

Madras High Court

I.S. Ilango vs V. Periasamy And T.K. Ramanujam on 26 June, 2003

Author: M Chockalingam

Bench: M Chockalingam

ORDER M. Chockalingam, J.

1. Challenging an order of the learned District Munsif, Karur allowing an application in part filed by the plaintiff and rejecting the other part, the plaintiff has filed this revision petition.

2. Originally, it was a suit for permanent injunction and subsequently, a prayer for declaration as to the title in respect of the suit property was also added. The respondents/defendants have filed their written statement and the suit has been pending. Inter-alia in their defence, they raised a plea that the suit must fail due to non joinder of necessary party. Under the stated circumstances, the instant application was filed by the plaintiff seeking withdrawal of the suit with a liberty to file a fresh suit on the same cause of action. The respondents were given an opportunity to file their counter. After hearing both sides, the court below has permitted the plaintiff to withdraw the suit, but has not granted permission to file a fresh suit on the same cause of action. Aggrieved over the disallowed part, the plaintiff has brought forth this revision.

3. It is not in dispute that originally it was a suit for permanent injunction. Subsequently, a prayer for declaration was added. The non joinder of the necessary party was fatal to the suit was one of the pleas raised by the respondents/defendants. It is also contended that 6 or 7 parties were also the owners of the suit property, and hence, they have also to be added as parties to the suit. According to the plaintiff, in order to make elaborate pleading over the matter, it became necessary to withdraw the suit and file a fresh suit on the same cause of action. The lower court, after hearing both sides and scrutinising all the materials, thought it fit that it was a case where the petitioner/plaintiff should be permitted to withdraw the suit, but has refused to grant permission to file a fresh suit on the same cause of action.

4. The learned counsel for the respondents would contend that written statement was filed very early and the suit has been pending for about 7 years; that the suit was dismissed for default, subsequently it was restored. Countering to the above contentions, the learned counsel for the petitioner would urge that it is true that originally it was a suit for permanent injunction, subsequently, a prayer for declaration was added; that for the plea of non joinder of necessary party, it requires elaborate pleadings, which could be done better by way of filing a fresh suit; that the dismissal of the suit for default had nothing to do with the present situation, and hence, the order of the lower court not granting permission to file a fresh suit has got to be set aside and the same has got to be granted by this Court.

5. After hearing both sides, this Court is of the considered view that having found that this is a fit case for allowing the plaintiff to withdraw the suit, the lower court should have permitted the plaintiff to file a fresh suit on the same cause of action. Hence, the permission what was not granted by the lower court has got to be granted instead of remanding the matter. This Court, under the stated circumstances and on scrutiny of the materials, is satisfied that this is a fit case for granting

permission to the petitioner to file a fresh suit on the same cause of action. Accordingly, it is ordered. The petitioner is directed to file a fresh suit on the same cause of action within a period of three months. This civil revision petition is allowed.