

IN THE COURT OF DISTRICT MUNSIF, TIRUVARUR

Present: Thiru. S. Mohamed Basil M.Sc., B.L.,
District Munsif, Tiruvarur

Thursday, 14th day of August 2025
29th day of Tamil Month Aadi, Visuvavasu year

I.A.No. 211/2025

in

O.S.No. 19/2020

CNR No. TNTV04-000025-2020

Muruganantham

... Petitioner / Plaintiff

/Vs/

Chandrakala

... Respondent /Defendant

This petition is coming before this Court for final hearing on 12.08.2025 in presence of Advocate Tmt. B. Rejina, B.A., B.L., for petitioner / plaintiff and Mr. Ganesan, B.A., L.L.B., for respondent / defendant. Having stood over for consideration till today, this court delivered the following:

ORDER

1. This application is filed under Order XXIII Rule 1 of CPC r/w Section 151 CPC to withdraw the above suit and liberty to file the fresh suit for the same cause of action.

2. Brief facts set out by the petitioner / plaintiff :

2.1. The original suit was instituted seeking the relief of permanent injunction against the defendant. During the pendency of the suit, the defendant encroached upon the suit property and constructed a staircase therein. In light of this development, the plaintiff

seeks permission to withdraw the present suit with liberty to file a fresh suit for recovery of possession based on the same cause of action. Filing such a fresh suit will not cause any prejudice to the defendant.

3. Brief averments made in the counter filed by the respondent :-

3.1. The alleged encroachment and construction of a staircase during the pendency of the suit is specifically denied. The defendant has not encroached upon the suit property and, therefore, the plaintiff is not entitled to seek recovery of possession through a fresh suit based on the same cause of action. The present suit has been initiated with the intent to unlawfully claim the defendant's property, despite the plaintiff having no possession over the suit property. Initially, the plaintiff sought an injunction, and subsequently, based on the alleged encroachment, amended the claim to seek a mandatory injunction. Under these circumstances, the plaintiff's current claim for recovery of possession, even after obtaining a mandatory injunction, is not legally tenable.

4. The point for consideration:

Whether the petition to seek permission to withdraw the suit with liberty to file fresh suit be allowed or not ?

5. Discussion:

5.1. Both sides are heard. Records have been perused.

5.2. The main suit was filed seeking the relief of permanent injunction to restrain the respondent/defendant from interfering with the plaintiff's peaceful possession of the suit property. It is noted that the trial has not yet commenced.

5.3. It is further observed that I.A. No. 66/2024 was filed by the petitioner seeking amendment of the plaint, changing the relief from permanent injunction to mandatory

injunction on the ground of alleged encroachment and construction of a staircase by the defendant during the pendency of the suit. This petition was allowed by this Court on 10.03.2025, and the matter has since been pending for the petitioner to file the amended plaint and carry out the corresponding amendment in the original plaint. Instead of proceeding with the amendment as permitted, the petitioner has now filed the present petition seeking withdrawal of the suit with liberty to file a fresh suit based on the same cause of action.

5.4. On perusal of the affidavit filed by the petitioner in IA No. 66/2024, it is evident that the same reason that the alleged encroachment and construction during the pendency of the suit was stated therein as the ground for seeking amendment. The said amendment was already allowed by this Court, and no distinct or additional reasons have been provided in the current petition that differ from those previously stated.

5.5. The Hon'ble Supreme Court, in the case of *V. Rajendran and Ors. vs. Annasamy Pandian (D) through L.Rs. Karthyayani Natchiar*, reported in 2017 (1) CTC 762, has clarified the scope of Order XXIII Rule 1(3) of the Code of Civil Procedure, which reads:

The withdrawal of suit has been dealt with under Order 23 Rule 1(3) of Code of Civil Procedure, which reads as follows:

Withdrawal of suit or abandonment of part of claim- 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.

As per Order XXIII Rule 1(3) CPC, suit may only be withdrawn with permission to bring a fresh suit when the Court is satisfied that the suit must fail for reason of some formal defect or that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit. The power to allow withdrawal of a suit is discretionary. In the application, the plaintiff must make out a case in terms of Order XXIII Rule 1 (3) (a) or (b) CPC and must ask for leave. The Court can allow the application filed under Order XXIII Rule 1 (3) CPC for withdrawal of the suit with liberty to bring a fresh suit only if the condition in either of the clauses (a) or (b) that is, existence of a formal defect or sufficient grounds. The principle under Order XXIII Rule 1 (3) CPC is founded on public policy to prevent institution of suit again and again on the same cause of action.

5.6. In nutshell, the withdrawal of a suit with liberty to file a fresh one can be permitted only if the Court is satisfied that the suit would fail due to a formal defect or there exist sufficient grounds justifying institution of a fresh suit. In the present case, since the ground now stated for withdrawal has already been considered and accepted by this Court while allowing the amendment in IA No. 66/2024, and no new or distinct reason has been brought forth, this Court finds no justification under 'formal defect' or 'sufficient ground' to permit withdrawal of the suit with liberty to file a fresh one.

5.7. On a comprehensive consideration of all relevant aspects, this Court is of the view that the petitioner can pursue his claim within the framework of the present suit itself, and there exists no necessity to withdraw the suit.

5.8. Accordingly, this Court finds that the petition lacks merit and is liable to be dismissed.

6. In Result:

The petition is dismissed. No costs.

This order is dictated by me to the steno-typist and typed by her, corrected and pronounced by me in open Court, this 14th August of 2025.

(Sd/- S. Mohamed Basil),
District Munsif,
Tiruvarur.

Witnesses examined by the petitioner : Nil
Witnesses examined by the respondent : Nil
Exhibits marked by the petitioner : Nil
Exhibits marked by the respondent : Nil

(Sd/- S. Mohamed Basil),
District Munsif,
Tiruvarur.