

(2012) 01 MAD CK 0230

In the Madras High Court

Case No : C.R.P. (NPD) No. 3532 of 2011 and M.P. No's. 1 and 2 of 2011

V. Murthy and Others

APPELLANT

Vs

Thiruthani Arulmigu Murugan Educational Trust

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

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

Citation : (2012) 01 MAD CK 0230

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : A. Irudayam, for the Appellant; M. Balasubramanian, for the Respondent

Final Decision : Allowed

Judgement

R.S. Ramanathan, J.—Defendants in O.S. No. 83 of 2010 on the file of the Principal District Court, Thiruvallur are the revision petitioners.

The above suit was filed by the respondent for declaration and for permanent injunction. The respondent also filed I.A. No. 232 of 2010 in the suit

for temporary injunction and temporary injunction was granted on 21.5.2010. The revision petitioners filed written statement raising various

objections and also filed I.A. No. 295 of 2010 to vacate the order of injunction. At that time, the respondent filed a memo in I.A. No. 415 of

2010 purported to be under Order XXIII Rule 1(3) of the CPC seeking permission to withdraw the suit with liberty to file a fresh suit on the same

cause of action and the same was ordered and as against the same, this revision is filed.

2. Learned counsel for the revision petitioners submitted that as per the provisions of Order XXIII Rule 1(3) of the Code of Civil Procedure,

where the court is satisfied that a suit must fail by reason of some formal defect or 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, the court can grant liberty to the plaintiff to withdraw the suit with liberty to file fresh suit

on the same cause of action and in this case, it was not stated that the suit must fail by reason of some formal defect and no sufficient grounds were

made out for withdrawing the suit with liberty to file a fresh suit and already proceedings were initiated by Saravanamuthu, the respondent against

the revision petitioners and others and finally in S.A. No. 63 of 2010, this court dismissed the appeal filed by the said Saravanamuthu confirming

the dismissal of the suit in O.S. No. 5851 of 2004 on the file of the XI Assistant Judge, City Civil Court, Chennai and only with the intention of

dragging on the proceedings and to cause prejudice to the revision petitioners, the application was filed and in the absence of sufficient cause, the

court ought not have allowed the application. The learned counsel for the revision petitioners relied upon the judgment reported in K.S. Bhoopathy

and Others Vs. Kokila and Others, and Velusamy v. Chenniappan (2010 (5) CTC 330) in support of his contention.

3. Learned counsel for the respondent submitted that the respondent, being the plaintiff, is entitled to withdraw the suit at any point of time and as

they wanted to file fresh suit on the same cause of action, they filed the application seeking the leave of the court to grant permission and that was

rightly allowed by the court below and therefore, the order of the court below need not be interfered with in the revision. He also relied upon the

judgment in Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co.,).

4. As stated supra, under Order XXIII Rule 1 of the Code of Civil Procedure, a right is given to the plaintiff to withdraw the suit or abandon the

suit or part of his claim at any time after institution of the suit and in such circumstances, the court cannot stand in the way of the plaintiff in

withdrawing the suit or abandon his claim. This has been rightly held in the judgment of the Honourable Supreme Court in Hulas Rai Baij Nath Vs.

Firm K.B. Bass and Co., . But, when the plaintiff wants to withdraw the suit with liberty to file a fresh suit, then as per the provisions of Order

XXIII Rule 1(3) of the Code of Civil Procedure, such permission can be granted only when the court is satisfied that the suit must fail by reason of

some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of the suit.

5. In this case, it is not pleaded that the suit may fail by reason of some formal defect and no allegation was made to make out sufficient grounds

for allowing the plaintiff to withdraw the suit with liberty to file fresh suit on the same cause of action. It is seen from the affidavit filed in support of

the petition that no reason has been stated for withdrawing the suit and it was only stated that the defendants have approached the High Court in

C.M.A. No. 1944 of 2010 and also approached the High Court by initiating contempt proceedings and therefore, the suit has to be withdrawn. As

held by the Honourable Supreme Court in the judgment reported in K.S. Bhoopathy and Others Vs. Kokila and Others, (cited supra), the right of

the plaintiff to seek liberty to file a fresh suit after withdrawing the suit is not a vital right and he has to satisfy the court that the suit may fail due to

some formal defect or there are sufficient grounds for instituting a fresh suit in respect of the same cause of action. Therefore, without satisfying the

two conditions as stated under Order XXIII Rule 1(3) of the Code of Civil Procedure, it is not open to the plaintiff to withdraw the suit with liberty

to file a fresh suit and that was rightly considered by this court in the judgment reported in 2010 (5) CTC 330 (cited supra) and Duraikannu,

Meenakshi Ammal, Sellammal and Seeniammal Vs. Malayammal, . The court below, without appreciating the law laid down by the Supreme

Court and our High Court, mechanically allowed the application as if the plaintiff has got every right to withdraw the suit at any point of time and he

is entitled to seek liberty to file a fresh suit. Hence, the order of the court below is liable to be set aside and is set aside. The civil revision petition is

allowed. No costs. The connected miscellaneous petitions are closed.