

KAMS010015992023



**IN THE COURT OF THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE AT MYSURU**

Dated this the 21st day of February, 2024

PRESENT

Smt. Prabhavathi M. Hiremath, B.A., LL.B.(Spl.),
Principal District and Sessions Judge,
Mysuru.

Misc/47/2023

Petitioners:

1. Goddess Maramma, a.k.a. Goddess Vidhinaagaradhamma, Municipal Corporation No.4013, L-5, situated at 6th Cross, Gandhinagara, Narasimharaja Mohalla, Mysuru – 570 007, represented by the Archaka of Deity Shivalingaiah S/o Late Kariyappa, aged about 74 years, R/at No.3907, 5th Cross, Gandhi Nagara, Mysuru – 570 007.
2. Shivalingaiah S/o Late Kariyappa, Aged about 74 years, R/at No.3907, 5th Cross, Gandhi Nagara, Mysuru – 570 007.
3. Ram Singh S/o Late Kariyappa, Aged about 66 years, R/at No.3907, 5th Cross, Gandhi Nagara, Mysuru – 570 007.

4. Kum Shivamma D/o Late Kariyappa, Aged about 64 years, R/at No.143, AJ Block, Revenue Layout, Narasimharaja Mohalla, Mysuru - 570 007.
5. Somasundar S/o Late K.Ningappa, Aged about 49 years, R/at Door No.1634, 2nd Cross, Raghavendra Nagara Extension, Nazarbad Mohalla, Mysuru - 570 019.
6. Ravi Kumara N. S/o Late K.Ningappa, aged about 39 years, R/at Door No.1634, 2nd Cross, Raghavendra Nagara Extension, Nazarbad Mohalla, Mysuru - 570 019.
7. Mahesh Kumar S/o Late Madaiah, Aged about 50 years, R/at No.62, 2nd Cross Road, LIG, KHB Colony, Nanjangud.

(**By Sri. Mahadeva Deshak, Advocate**)

Vs.

Respondent:

Shri Vidhinagaradamma Trust(R)
Represented by its Trustees:

1. Srikanta Murthy P. S/o Late Puttaraju, aged about 67 years, R/at No.4322, 7th Cross, 4th Main, Gandhinagara, Mysuru - 570 007.
2. Shiva Kumara C. S/o Late Chinnappa, aged about 47 years, R/at No.4322, 7th Cross, 4th Main, Gandhinagara, Mysuru - 570 007.

3. Mahesh P. S/o Puttaswamy, aged about 50 years, R/at No.4218/4 BL, 12/B, 6th Cross, 2nd Main, Gandhinagara, Mysuru – 570 007.
4. Ganesha, aged about 60 years, R/at No.4185, First Main, 8th Cross, Gandhinagara, Mysuru – 570 007.
5. Basava, aged about 47 years, Taxi Driver, R/at No.3495, First Main, 8th Cross, Gandhinagara, Mysuru – 570 007.
6. Prakasha, Auto Driver, aged about 43 years, R/at No.3995, First Floor, 3rd Cross, Annamma Temple Road, Gandhinagara, Mysuru – 570 007.
7. Manchappa S/o Late Siddaiah, aged about 70 years, R/at No.73/2, 7th Cross, A.J. Block, N.R. Mohalla, Mysuru – 570 007.
8. Chikkalingaiah S/o Late Lingaiah, aged about 65 years, R/at No.159, 4th Main Road, Subash Nagar, Mysuru – 570 007.
9. Kumaraswamy S/o Late Papanna, aged about 60 years, R/at No.4216/2, 6th Cross, Gandhinagara, Mysuru – 570 007.
- 10.. Bhuvaneshwara S/o Swamy, aged about 51 years, R/at No.4216, 6th Cross, Gandhinagara, Mysuru – 570 007.
11. M.Shankar S/o Maraiah, aged about 48 years, R/at No.4307/1, First Cross, Gandhinagara, Mysuru – 570 007.

