



A.S.(MD)No.243 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.04.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**A.S.(MD)No.243 of 2023
and
C.M.P.(MD)No.13558 of 2023**

A.K.Mohideen

... Appellant

Vs.

1.Zeenath Shakria

2.H.Solai Mohamed

3.K.Meenashisundaram @ Sundar

4.Mohammed Ali

... Respondents

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code r/w. Order 41 Rule 1 of Civil Procedure Code, to allow this appeal by setting aside the fair and decreetal order passed in I.A.No.1558 of 2022 in O.S.No.45 of 2020 dated 25.07.2023 on the file of the Family Court, Madurai.

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.L.Shaji for R1



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JUDGMENT

(Judgment of the Court was delivered by G.R.Swaminathan, J.)

The plaintiff in O.S.No.45 of 2020 on the file of the Family Court, Madurai is the appellant herein. The said suit was instituted for dissolving the appellant's marriage with the first respondent herein that was solemnized on 29.08.2008. The first respondent herein filed I.A.No.1558 of 2022 for rejection of the plaint. The Court below vide order dated 25.07.2023 allowed the said IA and dismissed the suit by rejecting the plaint. Since the rejection of plaint would amount to a decree, this appeal has been filed.

2.The learned counsel for the appellant reiterated all the contentions set out in the grounds of appeal and relied on the following decisions:-

(i) 2019 SCC Online Bom 1669 (Chandrakant Pandurang Shingade Vs. Walchand Gulabchand Bora)

(ii) (2021) 9 SCC 99 (Srihari Hanumandas Totala Vs. Hemant Vithala Kamat)



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(iii) 2023 Live Lad (Mad) 42 (Shanthakumari @ Shanthi Vs. Venkatasubramani)

(iv) Mat. Appeal No.383 of 2016, dated 06.03.2019 (K.Sunil Kumar Vs. D.Prasobha Devi and Others), and

(v) WP (227) No.919 of 2019, dated 10.08.2020 (Harsha Dewani Vs. Ashutosh Gupta).

He called upon this Court to set aside the impugned order so that the appellant can have his claim adjudicated on merits.

3.Per Contra, the learned counsel for the first respondent submitted that the impugned order is well reasoned and that it does not call for interference.

4.We carefully considered the rival contentions and went through the materials on record. It is not in dispute that the appellant and the first respondent got married on 29.08.2008 as per Islamic rites and customs. It is also not in dispute that the appellant herein filed O.S.No.17 of 2020 on the file of the Family Court, Madurai. The specific allegation made by the appellant herein in the said suit was that the first respondent



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herein was leading an adulterous life. In fact, the first respondent had implied one Mohammed Ali as the second defendant in the said suit.

For reasons that are not quite clear, the appellant filed a memo to the effect that he was not interested in prosecuting the suit. Hence, the suit was dismissed as withdrawn. Within two days, the present suit was laid by the appellant. The prayer as well as the cause of action remained the same. There was only one difference. Two more persons were also implied as defendants as the first respondent's paramours.

5.The court below noted that as per Order 23 Rule 4 of CPC, where the plaintiff abandons any suit without getting liberty to file a fresh suit on the same cause of action, he shall be precluded from instituting any fresh suit in respect of the subject matter. It is relevant to mention that the appellant while making the endorsement for withdrawal, did not even deem it necessary to seek liberty to file a fresh suit on the same cause of action. Thus, the earlier suit filed by the appellant was dismissed without grant of any liberty.



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6.The subject matter of the earlier suit and the present suit are one and the same. The relief sought for is also one and the same. Therefore, the court below rightly invoked Order VII Rule 11 CPC and held that the present suit is not maintainable and that it is barred. We see no ground to interfere with the order passed by the court below allowing I.A.No.1552 of 2022 filed by first respondent herein. This appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (R.P. J.)
16.04.2026

NCC : Yes/No
Index : Yes / No
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To:

The Family Court,
Madurai.

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The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
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and
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