
(1950) 11 MAD CK 0038

In the Madras High Court

Case No : Civil Revision Petition No. 126 of 1947

Thadi Konda Veeraswami

APPELLANT

Vs

Thullum Peda Lakshmudu and Others

RESPONDENT

Date of Decision : 24-11-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 1(2)

Citation : AIR 1951 Mad 715 : (1951) 1 MLJ 194

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Advocate : K. Kotayya and N. Rammohan Rao, for the Appellant; D. Muni Kanniah, S. Vaidhyanathan and K. Kanniah, for the Respondent

Final Decision : Dismissed

Judgement

Panchapakesa Ayyar, J.—The question involved in this civil revision petn. is very simple, namely, whether where a pltf. files a petn. to withdraw the suit with permission to file a fresh suit regarding the same subject-matter under Order 23, Rule 1 (2), C. P. C., the Ct. has got the right to dismiss the petn. telling him that he might withdraw the suit if ho wants but that it will not give him permission to file a fresh suit regarding the same subject-matter. The lower Ct. is said to have dismissed the suit (o. S. No. 95 of 1944) later on, but we are not concerned in this civil revision petn. with this alleged later order of dismissal, which is not filed here, on a subsequent unconditional withdrawal or non-prosecution of the suit. I have absolutely no doubt that the lower Ct. had the right & jurisdiction to pass an order it did. The law regarding the withdrawal of a suit under Order 23, Rule I, C. P. C. ia well settled. Order 23, Rule I (1) gives the pltf. the liberty to withdraw from a suit unconditionally on finding it unsustainable, or for any other reason. No leave or order is necessary for this. See Lakshmanan v. Muthayya, 40 M. L. J. 126 & Mahant Biharidasji v. Parushotham, 32 Bom. 345 : 10 Bom. L. R. 293. The pltf. need not assign any reason for such an unconditional withdrawal. Order 23, Rule I (2), C. P. C. contemplates a withdrawal from the suit with liberty to bring a

fresh suit. Here the pltf. must ask for leave & must make out a case within Clause (a) or (b), the Ct. has no jurisdiction to allow such withdrawal with liberty unless the suit must fail by reason of some formal defect, under Clause (a) or unless there are "other sufficient grounds" for allowing the pltf. to institute a fresh suit regarding the same subject-matter under Clause (b). See *Raj Kumar Mahton Vs. Ram Khelawan Singh*, An appln. to withdraw a suit with liberty to file a fresh suit regarding the same subject-matter must be either allowed or refused in toto. If liberty is refused, the suit should not be dismissed at once but retained for trial in the usual course. See *Marudachala Nadar Vs. Chinna Muthu Nadar and Another*, . The Ct. cannot divide the petn. into two, & accept the withdrawal & refuse the liberty in the same order. It is bound to give the facts & reason when giving the liberty to file a fresh suit regarding the same subject-matter. See *Maharaja Sir Rameshwar Singh Bahadur Vs. Subu Lal Jha*, , *Sukumar v. Chairman, Dist. Board of Gaya*, A. I. R. 1935 Pat. 251 : 155 I. C. 210 & *Reaz Uddin and Others Vs. Mir Sajid Husain and Another*, , *Abdul v. Mohammed A. I. R. 1947 Mad. 59 : 229 I. C. 267* & *Subhashini v. Ashutosh*, 39 C. L. J. 731 : A. I. R. 1924 Cal. 751. "Other sufficient grounds" in Clause (b) has been interpreted to mean "grounds ejusdem generis to those mentioned in Clause (a)" or at least analogous to them. See *Ramrao Bhagwantrao Inamdar Vs. Babu Appanna Samage*, In the present case, the petnr. the first pltf. had asked for permission to withdraw his suit, O. S. No. 95 of 1944, for possession of properties as the nearest reversioner to one Seshayya, whose widow Alivelu died on 30-11-1941, against the alleged adopted son of Seshayya, the first deft. & others. The grounds alleged by him in this I. A. No. 1374 of 1945, for withdrawal with liberty, were that his vakil, Mr. P. Chalapati Rao, had taken a portion of his (petnr.'s) properties in advance in the name of his relative the second pltf. for conducting the suit, & had then filed a genealogical table which would not support the petnr.'s case & had also refused to amend the plaint & the genealogical table suitably. The first deft. had attacked the genealogical table as false & mythical, & had contested the petnr.'s claim to be the nearest reversioner, besides asserting the truth & validity of his own adoption. The suit was filed in 1944. This I. A. was filed on 9-11-1945 after giving up his vakil & revoking his vakalat. On 9-11-1945 itself the lower Ct. passed the order as below :

"The petnr. may withdraw the suit if he wants. This is not a case for which permission can be given to withdraw the suit with liberty to being a fresh suit, Petn. is dismissed."

This is the order covered by this revision petn. The later order dismissing the suit has not been filed in this civil revision petn. So the reason for dismissing the suit cannot be definitely ascertained. Nor are we concerned with its correctness in this civil revision petn.

2. I do not see any merits in this civil revision petn. Insufficient evidence, or a false genealogical table, or even the fraud of pltf.'s vakil, will not come under Clause (a) or (b) of Order 23, Rule 1 (2), C. P. C., being neither a formal defect,

nor falling under "other sufficient grounds." See Bhikaji Raghunath Varerkar and Others Vs. Anant Laxman Khandalekar, & Ramrao Bhagwantrao Inamdar Vs. Babu Appanna Samage, So, the lower Ct. was right in refusing permission to file a fresh suit & dismissing the interlocutory appln. in toto remarking that the petnr. might withdraw his suit unconditionally if ho wanted. It was an order perfectly within its jurisdiction, & was not tainted by any illegality, nor was there any failure of justice. No doubt, it did not give reasons for. refusing permission to file a fresh Suit, as Mr. Kottayya, for the petnr., complained. But there is nothing in law forcing a Ct. to give reasons when refusing permission though it must give reasons when granting permission. It seems to me that, as in a discharge order u/s 253 (1), Cr. P. C. no reasons are required to be given by law for refusing permission to file a fresh suit, though it is desirable to give reasons in order to let the party & the superior Cts. know the reasons. Here the thing was so obvious (a facility could not be given to invent a new genealogical table), that the lower Ct. perhaps thought that no reasons need be given. The P. C. ruling in AIR 1949 156 (Privy Council) will make an interference in revision in the circumstances of thia case impossible. Mr. Kotayya relied on the ruling in Gurprit Singh v. Punjab Government, A. I. R.1946 Lah. 429 : 227 I. C. 401. The facts were different there. On the facts, it was held there that the lower Ct."s order refusing permission to file a fresh suit was wrong. Here, that cannot be said at all In that case, it was found as a matter of fact that there was a failure on the part of the lower Ct. to exercise jurisdiction vested in it, That is not so here. Bach case has, of course, to be decided on the facts of that case. The general observations in Gurprit Singh v. Punjab Govt., AIR 1946 Lah. 429 : 227 I. C. 401 cannot prevail against the wording of Section 115, C. P. C. or the P. C. ruling in Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras, I. L. R. (1950) Mad. 1 : A. I. R. 1949 Mad. 156.

3. This revision petn., therefore, deserves to be & is hereby dismissed but in the peculiar circumstances, without costs as it is the lower Ct."s failure to give reason which has led to the filing of this civil revision petn. Of course, I give no finding at all about the legality or otherwise of the subsequent dismissal of the suit O. S. No. 95 of 1944 itself, as that order of dismissal has not been filed in this case & is not the subject-matter of this civil revision petn.