In the High Court of Judicature at Madras

Reserved on : 03.09.2015

Delivered on : 22.09.2015

Coram:

The Hon'ble Mr.Justice S.MANIKUMAR
and
The Hon'ble Mr.Justice M.VENUGOPAL

O.S.A.No.108 of 2015

P.Rajesh
rep. by his Power of Attorney
N.Dhanalakshmi. ... Appellant/Respondent/Plaintiff

Vs.

1.V.Shanthi
2.M.A.Panchatcharam
D2 impleaded as per order
dated 06.08.2014
in A.No.696 of 2014. ... Respondents/Applicant/1st Defendant/2nd Defandant.

Prayer: Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side r/w.Clause 15 of Letter Patent against the order dated 17.11.2014 in A.No.2156 of 2014 in C.S.650 of 2012.

For Appellant : Mr.S.Jayachandran

For Respondent-1 : Mrs.A.Sumathy

J U D G M E N T

[Judgment of the Court was made by
M.VENUGOPAL, J.]

The Appellant/Respondent/Plaintiff has filed the instant Original Side Appeal as against the order dated 17.11.2014 in A.No.2156 of 2014 in C.S.No.650 of 2012 passed by the Learned Single Judge in allowing the application and consequently, rejecting the plaint, the Learned Single Judge while passing the order dated 17.11.2014 in A.No.2156 of 2014 in C.S.650 of 2012 at para 16 had inter-alia observed as follows:

"16. ..... when the question of law is such that and there is no cause of action disclosed, the plaint cannot be sustained. No reason is forthcoming as to why the plaintiff has come up with the third suit on the

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very same cause of action even without disclosing the same. From the above facts, excepting the sale deed dated 29.12.2008, the plaintiff does not get any other right. The plaintiff's father who had been a builder, had already ended up the battle with the defendant which has come to the Court up to the state of First Appeal and reached finality. While so, the plaintiff, who is the son of the builder, knowing very well about the factual position, has come up with the present suit only with an ulterior motive to harass the defendant abusing the process of law. The plaintiff could have either obtained liberty to file a fresh suit while withdrawing the earlier suits or amended the plaint by adding subsequent relief. Without doing so, the plaintiff has chosen to file a third suit on the same cause of action, which attitude of the party cannot be allowed to continue and should be nipped in the bud...."

and resultantly, allowed the application to reject the plaint in C.S.650 of 2012.

2. According to the Learned counsel for the Appellant/Plaintiff, the Learned Single Judge had failed to note the contents of the counter affidavit to the A.No.2156 of 2014. Also that, the Learned Single Judge had rejected the C.S.650 of 2012 by means of false allegations made in A.No.2156 of 2014 filed under Order 2 Rule 2 and Order 7 Rule 11 of the Civil Procedure Code.

3. The Learned counsel for the Appellant submits that the Learned Single Judge had failed to take into account that the fact cause of action in O.S.6 of 2010 and O.S.20 of 2012 are different. Although the parties and the properties are same, they were filed for permanent injunction.

4. The Learned counsel for the Appellant contends that the suit in C.S.650 of 2012 was filed for the recovery of money as damages against the First Defendant and as such, the cause of action in C.S.650 of 2012 is completely different from the earlier suits.

5. The main grievance of the Appellant is that the cause of action in C.S.650 of 2012 was clearly mentioned and in fact, the said suit was filed only after obtaining leave to sue from this Court in A.No.3479 of 2012 on 14.08.2012 because of the reason that the property is situated outside the territorial jurisdiction of this Court.

6. On behalf of the Appellant, it is represented before this Court that the Appellant/Plaintiff is permanently residing at Triplicane Chennai within the jurisdiction of this Court and the First Defendant had signed the sale agreement of UDS at Appellant/Plaintiff's residence and all transactions had taken place within the jurisdiction of the Court only.

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7. The Learned counsel for the Appellant/Plaintiff strenuously takes a plea that in para 4 of the plaint in C.S.650 of 2012, it was among other things averred that when the plaintiff went to his own flat for the purpose of conducting house warming ceremony but the defendant had not allowed the plaintiff to enter into his own flat without assigning any reason. In this regard, plaintiff lodged a police complaint but the concerned police officials after due enquiry closed the same since the subject matter is in civil dispute.

