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C.R.P.(MD)No.206 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.206 of 2023

and

C.M.P.(MD)No.1011 of 2023

Ravichandran, S/o.Venkatachalam

.. Petitioner

Versus

Purushothaman, S/o.Durairaj Naidu

.. Respondent

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.08.2022, made in I.A.No.350 of 2022 in O.S.No.73 of 2006, on the file of the Principal District Munsif Court, Thanjavur.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.A.Senthilkumar

ORDER

The petitioner is the plaintiff in O.S.No.73 of 2006. The said suit was filed by the petitioner against the respondent herein for a mandatory and permanent injunction. The suit was decreed by the Trial Court on 09.04.2007. The respondent filed an appeal in A.S.No.46 of 2007 before the Additional Sub-Court, Thanjavur, whereby the judgment and decree of the Trial Court in O.S.No.73 of 2006, dated 09.04.2007, was confirmed, vide judgment and decree, dated 31.10.2007.



2. The further appeal was preferred before this Court by the respondent in S.A. (MD)No.652 of 2008. After hearing the parties, the Court had passed the following order on 12.08.2008 in the said second appeal.

"9. On a careful consideration of the evidence available on record, it is clear that the suit property has not been described properly. On the other hand, the plaintiff's claim cannot be granted without there being any specific description of the property. Further, both the parties are unable to prove the actual measurement of the property. For want of definite particulars, the case cannot be thrown out of file. Hence, the matter is remanded back to the trial Court to enable both the parties to adduce evidence with regard to the nature of property and its actual measurement. After hearing both the parties, the trial Court is directed to dispose of the suit afresh on merits and in accordance with law. Both the parties shall appear before the trial Court on 16.09.2008. The second appeal is disposed of accordingly. No costs. Connected Miscellaneous Petition is closed."

3. After the judgment and decree passed by this Court, by remanding the case back to the Trial Court to enable both the parties to adduce evidence with regard to nature of the property and its actual measurement, the respondent herein filed O.S.No.36 of 2008 on 21.01.2008, for a permanent injunction in respect of the very same property.

4. In the said proceedings, the respondent filed I.A.No.843 of 2008, for appointment of an Advocate Commissioner under Order XXVI Rule 9 of C.P.C. The



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Trial Court allowed the application, which was challenged by the petitioner herein before this Court in C.R.P.(PD)(MD)No.1102 of 2009. This Court, on 18.07.2011, passed a consent order, by modifying the order of the Trial Court in I.A.No.843 of 2008 in O.S.No.36 of 2008, filed by the respondent with the following observation:-

"8. Further, it is submitted by the learned counsel on either side that the earlier suit O.S.No.73 of 2006 is pending before the trial Court and therefore, both the suits have to be taken up together by the trial Court and dispose of the same. After considering the facts and circumstances of the case, this Court directs the District Munsif, Thanjavur, to take up O.S.No.73 of 2006 and O.S.No.36 of 2008 together and after giving opportunity to both the parties, dispose of the same in accordance with law as expeditiously as possible. Both the parties are directed to co-operate with the trial Court for the early disposal of the suits."

5. Though the order was passed by this Court on 18.07.2021, the Trial Court did not comply with the order. Meanwhile, the petitioner filed an application, for amending the pleadings, which came to be allowed. The respondent thereafter filed I.A.No.350 of 2022 in O.S.No.73 of 2006, for joint trial of both suits in O.S.No.36 of 2008 and O.S.No.73 of 2006. The said application was allowed by the Trial Court, vide the fair and decreetal order dated 10.08.2022. The operative portion of the order reads as under:-

"4.மேற்படி எதிர்மனுதாரர் தரப்பில் குறிப்பிடுவது போல் CRP.No. 1102/2009 என்ற மனுவில் மாண்புமிகு சென்னை உயர்நீதிமன்றம் பிறப்பித்த உத்தரவில் (Both suits have to be taken up together by the trial Court and



dispose of the same) என்று குறிப்பிடப்பட்டுள்ளதே தவிர மேற்படி இரண்டு வழக்குகளையும் Joint Trial ஆக நடத்தப்பட வேண்டுமா அல்லது Simultaneous trial ஆக நடத்தப்படவேண்டுமா என்று குறிப்பிட்டு சொல்லப்படவில்லை. இந்நிலையில் இரண்டு வழக்குகளின் வழக்குரை மற்றும் எதிர்வழக்குரை ஆகியவற்றை பரிசீலிக்கையில் இரண்டு வழக்குகளின் தரப்பினரும் வழக்கு சொத்தும் ஒன்று என்பது தெரிய வருகிறது. மேலும் இரண்டு வழக்குகளும் வழக்கு விசாரணைக்காக ஒரே நிலையில் நிலுவையில் இருந்து வருகிறது. இது குறித்து எதிர்மனுதாரர் தரப்பிலும் மறுக்கப்படவில்லை.

