

In the Court of Principal District and Sessions Judge, Pudukkottai.

Present : Thiru.K.Poorana Jeya Anand, M.A., M.L.,

Principal District Judge, Pudukkottai

Thursday, the 18th day of April, 2024.

I.A.No.1/2023 in O.S.No.77/2020

S. Baskaran

....Petitioner/Plaintiff

//Versus//

1. A.S. Subbaiah (died)

2. Panchavarnam

3. Balamurugan

4. Poonkodi

5. Saroja

6. Jeyalakshmi

7. Minor. Arulmurugan aged 16,

(7th minor defendant represented through his father/
guardian 3rd defendant Balamurugan).

.... Respondents/Defendants

This petition came before this court on 18.04.2024, in the presence of Thiru. S. Suyamprakasam, Advocate for the Petitioner/Plaintiff and of Thiru. M.J. Ameer Hussain, Advocate for the 2, 3, 6 and 7 respondents/ 2, 3, 6 and 7 defendants and of Thiru.PT. Panneerselvam, Advocate for the 4th and 5th respondents/4th and 5th defendants and 1st respondent/1st defendant died and upon hearing both sides arguments and on perusal of records this court delivers the following

Order

1. This petition has been laid by the petitioner/plaintiff under Or.23 Rule 1 of CPC prays to pass an order to permit the petitioner/plaintiff to contest the suit claim only with regard to the "A" schedule property since the suit claim against "B" schedule property is abandoned.

2. Short facts of the petition are as follows :

(a) The petitioner/plaintiff has filed the suit for the relief of partition as against the defendants. The 1st defendant is the father of the plaintiff and the 2nd defendant is the mother of the plaintiff. The 1st defendant has mentioned in his written statement that the 2nd namely Tmt. Panchavarnam filed a suit as against the third parties with regard to the suit "B" schedule property before the District Munsif Court, Aranthangi and the same was dismissed. Therefore, the 2nd defendant preferred an appeal as against the above judgment and the same is pending before the Subordinate Court, Pudukkottai.

(b) At this juncture, the petitioner/plaintiff is not willing to claim partition regarding the suit "B" schedule properties and hence the suit claim against "B" schedule property is hereby abandoned.

(c) Hence, the petitioner/plaintiff prays to pass an order to permit the petitioner/plaintiff to contest the suit claim only with regard to the "A" schedule property since the suit claim against "B" schedule property is abandoned.

3. Short facts of the counter filed by the 3rd respondent and the same was adopted by the 2nd and 6th respondents are as follows:

(a) There is no possibility to contest the suit by deleting the suit "B" schedule property as the suit is filed for the relief of partition.

(b) As the 2nd defendant filed the suit only for the relief of permanent injunction and it is not for title over the suit "B" schedule property. Therefore, there is no necessity to contest the suit by deleting the suit "B" schedule property.

(c) The petitioner has filed this petition to drag on the suit proceedings. The plaintiff is not entitled to get any relief. Hence, prays for dismissal of the petition with cost.

4. Point for consideration:-

Whether the petition can be allowed ?

POINT :-

5. Heard both sides.

6. The plaintiff is dominants witness. The plaintiff is seeking to permit the petitioner/plaintiff to contest the suit claim only with regard to the "A" schedule property. Originally the suit is filed for partition. The 1st defendant is the father of the plaintiff. The 2nd defendant is the mother of the plaintiff. The 1st defendant has stated in the written statement that the 2nd defendant filed a suit as against the 3rd parties with regard to the suit "B' schedule property before the District Munsif Court, Aranthangi and the same was dismissed. The plaintiff /petitioner wants to abandon the claim of "B" schedule property.

7. Per contra, the 2nd defendant contended that the petitioner has filed the petition to drag on the proceedings.

8. Order 23 Rule 1 CPC reads as follows:-

WITHDRAWAL AND DJUSTMENT OF SUITS

{1. withdrawal of suit or aandonment 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 abaondon 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 32 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 other 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 the 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. }

In view of the above, the petitioner/plaintiff is entitled to withdraw or abandon of part of claim or abandon his suit against all or any of the defendants at any time. In view of the above, the contention raised by the 2nd defendant is unsustainable. Hence, this petition is allowed .

In the result, this petition is allowed. No cost.

Dictated to the Steno-typist, taken down in shorthand, transcribed and typed by her in computer and corrected and pronounced by me in Open Court on this the 18th day of April, 2024.

Sd/- K.Poorana Jeya Anand
Principal District Judge,
Pudukkottai.