8. The Learned counsel for the Appellant submits that the Applicant/First Defendant has not made out any ground to show that the suit in C.S.No.650 of 2012 has to be rejected under Or.7 R.11 or Or.2 R.2 of the Civil Procedure Code along with Section 11 of the Civil Procedure Code. As such, the suit in C.S.650 of 2012 filed by the Appellant/Plaintiff is perfectly maintainable in Law.

9. The Learned counsel for the Appellant/Plaintiff cites the decision of the Hon'ble Supreme Court in Union of India V. H.K.Dhruv reported in 2005 (10) Supreme Court Cases at page 218 and at Special page 219 whereby and where under at paragraphs 3 and 4, it is observed and held as follows:

> "3.It also appears that during the pendency of the first application, yet another claim was preferred by the respondent which too was turned down by the Railways. The respondent sought for reference of the subsequent dispute also for adjudication by arbitrator and on that prayer having been turned down by the Railways, the respondent filed the subsequent petition under Section 8 of the Arbitration Act, 1940 before the civil court. It is the maintainability of the subsequent petition which was objected to by the appellant by placing reliance on Order 2 Rule 2 CPC. The High Court has formed an opinion against the appellant Railways.
>
> 4.Having heard the learned Senior Counsel for the appellant as also the respondent appearing in person, we are satisfied that no fault can be found with the view taken by the High Court. In order to attract applicability of the bar enacted by Order 2 Rule 2 CPC, it is necessary that the cause of action on which the subsequent claim is founded should have arisen to the claimant when he sought for enforcement of the first claim before any court. On the facts found and as recorded in the judgment of the High Court and with which we find no reason to differ, the second demand raised by the respondent was not available to be made a part of the claim raised in the first application. The bar enacted by Order 2 Rule 2 CPC is clearly not attracted."

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10. It is not in dispute that the First Respondent/First Defendant filed A.No.2156 of 2014 against the Appellant/plaintiff (as Respondent) by taking a stand that the suit in C.S.650 of 2012 ought not to have been numbered since the same is barred by the principles of 'Res Judicata' under Section 11 of Civil Procedure Code and Or.2 R.2 of the Civil Procedure Code.

11. As a matter of fact, the First Respondent/First Defendant who is the Applicant in A.No.2156 of 2014 at para 9 had averred that the Plaintiff (Appellant) who is the son of the builder Panchatcharam had filed two suits viz., O.S.6 of 2010 and O.S.20 of 2012 and has chosen to withdraw the suits, had no manner of right to file the suit for damages as against him without any cause of action as pleaded in the plaint.

12. Further, the First Respondent/First Defendant/Applicant in the A.No.2156 of 2014 had proceeded to state that the Appellant/Plaintiff who had chosen to file earlier suits before the appropriate Court which had territorial jurisdiction to entertain the matter, since the property was situated at Valasaravakkam and the jurisdictional Court to deal with the disputes with regard to him and property falls only within the ambit at Poonamallee Court and that the plaintiff (Appellant) who filed the earlier suits before the appropriate Court had no manner of right to file the present suit before this Court since the issue related to both the parties is with respect to the property situated at Valasaravakkam within the jurisdiction of Poonamallee Court and its Appellate Courts. As such, the suit in C.S.No.650 of 2012 is not maintainable before this Court and that it ought to be rejected on that score alone. Added further, the said suit is also hit by the Principles of Or.2 R.2 of the Civil Procedure Code.

13. Apart from the above, in A.No.2156 of 2014 in C.S.650 of 2012, the First Respondent/First Defendant/Applicant had also stated that there was no pleading in the cause of action pleaded in the plaint in C.S.650 of 2012 and further, the dispute is with regard to the landed property which is situated outside the territorial jurisdiction of this Court. Therefore, the suit in C.S.No.650 of 2012 fails in terms of the Order 7 Rule 11 (a) of the Civil Procedure Code and also by not fulfilling the requirements envisaged under Order 2 Rule 2 of the Civil Procedure Code along with Section 11 of the Civil Procedure Code and Order 7 Rule 11(d) of the Civil Procedure Code.

