2010/10 of 2010/35 of 2013 is permitted to be withdrawn with liberty to file a fresh representative suit in relation to the same cause of action, subject to the payment of costs of ₹ . 500/- (Rupees Five Hundred) to the respondents/defendants.

In the light of this final order, no further order needs to be passed in MC(CRP) No. 4 of 2019 and the same is accordingly closed.

No order as to costs.