



2025:TSHC:44442

IN THE HIGH COURT FOR THE STATE OF TELANGANA // AT HYDERABAD

TUESDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SMT JUSTICE RENUKA YARA

CIVIL REVISION PETITION NO: 2481 OF 2024

Petition under Article 227 of the Constitution of India, Aggrieved the orders dated 18-07-2024 passed in IA 566/2024 in OS. 890/2022 on the file of II the Additional Senior Civil Judge, Medchal-Malkajgiri District at Kushaiguda.

Between:

1. Smt. CVS Radha Devi, W/o. N.V.N. Charuyulu, Aged about. 48 Years, Occ. House Hold R/o. H.No.1-2-36/A, Dommalguda Hyderabad
2. Smt. C Indira Devi, W/o. C. Narayana Chary Aged about. 68 Years, Occ. House Hold R/o. Plot No.15-B, Swaroopa Nagar Uppal. R R District

...Petitioners/Plaintiffs

AND

Sri. K Veerananda, S/o. Sri. K. Murali, Aged about. 32 Years, Occ. Employee
P/o. Paralotha Cheruvu Village Anantapur

...Respondent/Defendant

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to **vacate** the order dated 09-08-2024 in CRP No. 2481 of 2024 in the interest of justice.

Counsel for the Petitioners: Mr. J. SRINIVAS, Advocate

Counsel for the Respondent: Mr MS.CHANDRESH, Advocate

The Court made the following: ORDER



THE HONOURABLE SMT. JUSTICE RENUKA YARA

C.R.P.No.2481 of 2024

ORDER:

Heard Sri J.Srinivas, learned counsel for the petitioners and Sri M.S.Chandresh, learned counsel for the respondent.

2. This Civil Revision Petition is filed aggrieved by the order dated 18.07.2024 passed in I.A.No.566 of 2024 in O.S.No.890 of 2022(Old O.S.No.965 of 2003) by the learned II Additional Senior Civil Judge, Medchal-Malkajgiri District at Kushaiguda.

3. The revision petitioners have filed the said suit seeking perpetual injunction with respect to the suit schedule property consisting of Plot No.17-C with Municipal No.4-123/6A in Survey No.64, admeasuring 630 square yards, situated at Swaroop Nagar, Uppal Kalan, Uppal Municipality, Ranga Reddy District. Thereafter, amendments were carried in the prayer by seeking relief of declaration that the revision petitioner No.2 is the owner of the suit schedule property and to declare the sale deed document No.1662 of 1967 as null and void. The matter came up for evidence of the revision petitioners in the year 2014, but the same was closed as the evidence was not recorded. Aggrieved by the same, earlier, civil revision petition was preferred and the same was dismissed. Therefore, there is no evidence of the revision petitioners on record to support the suit claim. After closing of the evidence



of the revision petitioners, the respondent has led the evidence and currently, the suit is at the stage of arguments.

4. At that juncture, I.A.No.566 of 2024 was filed under Order 23 Rule 3 of C.P.C to withdraw the suit with permission to file a fresh suit. The respondent opposed the petition and the I.A. came to be dismissed *vide* impugned order dated 18.07.2024. Aggrieved by the same, the present civil revision petition is preferred.

5. In grounds of revision, it is pleaded that a petition to withdraw can be filed at any stage of the proceedings in a suit and that there is a formal defect as there is no evidence of the petitioners-plaintiffs and therefore, the revision petitioners intend to withdraw the suit for filing a fresh suit.

6. In support of his claim, learned counsel for the petitioners relied upon judgment of the Hon'ble Supreme Court in *K.S.Bhoopathy and others vs. Kokila and others*¹, wherein it was held as follows:-

“The present Rule which was introduced in place of the old Rule 1 by the Amendment Act of 1976 makes a distinction between absolute withdrawal which is termed as ‘abandonment’ and withdrawal with the permission of the Court. This clear distinction is maintained throughout in the substituted Rule by making appropriate changes in the wording of various sub-rules of Rule 1.

The law as to withdrawal of suits as enacted in the present Rule may be generally stated in two parts (a) a plaintiff can abandon a suit or abandon a part of his claim as a matter of right without the permission of the Court; in that case he will be precluded from suing again on the same cause of action. Neither

¹ AIR 2000 Supreme Court 2132



the plaintiff can abandon a suit or a part of the suit reserving to himself a right to bring a fresh suit, nor can the defendant insist that the plaintiff must be compelled to proceed with the suit; and (b) a plaintiff may, in the circumstances mentioned in sub-rule (3) be permitted by the Court to withdraw from a suit with liberty to sue afresh on the same cause of action. Such liberty being granted by the Court enables the plaintiff to avoid the bar in Order II Rule 2 and Section 11, C.P.C.

The provision in Order XXIII, Rule 1, C.P.C. is an exception to the common law principle of non-suit. Therefore on principle an application by a plaintiff under sub-rule (3) cannot be treated on par with an application by him in exercise of the absolute liberty given to him under sub-rule(1)."

7. Further reliance is placed on the judgment of the Hon'ble Supreme Court in *V. Rajendran and Anr. vs Annasamy Pandian (D) Thr. Lrs. Karthyayani Natchiar*² wherein it is held as follows:

"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 clause (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."

8. In response, learned counsel for the respondent submitted that the evidence of the revision petitioners as plaintiffs was closed due to their own negligence and failure to lead evidence for a period of eight years. After closing of the evidence on behalf of the revision petitioners, civil revision

² AIR 2017 Supreme Court 685

petition was preferred and the same was dismissed. Since the order in the ci
revision petition was not challenged, the said order became final. Thereafter,
the respondent has led his evidence and the respondent's witness was cross-
examined. Learned counsel further submitted that in case the present civil
revision petition is allowed granting liberty to the revision petitioners to file a
fresh suit, the same would nullify the order passed by this Court in the earlier
civil revision petition.



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9. After conclusion of arguments, learned counsel for the revision
petitioners sought permission to withdraw the suit unconditionally for which
there is no objection to the learned counsel for the respondent.

10. Since the revision petitioners have sought to withdraw the civil revision
petition unconditionally, this Civil Revision Petition is disposed of by granting
permission to the revision petitioners to withdraw the suit unconditionally
before the trial Court. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this appeal, shall stand
closed.

//TRUE COPY//

SD/- K.BHAVANI SWAMY
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The Additional Senior Civil Judge, Medchal-Malkajgiri District at
Kushaiguda.
2. One CC to Mr. J. SRINIVAS Advocate [OPUC]
3. Two CD Copies



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HIGH COURT

DATED: 28/10/2025



ORDER

CRP.No.2481 of 2024

This Civil Revision Petition is Disposed of

⑤ MT
12/12/25