14.At this stage, this Court significantly points out that the First Respondent/First Defendant/Applicant in A.2156 of 2014 in C.S.650 of 2012 had also stated that as per the plaint averments, the First Respondent/First Defendant/Applicant had made the entire payments only to the builder Panchatcharam (who is none other than the Appellant/Plaintiff's father) and as such, for not handing over the property, she had to make her claim only against the builder. Furthermore, she is only the owner of the land and therefore, there is no need or necessity to claim damages against her and that the suit is only filed to harass her.

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15.The Appellant/Respondent/Plaintiff in his counter to A.No.2156 of 2014 (filed by the First Respondent/First Defendant) had inter-alia stated that the cause of action for the suit in C.S.650 of 2012 was clearly stated and in reality, the suit was instituted only by obtaining 'Leave to Sue' from this Court in A.No.3479 of 2012 on 14.08.2012 because of the reason that the property was situated outside the jurisdiction of this Court and as such, he did not obtain any leave under Or.2 R.2 of the Civil Procedure Code from the Learned District Munsif, Poonamallee instituted the C.S.650 of 2012 on the file of this Court. In short, the stand of the First Respondent/First Defendant is that the suit in C.S.650 of 2012 is maintainable in Law and Facts and further, it is not barred in terms of Section 11 of the Civil Procedure Code and under Or.2 R.2 of the Civil Procedure Code.

16.It comes to be known that the Appellant as plaintiff had earlier filed the suit in O.S.No.6 of 2010 against the First Respondent/Defendant (as First Defendant) and another M.Veeraraghavan (as second defendant) on the file of the Learned District Munsif, Poonamallee seeking for the relief of permanent injunction restraining the Defendants (therein), their men, agents, servants, employees or any other persons claiming through them or in any manner interfering with his peaceful possession and enjoyment of the Flat No.3 in the First Floor bearing Door New No.4, Old No.38 Gangai Amman Koil Street, Sridevikuppam, Valasaravakkam, Chennai-600 087 more fully described in the schedule of the plaint.

17.At this stage, it is significant for this Court to point out that the Appellant/Plaintiff in the plaint in O.S.No.6 of 2010 on the file of the Learned District Munsif, Poonamallee at para 14 stated the following:-

> "14.The cause of action arose for the suit within the jurisdiction of this Hon'ble Court where the suit property is located and where the Defendants are residing and on 06.04.2008 when the Plaintiff entered into the Construction Agreement with M/s. Aneraj Construction, on 29.12.2008 when the Sale Deed was executed by the 1st Defendant in favour of the Plaintiff, on 20.8.2009 when the possession of the Flat was handed over to the Plaintiff, on 25.08.2009 when the defendants prevented the Plaintiff and his family members from occupying the Flat and conducting Grahapravesam on 26.08.2009, on 11.10.2009 and 6.12.2009 when the defendants prevented the Plaintiff and his friends from entering the Flat, on 3.1.2010 when the defendants prevented the plaintiff and his friends from entering the Flat and when the Plaintiff lodged a complaint with the Police and subsequently thereafter when the defendants prevented the Plaintiff from occupying the flat."

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18.In fact, the Appellant/Plaintiff's counsel on 23.02.2012 had filed a memo on the file of the trial Court in O.S.6 of 2010 and based on the said memo, the suit in O.S.6 of 2010 was dismissed as not pressed without costs.

