

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.02.2017

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.2109 of 2012

and

M.P.No.1 of 2012

Joseph Arokiados

Rep. by Power Agent T.Kasi

... Petitioner

Vs.

P.Pradeep

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order passed in I.A.No.6 of 2012 in O.S.No.576 of 2008, dated 21.03.2012, on the file of the District Munsif, Ambattur.

WEB COPY

For Petitioner : Mr.B.Vijay

For Respondent : Mr.A.K.Raghavulu

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order passed in I.A.No.6 of 2012 in O.S.No.576 of 2008 dated 21.03.2012 on the file of the District Munsif, Ambattur.

2.The case of the revision petitioner is that in the year 2007, he filed a suit for Permanent Injunction against the respondent in O.S.No.435 of 2007 in respect of the suit schedule of property and in the said suit he enjoyed an order of Interim Injunction, preventing the respondent to interfere with the peaceful possession of the revision petitioner. In said suit in O.S.No.435 of 2007, the respondent herein admitting the possession of the revision petitioner has filed an Interlocutory Application in I.A.No.1745 of 2008 to restrain the revision petitioner from in any way altering or changing the physical structure of the suit property. Being so, in the year 2008, the respondent herein has filed the suit in hand in O.S.No.576 of 2008 for bare injunction on the ground that the revision petitioner has attempted to disturb his possession on 17.10.2008 by way of digging foundation in the suit property. While the above suit was pending, the

respondent herein as plaintiff filed one another suit for declaration, in O.S.No.124 of 2009 before the learned Principal District Judge, Thiruvallur praying for the following reliefs namely,

1. Declaration of title over the suit property.
2. Directing the revision petitioner to vacate and handover the vacant possession of the suit property.
3. For Permanent injunction.

3. Thereupon the revision petitioner filed an application under Order 7 Rule 11 of C.P.C. before the trial Court to reject the plaint of the latter suit in O.S.No.124 of 2009. The said application though was erroneously dismissed by the Learned trial Judge, the order was challenged before this Court and came to be set aside in the Civil Revision preferred by the revision petitioner and thereby the Plaint in O.S.No.124 of 2009 came to be rejected. In the said Civil Revision in CRP.No.2437 of 2010 it was held that the suit was not maintainable, since it was hit by Order 2 Rule 2 of C.P.C. Further it was held that best course would have been only an application under Order 6 Rule 17 of C.P.C. for amendment, whereas, the respondent cannot file a second suit in O.S.No.124 of 2009 for declaration, possession and injunction.

4.It is the further case of the revision petitioner that though there was no liberty or leave of this Court granted to the respondent to file any such application under Order 6 Rule 17 of C.P.C., an Interlocutory Application in above I.A.No.6 of 2012 came to be filed by the respondent for amending the suit in O.S.No.576 of 2008 with reliefs for Declaration and Recovery of Possession. Such amendment sought by the respondent is unsustainable and impermissible under law, as the same is hit by Order 2 Rule 2 of C.P.C. In the absence of specific direction or leave of this Court in the above civil revision, the above suit was sought to be amended by the respondent in the year 2012 for the relief of declaration, beyond the Limitation which commenced in the Year 2008 i.e. 26.09.2008 the date of filing of his Interlocutory Application in I.A.No.1745 of 2008 to restrain the revision petitioner from in any way altering or changing the physical structure of the suit property. That apart, the amendment sought by the respondent is inadmissible, since it would entirely change the nature and character of the suit. However, the learned trial Judge on misconception of Law and Fact, as well as erring that this Court has permitted the respondent herein to file an application to amend the suit in O.S.No.576 of 2008, allowed the above I.A.No.6 of 2012 filed by the respondent. The said order is impugned herein.

5.I heard Mr.B.Vijay, learned counsel appearing for the revision petitioner and Mr.A.K.Raghavulu, learned counsel appearing for the respondent and perused the entire records.

6.The learned counsel for the revision petitioner would submit that the amendment sought by the respondent herein is not maintainable and the same is hit by Order 2 Rule 2 of C.P.C. which envisages that every suit shall include the whole of the claim and the plaintiff shall not afterwards be permitted to sue in respect of other portions so omitted or relinquished.

7.The prime contention of the learned counsel for the revision petitioner is that having admitted that the revision petitioner is in active possession of the suit property and claiming that the revision petitioner is making arrangements as on 26.09.2008 i.e. (the date of filing of the suit) to improve the suit property, should have filed a suit for appropriate reliefs at the time of filing the suit in the year 2008 itself. Whereas the petitioner cannot after a lapse of prescribed limitation period of 3 years has filed the above Interlocutory Application in I.A.No.6 of 2012 to amend the plaint praying for

declaratory decree. Therefore the above application is not maintainable on the ground of limitation also.

