

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CRP (PD) No.1280 of 2017

and

C.M.P.No.5996 of 2017

S.Jonson

Vs.

.. petitioner

J.Srinivasan

.. respondent

Prayer : Revision Petition is filed under Article 227 of the Constitution of India, against the order passed by the learned XIV Assistant City Civil Judge, Chennai dated 02.01.2017 passed in I.A.No.928 of 2016 in O.S.No.4956 of 2015.

For Petitioner : Mr.R.Balachandran

ORDER

This Civil Revision Petition has been filed against the order dated 02.01.2017, passed by the learned XIV Assistant City Civil Judge, in I.A.No.928 of 2016 in O.S.No.4956 of 2015.

2. The petitioner is the defendant and the respondent is the plaintiff in the suit in O.S.No.4956 of 2015. The respondent filed a suit against the defendant claiming a sum of Rs.3,00,000/- as compensation towards damages. The petitioner filed I.A.No.928 of 2016 for rejection of plaint on the following grounds:

(i) The suit is hit by principles of resjudicata, as the respondent has not claimed damages in the earlier suit, when the cause of action for claiming damages was available at the time of filing the earlier suit itself. Therefore the suit is hit under Order II Rule II of Civil Procedure Code.

(ii) The respondent has abandoned the earlier suit and suppressing the same filed the present suit. Therefore, the present suit is barred under Order XXIII Rule 1 (4) of Civil Procedure Code.

(iii) The respondent has made a false declaration that the earlier suit is pending.

3. The respondent has filed the counter affidavit stating that

(i) Earlier suit is for injunction restraining the petitioner not to evict the respondent except by due process of law and at that time the respondent

was in possession of the property. Therefore, no cause of action arose for claiming damages.

(ii) Pending earlier suit the petitioner forcibly evicted the respondent and all the goods belonging to the respondent are still in the premises of the petitioner and he has damaged it.

(iii) The respondent has filed a Memo stating that he is not pressing the suit filed by him for injunction with liberty to file the suit for damages. Therefore the present suit is not hit under Order II Rule II of Civil Procedure Code and order Order XXIII Rule 1 (4) of Civil Procedure Code and based on the said Memo the earlier suit was dismissed as not pressed.

(iv) The cause of action and relief sought for in the earlier suit and the present suit are different.

4. The learned Judge, on considering the averments in the affidavit, counter affidavit, materials available on record and the arguments of the learned counsel for the parties, dismissed the application on 02.01.2017, holding that to decide the application filed under Order VII Rule 11 of Code of Civil Procedure, the averments contained in the plaint and the documents filed along with the plaint alone are germane and the respondent has not made any false averments.

5. Challenging the same, the present Civil Revision Petition has been filed by the petitioner.

6. The grievance of the petitioner is that the present suit hit by Order II Rule II as well as Rule 23 Rule 1 of Civil Procedure Code. The respondent has made false averment that the earlier suit in O.S.No.6816 of 2013 is still pending.

7. From the materials available on record, it is seen that the respondent has filed earlier suit for injunction restraining the petitioner not to evict the respondent ,without following due process of law. In the present suit the respondent has stated that he was not in possession and enjoyment of the property as a tenant.

8. According to the respondent, pending suit the petitioner forcibly evicted the respondent illegally and without following due process of law and damaged the items kept in the premises. The respondent therefore withdrawn the suit for injunction and filed the present suit claiming damages against the petitioner.

9. The learned Judge considering the relief sought for in the earlier suit as well as in the present suit, rejected all the contentions made by the petitioner and has rightly observed, to decide the application

filed under Order VII Rule XI only averments in the plaint and the documents filed along with the plaint alone has to be considered.

10. The learned Judge dismissed the application by giving valid reasons. There is no irregularity or illegality in the said order warranting interference by this Court.

In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.04.2017

arr

To

The XIV Assistant City Civil Judge, Chennai

V.M.VELUMANI, J

arr

CRP (PD) No.1280 of 2017

06.04.2017

<http://www.judis.nic.in>