19.It transpires that the Appellant/Plaintiff had filed another suit in O.S.20 of 2012 on the file of the Learned District Munsif, Poonamallee against the First Respondent/First Defendant and one M.Veeraraghavan (as Second Defendant) seeking the relief of permanent injunction restraining the defendants or men or agents or anybody authorised by them from interfering with his peaceful possession and enjoyment of 'B' schedule suit property in any manner. Further, in the plaint in O.S.20 of 2012, the Appellant/Plaintiff at para 11 had stated the following:

> "The cause of action arose at Valasaravakkam where the First Defendant executed a sale deed in favour of the plaintiff dated 29.12.2008 within the jurisdiction of this Hon'ble Court where power executed by the plaintiff in favour of his mother Mrs.Dhanalakshmi and within the jurisdiction of this Hon'ble Court."

but the Appellant/Plaintiff had withdrawn the O.S.No.20 of 2012 on the file of the trial Court by filing a memo dated 16.08.2012. When that be the fact situation, the Appellant/Plaintiff filed the C.S.650 of 2012 on the file of this Court seeking a relief of depreciation of property, mental agony, physical torture, medical expenses and Court expenses totally in all, a sum of Rs.10 lakhs and all together claimed a sum of Rs.26,88,468/- from the defendant to be paid to him with accrued interest till realisation.

20.In reality, the Appellant/Plaintiff in the plaint in C.S.No.650 of 2012 at para 6 had mentioned the following:

> "The cause of action arose at Chennai where the plaintiff permanently residing at Chennai within the jurisdiction of this Hon'ble Court; where all transactions taken place within the jurisdiction of this Hon'ble Court."

21. A cursory perusal of the plaint filed by the Appellant/Plaintiff in C.S.650 of 2012 (filed against the First Respondent/First Defendant as Defendant) shows that the Appellant/Plaintiff had valued the suit at Rs.26,88,604/- and paid a sum of Rupees and also given his 'memo of calculation'.

22. Coming to the plea taken on behalf of the First Respondent/First Defendant in A.No.2156 of 2014 in C.S.650 of 2012 that the said suit is barred by the Principles of Res Judicata under Section 11 of the Civil Procedure Code because of the reason that the Appellant/Plaintiff, when the suit in O.S.6 of 2010 was pending on the file of the trial Court, filed another suit in

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O.S.No.20 of 2012 on the file of the trial Court seeking relief of permanent injunction against the First Respondent/First Defendant and her husband and therefore, the ingredients of Section 11 of the Civil Procedure Code are attracted, it is to be pertinently pointed out that 'Doctrine of Res Judicata' is not merely a matter of procedure but a doctrine evolved by a Court of Law in wider public interest, in the considered opinion of this Court. Indeed, 'Res judicata' is often treated as a branch of the 'Law of Estoppel' though the two doctrines differ in some essential particulars as per decision of the Hon'ble Supreme Court in Hope Plantations Ltd. V. Taluk Land Board, Peermade and another reported in 1999 (5) Supreme Court Cases at page 590 and at Special page 607. Also that, Section 11 is a Substantive Law which bars the filing of subsequent suit on a plea which was available before the Lower Court to a party in a previous suit. After all, the principle underlying Section 11 of the Civil Procedure Code is no one can be vexed twice. The basic principle of 'Res Judicata' is that the cause of action for the second suit being merged with the first suit, it does not survive any more as per decision of Bharathi & others V. Vinod S.Sivasudha reported in AIR 2008 Kerala at page 125 and at Special page 311 (FB).

23.A plea of 'Res Judicata' is a plea of Law which concerns the jurisdiction of the Court which tries the proceedings. It is to be noted that before the plea of 'Res Judicata' can be given effect, the following conditions must be established:

a)that the litigating parties must be the same;

b)that the subject matter of the suit also must be identical

c)that the matter must be finally decided between the parties and

d)that the suit must be decided by a Court of competent jurisdiction as per decision of the Hon'ble Supreme Court in Saroja V. Chinnusamy (Dead) by LRS. and another reported in 2007 (8) Supreme Court Cases at page 329 and at Special page 333. Apart from the above, the 'Res Judicata' applies when a fresh suit is prayed on the same cause of action as per decision of Smt.Charanjit Kaur V. S.R.Cable through its partner Sanjay Mahore reported in AIR 2009 Madhya Pradesh at page 66 and at Special page 71.

