

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) Nos.698 and 699 of 2015
and M.P.No.1 of 2015

Hussain Ansar

... Petitioner in both CRPs.

Versus

S.Elumalai

... Respondent in both CRPs.

Prayer in CRP(PD)No.698 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 06.02.2015 made in I.A.No.17583 of 2014 in O.S.No.1539 of 2008, on the file of the learned XII Asst. City Civil Judge, Chennai.

Prayer in CRP(PD)No.699 of 2015: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 06.02.2015 made in I.A.No.17584 of 2014 in O.S.No.1539 of 2008, on the file of the learned XII Asst. City Civil Judge, Chennai.

For Petitioner	
in both CRPs.	: Mr.M.Raja Sekhar
For Respondent	
in both CRPs.	: Mr.K.Elango

COMMON ORDER

The respondent filed a suit in O.S.No.1539 of 2008 before the learned XII Assistant City Civil Judge, Chennai, praying for a decree of permanent injunction. The suit was opposed by the petitioner by filing written statement, wherein, a contention was taken that there was no cause of

action to initiate the suit. The trial Court framed issues and thereafter, evidence was adduced by the parties. After the conclusion of arguments, the Trial Court framed an additional issue as to whether the plaintiff was having a cause of action to file the suit and more particularly, whether the suit is liable to be dismissed for want of cause of action. Thereafter, the respondent filed two applications in I.A.Nos.17583 and 17584 of 2014 to re-open the case and to re-call P.W.1 for further examination. Those applications were opposed by the petitioner on the ground that the respondent was aware of the pleadings in the written statement and as such, there is no need for re-calling P.W.1 for further examination. The trial Court allowed the applications notwithstanding the objections raised by the petitioner. Feeling aggrieved, the petitioner is before this Court.

2. The learned counsel for the petitioner, by placing reliance upon the written statement filed by the petitioner and the evidence adduced by cross-examination of P.W.1, contended that the issue with regard to the cause of action was within the knowledge of the respondent and as such, there was no need for recalling P.W.1 for further examination. According to the learned counsel, the trial Court was perfectly correct in framing an additional issue. Since materials were there for disposal of the additional issue, there was no need for recalling P.W.1 for further evidence.

3. I have also heard the learned counsel for the respondent.

4. There is no dispute that the petitioner took up a contention with regard to want of cause of action in the written statement filed in O.S.No.1539 of 2008. The trial Court framed certain issues. The parties adduced evidence so as to enable the Court to adjudicate the issues. There was no issue with regard to cause of action originally framed by the trial Court. The trial Court framed an issue with regard to want of cause of action only after the conclusion of arguments. It was only under such circumstances, the respondent filed the applications to reopen the case and re-call P.W.1. for further examination.

5. The Trial Court was expected to frame issues taking into account the pleadings of the parties. In this case, the Trial Court failed to frame an issue with regard to want of cause of action originally. The trial Court framed an additional issue with regard to want of cause of action only after the conclusion of arguments. Since this issue was not there originally, the parties were entitled to lead evidence later when additional issue was framed. In short, after framing an issue as to whether the plaintiff was having cause of action for filing the suit, necessarily, the parties should be given an opportunity to submit their case so as to enable the Court to answer the additional issue. The learned Trial Judge was therefore perfectly correct in allowing the applications filed by the respondent. I do not find any error or illegality in the orders passed by the learned Trial Judge, warranting

interference, by invoking the revisional jurisdiction under Article 227 of the Constitution of India.

6. The learned Trial Judge is directed to give an opportunity to the petitioner also to lead evidence after conclusion of the evidence on the side of the respondent, if he is so advised. The trial Court shall adjudicate the issue with regard to want of cause of action, taking into account the pleadings and evidence on record.

7. The Civil Revision Petitions are disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

24.10.2016

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To

1. The XII Asst. City Civil Judge,
Chennai.

K.K.SASIDHARAN, J.

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