5. எனவே இருவழக்குகளையும் தனித்தனியாக வழக்கு விசாரணை நடத்தப்பட்டால் வழக்கில் முடிவு காண்பதில் காலதாமதமாகும் என்று நீதிமன்றம் கருதுகிறது. மேலும் இரண்டு வழக்குகளும் 2006 மற்றும் 2008 வருடங்களில் தாக்கல் செய்யப்பட்ட பழமையான வழக்கு என்பதால் அதில் விரைவாக முடிவு காணும் வகையில் இரு வழக்குகளையும் Joint Trial ஆக நடத்த உத்தரவிடுவதே நீதியின் நலனுக்கு உகந்தாக இருக்கும் என்று நீதிமன்றம் முடிவு செய்கிறது. மேலும் அசல் வழக்கு 73/2006 வழக்கே முதலில் தாக்கல் செய்யப்பட்ட வழக்கு என்பதாலும், மேலும் 36/2008 வழக்கானது நிரந்தர உறுத்துக்கட்டளை பரிகாரம் மட்டுமே கோரி தாக்கல் செய்யப்பட்டுள்ள நிலையில் இவ்வழக்கானது நிரந்தர உறுத்துக்கட்டளை மற்றும் செயலுறுத்துக்கட்டளை என இரு பரிகாரங்களும் கோரி தாக்கல் செய்யப்பட்டுள்ளதால் இவ்வழக்கே comprehensive suit என்பதாலும் அசல் வழக்கு 73/2006 வழக்கிலேயே வழக்கு விசாரணை தொடங்க உத்தரவிடப்படுகிறது."

6. The impugned fair and decreetal order of the Trial Court is assailed by the petitioner on the ground that the evidence in O.S.No.73 of 2006 was adduced and



trial was also complete, which culminated in a judgment and decree of the Trial Court, which was affirmed by the 1st Appellate Court in A.S.No.46 of 2007 and thereafter, modified by this Court, vide judgment and decree, dated 12.08.2008, in S.A.(MD)No.652 of 2008 filed by the respondent by remanding the case back to the Trial Court only to enable both the parties to adduce evidence with regard to the nature of property and its actual measurement. It is submitted that there cannot be a fresh trial.

7. It is submitted that this Court, vide judgment and decree, dated 12.08.2008, in S.A.(MD)No.652 of 2008, has merely remanded the case back to the Trial Court only to enable both the parties to adduce evidence with regard to the nature of property and its actual measurement and has not ordered a fresh recording of evidence.

8. It is submitted that the evidence in the second suit has not been commenced so far. It is submitted that the petitioner has no objection for recording of evidence in O.S.No.73 of 2006 as was ordered by this Court on 12.08.2008 while remanding the case. However, a joint trial at this stage, would mean to eschew the evidence that has been already recorded in O.S.No.73 of 2006 which was not contemplated.

9. It is further submitted that vide order dated 18.07.2011, in C.R.P.(PD)



(MD)No.1102 of 2009, this Court has merely directed the Court to take up both the suits together after giving opportunity to both the parties and dispose of the same in accordance with law. It is submitted that this Court has not directed recording of evidence afresh.

10. Per contra, the learned counsel for the respondent submitted that the impugned fair and decreetal order is well reasoned and therefore, requires no interference. That apart, it is submitted that the trial in the second suit filed by the respondent in O.S.No.36 of 2008 has also not commenced. It is, therefore, submitted that the present Civil Revision Petition is liable to be dismissed.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent. I have also perused the judgment and decree dated 31.10.2007, in A.S.No.46 of 2007 of the Additional Sub-Court, confirming the judgment and decree dated 09.04.2007 of the Trial Court in O.S.No.73 of 2006.

12. The judgment and decree of this Court, dated 12.08.2008, in S.A.(MD)No. 652 of 2008 merely allows both the parties to adduce evidence with regard to nature of the property and its actual measurement after hearing both the parties. It has not directed a fresh trial. The Court has merely directed recording additional evidence of



the petitioner and the respondent as plaintiff and defendant in O.S.No.73 of 2006.

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13. The respondent has filed the suit subsequent to the judgment and decree of this Court, dated 12.08.2008, in S.A.(MD)No.652 of 2008. Therefore, it cannot be construed that this Court, by its judgment and decree dated 12.08.2008, in S.A.(MD)No.652 of 2008 and in C.R.P.(PD)(MD)No.1102 of 2009, vide order dated 18.07.2011, had concluded that there should be a joint trial. There is no scope for any joint trial even though the dispute pertains to the same property.

14. Therefore, this Civil Revision Petition is allowed. The impugned fair and decreetal order, dated 10.08.2022, in I.A.No.350 of 2022 in O.S.No.73 of 2006, is set aside. The Trial Court is directed to bring a closure to the dispute between the parties, by endeavouring to record evidence in O.S.No.73 of 2006 as ordered by this Court in S.A.(MD)No.652 of 2008, vide its judgment and decree, dated 12.08.2008 read with the order dated 18.07.2011, made in C.R.P.(PD)(MD)No.1102 of 2009, within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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17.03.2023



C.R.P.(MD)No.206 of 2023

To

The Principal District Munsif,
Thanjavur.

C.SARAVANAN, J.

smn2

Order made in
C.R.P.(MD)No.206 of 2023

17.03.2023