24.It is to be remembered that where the cause of action and reliefs in the first and second proceedings are different, then there is no question of 'Res Judicata' as per decision of Hon'ble Supreme Court in Bhavsingh (Dead) by LRS. V. Keshar Singh and others reported in 2003 (8) Supreme Court Cases at page 263 and at Special page 269. If the dismissal of earlier suit was not on merit but of technical ground, there is no Res Judicata as per decision of Mrs.Niloufer Siddiqui & Another V. Indian Oil Corporation Ltd., & Others reported in AIR 2008 Patna at page 5 and at Special Page 10.

25.Moreover, once the suit is filed and is withdrawn unconditionally, then even if the principles of 'Res Judicata' may not apply in strict sense because there is no adjudication on issue but at the same time, the plaintiff is debarred from seeking decree

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on the same grounds, on the principle of abandonment of claim as per decision of Gordhan Das through his LRS. V. Som Dutt reported in 2007 (3) Raj LW at page 2389 and at Special page 2393 (Raj). Also that, 'Res Judicata' applies when proceeding was heard and decided. If the 'First Revision' was dismissed for 'Default' and the 'Second Revision' was not barred by 'Res Judicata' as per decision of of Mothukuri Ranga Rao and another V. Royyala Laxminarayana and others reported in 2008 (4) Andh LT 96 and 103 (AP). Indeed, 'Res judicata' applies only when finality is reached as per decision 2002 AIHC at page 3512 & 3523 (Cal)

26.As far as the present case is concerned, the two suits viz., O.S.6 of 2010 and O.S.20 of 2012 filed by the Appellant/Plaintiff on the file of the trial Court were dismissed as not pressed based on the memo filed by him. As such, this Court comes to an inevitable conclusion that 'the Principle of Res Judicata' may not apply in strict sense because when the first suit was dismissed as not pressed by the trial Court on 23.02.2012, the Appellant/Plaintiff was debarred from seeking the relief of permanent injunction on the same ground in O.S.20 of 2012 on the file of the trial Court and in strict sense, only the principle/concept of 'Abandonment of claim' applies. As such, contra plea taken on behalf of the First Respondent/First Defendant is not acceded to by this Court.

27.At this juncture, it is quite evident from the A.No.2156 of 2014 in C.S.650 of 2012 that the First Respondent/First Defendant had taken the plea that in the plaint in C.S.650 of 2012, there was no pleading relating to 'cause of action'. Moreover, the dispute related to the landed property is situated outside the territorial jurisdiction of this Court and as such, the ingredients of Or.7 R.11(a) of the Civil Procedure Code are attracted. Further, the First Respondent/First Defendant in the plaint in C.S.650 of 2012 had taken yet another plea that the suit is barred by Law as seen from the statement in the plaint because of the reason that the Appellant/Plaintiff had not obtained any 'Leave' under Or.2 R.2 of the Civil Procedure Code before the Learned District Magistrate, Poonamallee in O.S.6 of 2010 and O.S.20 of 2012.

28.In this connection, this Court relevantly points out that O.2 R.2 of the Civil Procedure Code speaks of suit include the whole claim and the same enjoins as follows:

> "R.2.Suit to include the whole claim-1)Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.
>
> 2)Relinquishment of part of claim-Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished."

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That apart, the ingredients of O.2 R.2(3) of the Civil Procedure Code are as follows:

> "3.Omission to sue for one of several reliefs: A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.
>
> Explanation-For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

29.It is pointed out that the provisions of O.2 R.2 of the Civil Procedure Code indicates that if the plaintiff is entitled to different reliefs against the defendant in respect of the same cause of action, he cannot split up the claim so as to omit one part of the claim and sue for the other. In fact, if the cause of action is the same, the plaintiff has to project all his claims before the Court in one suit because of the simple reason that O.2 R.2 of the Civil Procedure Code is based on the principle that the defendant should not be vexed/harassed twice for the same cause as per decision of the Hon'ble Supreme Court in Deva Ram V. Ishwar Chand reported in 1995 (6) SCC at page 733. After all, one of the objects of O.2 R.2 of the Civil Procedure Code is to avoid multiplicity of petitions as per decision of Swatantra Kumar Agrawal V. Managing Director, UPFC Kanpur reported in AIR 1994 (All) at page 187 (DB).