8.Thirdly, the amendment sought by the respondent would totally change the nature and character of the suit, the same is impermissible. However, the Learned trial Judge without appraisal of the above said aspect apparently has erred, conceiving as if there was an express direction by this Court, enabling the respondent to amend the suit by filing an application under Order 6 Rule 17 of C.P.C.

9.Per contra, the learned counsel for the respondent would submit that originally the respondent has filed a suit for bare injunction in respect of suit property as against the revision petitioner in O.S.No.576 of 2008. Subsequently due to the perpetual attempts made by the revision petitioner to trespass into the suit property so as to put up a construction therein, the respondent was constrained to file the latter suit in O.S.No.124 of 2009 for declaration and injunction. Whereas in the Civil Revision filed by the revision petitioner in C.R.P.No.2437 of 2010, it was opined and held by this Court that it would be proper for the respondent herein to file an application under Order 6 Rule 17 C.P.C. to amend the plaint in the earlier suit in

O.S.No.576 of 2008, for comprehensive reliefs and the second suit filed by the respondent will not lie.

10. Thereupon in the light of the above expression made by this Court, the application in I.A.No.6 of 2012 was filed by the respondent to amend the prayer of the suit in O.S.No.576 of 2008 with the relief of Declaration and Recovery of Possession, thus the same was rightly allowed in the learned trial Judge.

11. Hearing upon the rival submission and on perusal of the available records, it is noticed by this Court that the respondent has filed the above suit in O.S.No.576 of 2008 in the year 2008 for the relief of bare Injunction. Whereas in an earlier suit in O.S.No.435 of 2007 filed by the revision petitioner, the respondent herein admitting the possession of the Revision petitioner has filed an Interlocutory Application in I.A.No.1745 of 2008 on 26.09.2008 to restrain the revision petitioner from in any way altering or changing the physical structure of the suit property. The relevant averment made by the respondent is extracted hereunder:

"6.I submit that the respondent stealthily erected a bore well in the suit property with the help of police and the police who has to safeguard the parties from injuries

playing hand in glove with the persons who are having money and men power. The respondent in any event not entitle to claim any right over the suit property since he does not have any title and possession, the respondent anticipating the outcome of the suit filed by him decided to make use of the situation, flouted the Court order besides using the local police for his cheap game. The respondent, since he is success in achieving his first target trying to remove the hut put up by me in the suit property and constantly making arrangements to make improvement in the suit property so as to defeat my interest over the suit property. Since the respondent is already equipped with the influence of police, I left with no other option but to file this petition to preserve the suit property for the final decision of the Hon'ble Court equally so to safe guard my interest over the suit property I am filing this petition and seeking indulgence of this Court by granting injunction restraining the respondent herein from in any manner making any improvements in the suit property pending disposal of the above suit. Unless the respondent is restrained as prayed herein he would certainly change the character of the suit property, which is absolutely detrimental to my interest."

12.The above said averment disclose that the respondent stating that the revision petitioner having put up a bore well and is proposed to alter the physical structure of the suit property, claims for an

Interim Injunction restraining the revision petitioner from changing the physical structure of the suit property.

13. Furthermore it is noticed by this Court that in the earlier suit filed by the Revision petitioner in O.S.No.435 of 2007, there is a categorical denial of the possession and title of the respondent over the suit property. In such circumstance, this Court is of the opinion that it would have been appropriate for the respondent to include a larger relief of declaration and recovery of possession.

14. At this juncture, it would be relevant to look into the relief sought for by the respondent in the above suit in O.S.No.576 of 2008 in the light of Order II Rule 2 C.P.C., so as to find whether there is any omission or relinquishment on the part of the respondent to seek appropriate reliefs. Order II Rule 2 C.P.C. runs as follows:

“ORDER 2 Rule 2 CPC:

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.

(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."

15. Thus Order II Rule 1 of C.P.C. requires that a plaintiff must include the whole of the claim to which the plaintiff is entitled in

respect of any particular cause of action. But, the plaintiff has an option to relinquish any part of his claim if he chooses to do so.

16. Further Order II Rule 2 of C.P.C. contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, Order II Rule 2 of CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. Order II Rule 2 (2) of C.P.C. does not contemplate omission or relinquishment of any portion of the plaintiff's claim with the leave of the Court so as to entitle him to come back later to seek what has been omitted or relinquished. The object behind enactment of Order II Rule 2 (2) and (3) of CPC is to discourage and prohibit vexing the defendant again and again by multiple suits filed by a person as plaintiff, except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the Court which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons.