12. D.Dharmu S/o Late Devaraj, aged about 49 years, R/at No.4263, 4th Cross, Gandhinagara, Mysuru – 570 007.
13. Puttaraju S/o Late Siddaiah, aged about 55 years, R/at No.4186, 8th Cross, Gandhinagara, Mysuru – 570 007.
14. N.Chandru S/o Late Nanjundaiah, Aged about 46 years, R/at No.4253, 4th Cross, Gandhinagara, Mysuru – 570 007.
15. Suresh S/o Manchaiah, aged about 55 years, R/at No.4040, 9th Cross, Gandhinagara, Mysuru – 570 007.
16. S.Naveena S/o Shivanna, aged about 43 years, R/at No.4186, 8th Cross, Gandhinagara, Mysuru – 570 007.
17. Bhagyamma W/o Late Shivanna, Aged about 62 years, R/at No.3907, 5th Cross, Gandhinagara, Mysuru – 570 007.
- 18., Kamalamma W/o Late Eshwar, aged about 70 years, R/at No.4265, 4th Cross, Gandhinagara, Mysuru – 570 007.
19. Nirmala W/o Mahadeva Swamy, Aged about 43 years, R/at No.4216, 6th Cross, 2nd Main, Gandhinagara, Mysuru – 570 007.
20. Pankaja W/o Papanna, aged about

52 years, R/at No.4215/2, 6th Cross,
Gandhinagara, Mysuru – 570 007.

21. Suvarna W/o Mahadeva Swamy,
Aged about 42 years, R/at No.3875,
3rd Cross, Gandhinagara, Mysuru –
570 007.
22. Venkataraju S/o Late Srikantaiah,
Aged about 53 years, R/at
No.4032/1A, 2nd Cross,
Gandhinagara, Mysuru – 570 007.
23. Nanjundaswamy S/o Late Nanjappa,
Aged about 65 years, R/at Door
No.4321, 4th Main, 7th Cross,
Gandhinagara, Mysuru – 570 007.
24. Nagendra S/o Late Nanjappa, aged
about 64 years, R/at No.4321, 4th
Main, 7th Cross, Gandhinagara,
Mysuru – 570 007.

(**R.1 to 6, 8 to 10, 12, 14 to 16 & 24 by
Sri. H.V.Sreenath, Advocate**
R.13, 19, 21 & 23 – Exparte
R.7, 11 & 22 – Since dead, petition dismissed
R.17 – In Person
R.18 & 20 by Smt. Swathi S, Advocate)

IN I.A. No.4/2024

Applicant:

Ravi Kumar

.... Petitioner No.6

Vs.

Opponents:

Shri. Vidhinagaradamma Trust,
Represented by its Trustees &
Others

.... Respondents

ORDERS ON I.A. No.4

This is an application filed by petitioner No.6 under Order 23 Rule 1(3)(a) of C.P.C., seeking permission to withdraw the petition together with suit, with liberty to institute suit afresh in respect of the subject matter of the present suit.

2. In support of the application, one Ravikumar who is 6th petitioner, has filed affidavit stating that, petition was filed under Section 92 of C.P.C., under misconception of fact that subject matter as it related to the subject matter of the suit claimed by the respondent Trustees. Respondents have claimed their rights over the temple in question. The relief sought for by petitioners do not fall under the ambit of Section 92 of C.P.C. with respect to the relief sought in the suit. Therefore, there is a formal defect in the suit. Hence, proceeding with the matter in the Miscellaneous Petition or in the Suit results in writ large on the face of record. Therefore, it is futile exercise. The formal defect cannot be cured by amending the pleadings. Therefore, sought permission to withdraw the petition and suit, with liberty to file fresh suit on same subject matter.

3. For that, the learned Advocate for respondents filed objections stating that, application is not maintainable, as provisions under Order 23 Rule 1(3)(a) of C.P.C. is not applicable to the present case. The petition is filed under Section 92 of C.P.C. in a representative character. The respondents have filed their objections as present petition is hit by principles of res-

judicata. With reference to same property, seeking same relief, some group of people under the leadership of one Maraiah, had filed declaratory suit in O.S.No.1427/2010 on the file of IV Addl. Civil Judge and JMFC, Mysuru in a representative manner against the respondents. The said suit came to be dismissed and Court has observed that, through registered Trust Deed, Vidhinagaradamma Temple is administering both Temple and its Property by the respondents and that observation is a right in rem applicable to the world at large.