30.A plea of bar under Order 2 Rule 2 of the Civil Procedure Code is a technical plea. It tends to defeat justice and to deprive a litigant of a genuine, reasonable and legitimate right. As such, care and caution should be taken to see that complete identity of 'cause of action' is established.

31.To constitute a bar to file fresh suit under O.2 R.2(3) of the Civil Procedure Code was i)it must be established that the second suit was in respect of the same cause of action as that on which the previous suit was based ii) in respect of that cause of action, the plaintiff is entitled to grant one relief and iii) that being so, the plaintiff, without leave obtained from the Court, omitted to sue for the relief which the other suit was filed. As a matter of fact, the term 'cause of action' consists of essential facts constituted the right and its violation/breaches. The proper test in a given case following under Or.2 R.2 of the Civil Procedure is whether the claim in the new suit is in fact, founded upon a cause of action distinct from that which was the foundation for the former suit? as per decision of Moonshee Bazloor Ruheem V. Shumsoonnissa Begum reported in 1867 (11) MIA 551. Further, the 'cause of action' means every fact which would be necessary for the plaintiff to establish if traversed in order to

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support his right to the judgment. However, if the evidence to support the two claims is different, then the cause of action are also different.

32.The cause of action in the two suits may be considered to be the same if in substance they are identical as per decision of Brunsden V. Humphrey reported in 1884 (14) QBD at page 141. In Law, the onus is on the defendant to prove that the subsequent is founded with the cause of action which is identical with that of of the earlier suit was founded. It is well settled law whether the plaintiff is aware of his reliefs and yet omits to claim the same, as later, filed suit for such a relief is clearly barred although, the amount was accidental or involuntarily as opined by this Court.

33.As far as the present case is concerned, the Appellant/Plaintiff had filed the suit in C.S.650 of 2012 only after obtaining 'Leave to Sue' from this Court in A.3479 of 2012 on 14.08.2012 based on the fact that the property in question was situated outside the territorial jurisdiction of this Court.

34.In the present case before this Court, admittedly, the Appellant/Plaintiff even though is entitled to more than one relief in respect of the same cause of action had not claimed for all or any sued such reliefs as per O.2 R.3 of the Civil Procedure Code. In fact, the Appellant/Plaintiff had not claimed the relief relating to depreciation of property, mental agony, physical torture, medical expenses and Court expenses totally in all, a sum of Rs.10 lakhs together claiming the relief of mandatory claim of Rs.26,88,468/- from the First Respondent/First Defendant to be paid to him with interest till realisation.

35.For omitting to claim the relief of depreciation of property, mental agony, physical torture, medical expenses and Court expenses as described in the plaint in C.S.650 of 2012, the Appellant/Plaintiff had not sought any permission/leave from the competent Court to sue for such reliefs. When the fact of the matter is that the Appellant/Plaintiff had omitted to claim the present relief as sought for by him in C.S.650 of 2012, in his earlier suits either in O.S.No.6 of 2010 or O.S.No.20 of 2012 on the file of the trial Court, then he is precluded from seeking the said relief thereafter in C.S.650 of 2012. Therefore, the principle envisaged under Or.2 R.3 of the Civil Procedure Code squarely applies to the case of the Appellant/Plaintiff and accordingly, the suit in C.S.650 of 2012 is barred by Law.

36.In the third suit in C.S.650 of 2012, the Appellant/Plaintiff has vested his case on the very same cause of action as averred in two earlier suits viz., O.S.6 of 2010 and O.S.20 of 2012 filed on the file of the trial Court.

37.It comes to be known that the Appellant/Plaintiff's father was a builder filed A.S.175 of 2012 on the file of this Court as against the judgment and decree in O.S.7843 of 2010 on the file of the Fast Track Court-II, Chennai and the Appeal was partly allowed

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by this Court on 13.08.2013, in favour of the plaintiff therein whereby and where under, he was found entitled to claim a sum of Rs.2,69,452/- with interest 12% p.a. from the date of judgment from the defendants etc.