17. Admittedly in the case on hand, the respondent has admitted

that the revision petitioner was in actual and physical possession in the year of 2008, in such circumstance the respondent should have sought for relief of Declaration and Recovery of possession at the very point of filing his suit in the year 2008 itself. Whereas, the respondent was not due diligent in claiming appropriate relief, it would be precise to say that the respondent omitted to include a larger relief. Such omission would amount to relinquishment of his claim, which is barred by Order 2 Rule 2 of C.P.C.

18. In addition, it would be noteworthy that the amendment sought by the respondent would definitely alter the nature and character of the suit. Besides above, the respondent having admitted the revision petitioner's possession over the suit property has filed suit in O.S.No.124 of 2009, to recover the vacant possession of the suit property, in such circumstance, this Court is of the opinion that it would have been appropriate for the respondent to include a larger relief of declaration and recovery of possession at an earlier point of time. However, this Court is not inclined to go into the claim of the revision petitioner, that the amendment is hit by Limitation, since the plea of limitation can only be decided after conclusion of Trial and not at the threshold.

19. In view of the foregoing reasons and the facts involved in the case on hand, this Court comes to conclusion that the amendment sought by the respondent is unsustainable, since barred by Order 2 Rule 2 of C.P.C. Hence, this civil revision petition is liable to be allowed and accordingly allowed.

20. In the result:

(a) the civil revision petition is allowed by setting aside the order passed in I.A.No.6 of 2012 in O.S.No.576 of 2008, dated 21.03.2012, on the file of the learned District Munsif, Ambattur;

(b) the trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

24.02.2017

Note: Issue order copy on 14.09.2017

vs

Index: Yes

Internet: Yes

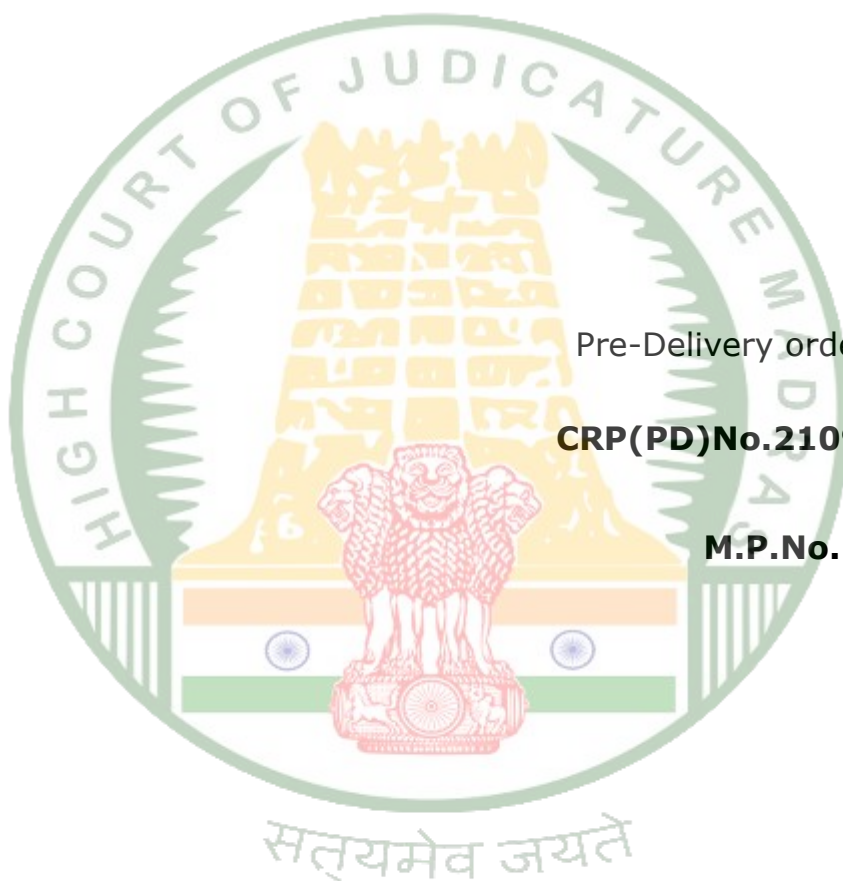
To

The District Munsif, Ambattur.

WEB COPY

M.V.MURALIDARAN,J.

VS



Pre-Delivery order made in

CRP(PD)No.2109 of 2012

and

M.P.No.1 of 2012

WEB COPY **24.02.2017**