3.1 It is further contended that, another group of people have filed suit in O.S.No.62/2016 against the 1st respondent Trust. On contest, same was dismissed on the ground of res-judicata. Now, another group of locality, under the leadership of Shivalingaiah and his family members, filed the present petition seeking permission to file the suit for same relief as claimed in O.S.No.1427/2010 and O.S.No.62/2016. There is no formal defect involved in the petition. There is no sufficient ground for allowing the application and prayed to reject the application.

4. Heard both sides.

5. The points that arise for my consideration are as follows:

1. Whether it is necessary to allow the petitioners to withdraw the petition and suit, with liberty to file fresh suit on the same cause of action ?

2. What order ?

6. For the reasons stated in the subsequent Paras, I answer the above points as follows:

Point No.1 :: In the **negative**,

Point No.2 :: As per final order, for the following:

REASONS

7. **Point No.1:**

Under Order 23 Rule 1(3)(a) of C.P.C., when the Court is satisfied that a suit must fail by reason of some formal defect, then, Court 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.

8. From going through Order 23 Rule 1(3)(a) of C.P.C., it is clear that, this Rule refers to withdrawal of suit or abandonment of part of claim. In this case, the petitioners want to withdraw the petition under Section 92 of C.P.C. as well as suit with liberty to file fresh suit.

9. The grounds made out by the petitioners for withdrawal of the suit and present petition are that, Section 92 of C.P.C. is not applicable and there is a formal defect.

10. On the interim application-I.A.No.1 filed by the present petitioners under Order 94(c) and 94(e) of C.P.C., the orders were passed by this Court and case was posted for hearing on

petition under Section 92 of C.P.C., by keeping I.A.No.1 in abeyance. At the time of passing that order dated 12.12.2023, this Court in Para No.15 observed that, "***From the pleadings in the petition under Section 92 of C.P.C. and the annexed plaint, it is clear that, the plaintiffs are claiming their rights of inheritance to manage the temple as it is a family temple. Therefore, before considering the merits of I.A.No.1, the consideration of main petition under Section 92 of C.P.C. is necessary.***"

11. The respondents in the objections to the petition under Section 92 of C.P.C., have taken specific contention that, the principles of res-judicata is applicable to the present case. The earlier two suits for the same relief have already been dismissed by the Competent Court.

12. It is the specific case of the petitioners that, wrong petition is filed under Section 92 of C.P.C. and there is a formal defect.

13. In view of the specific contention taken by the respondents about the maintainability of the petition and applicability of principles of res-judicata, if at the time of giving permission to withdraw the present petition and annexed suit liberty is given to file fresh suit, it will affect the specific defence taken by the respondents in objections to the petition.

14. Now, the question is, whether I.A.No.4 can be allowed in part by permitting withdrawal of the petition and the annexed suit without granting leave of the Court for filing fresh suit, is to be seen.

15. The Hon'ble **Madras High Court** has considered this point in the decision in between ***Rajasundari Vs. Gowri*** dated **December 9th 2005**. In Para No.12 of the said Judgment, their Lordships observed that:

"An Application to withdraw the Suit with liberty to file a fresh suit must either be allowed or refused in toto. It is not open to the Court to grant a prayer for withdrawal and refuse the leave. If liberty is refused, the Suit should not be dismissed, but must be retained in the file for Trial/continuation of Trial. If an application is made for withdrawal of the Suit with liberty to file a fresh suit, it is not open to the Court to grant only permission for withdrawal, without liberty to file a fresh suit. If the Court simply allows withdrawal but refuses liberty, the Court would be acting without jurisdiction in dividing the Petition into two parts."

16. In view of the above said principles laid down by their Lordships, only permission to withdraw the petition and suit cannot be granted, without giving liberty to file a fresh suit, as same is sought by the petitioners. In view of my above said observation regarding specific contention taken by respondents, liberty cannot be granted to the petitioners to file fresh suit on the same cause of action.

17. For the above said reasons, **point No.1** is answered in the **negative**.

18. **Point No.2:**

In the result, I proceed to pass the following:

ORDER

I.A.No.4 filed by petitioner No.6 under Order 23 Rule 1(3)(a) of C.P.C., is hereby rejected.

Parties are directed to bear their own costs.

(Dictated to the Stenographer Grade-1, transcribed by her on Computer and after corrections, signed and then pronounced by me in open Court on this the **21st day of February, 2024.**)

(Prabhavathi M. Hiremath)
Prl. District and Sessions Judge,
Mysuru.

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