38.Admittedly, the Appellant/Plaintiff (being son of the builder) had filed the suit in C.S.650 of 2012 absolutely with a view to persecute the First Respondent/First Defendant. Also that, as per Or.2 R.2 of the Civil Procedure Code, the Appellant/Plaintiff in the two earlier suits viz., O.S.No.6 of 2010 and O.S.No.20 of 2012 filed by him had not included the reliefs pertaining to depreciation of property, mental agony, physical torture, medical expenses and Court expenses etc. In this regard, as per Or.2 R.2 of the Civil Procedure Code, when he had not sought the reliefs relating to depreciation of property, mental agony, physical torture, medical expenses and Court expenses etc., thereby claiming damages to the tune of Rs.26,88,468/- from the First Respondent/First Defendant in the two suits viz., O.S.No.6 of 2010 and O.S.20 of 2012 earlier filed by him and later, the same being dismissed as not pressed by the trial Court (based on the memo filed by the Appellant/Plaintiff), it is lucidly quiet clear that he had relinquished his right in this regard and as such in Law, he cannot seek the reliefs in respect of portions so omitted or relinquished without obtaining express permission from the Competent Court concerned.

39.In the present case, the Appellant/Plaintiff had not obtained the permission to sue in respect of the reliefs sought for by him in the suit in C.S.650 of 2012 when he withdrew the earlier two suits i.e., O.S.No.6 of 2010 and O.S.No.20 of 2012 on the file of the trial Court. Moreover, the Appellant/Plaintiff had described the cause of action by filing C.S.650 of 2012 on the file of this Court at para 6 by mentioning the same in an omnibus and wholesale fashion, that he is permanently residing at Chennai within the jurisdiction of this Court; where all transactions taken place within the jurisdiction of this Court. In short, he had filed the third suit C.S.650 of 2012 on the same cause of action which arose for the two earlier suits viz., O.S.6 of 2010 & O.S.20 of 2012 on the file of the trial Court, is clearly impermissible in the eye of Law.

40.At this stage, it is not out of place for this Court to point out that the real object of Order 7 Rule 11 of the Civil Procedure Code is to keep out of Court, the irresponsible law suits. Further, Order 7 Rule 10 of the Civil Procedure Code is a tool in the hands of a Court of Law to achieve the object behind Order 7 Rule 11 of the Civil Procedure Code. No wonder, a duty is cast on a Court of Law to perform its primordial obligation in rejecting the plaint hit by any of the infirmities under Clauses (a) to (d) of Order 7 Rule 11 of the Civil Procedure Code. For rejecting the plaint under Order 7 Rule 11 for absence of cause of

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action, a Court of Law would examine a plaint allegations and not whether the plaintiff would be entitled to the reliefs claimed in the suit. It cannot be forgotten that its incumbent on a Court of Law to sustain the plaint averments in a given case as to when the cause of action arose for the suit and the suit is in time etc. To put it precisely, for the purpose of deciding an Application under Order 7 Rule 11 (a) and (d) of the Civil Procedure Code, the averments in the plaint are only germane. If an illusory cause of action has been created by a clever drafting of plaint, undoubtedly, a Court of Law is empowered to reject the plaint under Order 7 Rule 11 of the Civil Procedure Code.

41.In the light of the detailed and quantitative discussions and on a careful consideration of the respective contentions, this Court holds that the plaint filed by the Appellant/Plaintiff in C.S.650 of 2012 on the file of this Court suffers from infirmities which falls within the parameters of Order 7 Rule 11 (a) and (d) of the Civil Procedure Code. Viewed in that perspective, the conclusion arrived at by the Learned Single Judge in rejecting the plaint in C.S.650 of 2012 by allowing the A.No.2156 of 2014 filed by the First Respondent/First Defendant does not suffer from any legal infirmities. Consequently, the Original Side Appeal fails.

42.In the result, the Original Side Appeal is dismissed for the reasons ascribed by this Court in this Appeal. No costs.

Sd/-
Asst.Registrar (CO)

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Sub Asst. Registrar

DP

To
The Sub-Assistant Registrar,
Original Side, High Court, Madras.

+1 cc to M/s.A.Sumathy, Advocate, sr.52258
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Judgment made in
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