

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3919 of 2012
& M.P.No.1 of 2012

1.Chinnaiyan
2.Jayabalan @ Balan

.. Petitioners

Vs.

Thangaraj

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.08.2012 made in I.A.No.1017 of 2012 in O.S.No.188 of 2012 on the file of the Principal District Munsif Court, Bhavani.

For Petitioner : Ms.Zeenath Begum
For Respondent : Mr.D.Selvaraju

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 21.08.2012 made in I.A.No.1017 of 2012 in O.S.No.188 of 2012 on the file of the Principal District Munsif Court, Bhavani.

2. The petitioners are the defendants and respondent is the plaintiff in O.S.No.188 of 2012 on the file of the Principal District Munsif Court, Bhavani. The respondent filed suit for permanent injunction restraining the petitioners from interfering with his peaceful possession and enjoyment of A schedule property; for permanent injunction restraining the petitioners from putting up any construction in B schedule property and for a direction to the petitioners to deliver vacant possession of the B-schedule property. The petitioners filed I.A.No.1017 of 2012 under Sections 10 and 151 C.P.C. to stay all further proceedings in the suit till the disposal of the second appeal in S.A.No.467 of 2012 pending in this Court.

3. According to the petitioners, they filed suit in O.S.No.18 of 2006 against the respondent herein for cancellation of sale deed dated 03.08.2004 and for permanent injunction restraining the respondent from interfering with their peaceful possession and enjoyment of the suit property. The said suit was decreed on 27.03.2010. Against the same, the respondent filed first appeal in A.S.No.74 of 2010 on the file of the Principal District Court, Erode. The first Appellate Court by judgment and decree dated 14.09.2011, allowed the first appeal by setting aside the decree and

judgment passed in O.S.No.18 of 2006. Against the judgment and decree dated 14.09.2011, the petitioners filed S.A.No.467 of 2012 and the same is pending before this Court. The petitioners submitted that the parties, suit properties and cause of action for both the suits are one and the same. In the circumstances, the petitioners prayed for stay of the present O.S.No.188 of 2012 till the disposal of second appeal in S.A.No.467 of 2012 pending in this Court.

4. The respondent filed counter affidavit denying all the averments made in the said application and submitted that cause of action and relief sought for in both the suits are different. The respondent has not received any notice from this Court with regard to the second appeal filed by the petitioners.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, materials on record and taking note of the relief sought for in both the suits and cause of action, dismissed the application filed by the petitioners holding that cause of action and relief sought for in both the suits are not one and the same.

6. Against the order of dismissal dated 21.08.2012 made in I.A.No.1017 of 2012, the present civil revision petition is filed by the petitioners/defendants.

7. Heard both sides and perused the materials on record.

8. Earlier, the petitioners have filed O.S.No.18 of 2006 for cancellation of sale deed dated 03.08.2004 and for permanent injunction. According to the petitioners, they borrowed money from the respondent and at request of the respondent, they executed power of attorney appointing the respondent's mother-in-law as his agent. Without knowledge of the petitioners, the respondent got the sale deed executed in his favour through the power agent.

9. According to the petitioners, they did not agree to sell the property and power of attorney executed is only a security for the loan taken by them. The present suit filed by the respondent is for permanent injunction restraining the petitioners from interfering with his peaceful possession and enjoyment of A schedule property and not to put up any further construction in B schedule property.

10. From the materials on record, it is seen that the cause of action and relief sought for in both the suits are different. As per the provisions of Section 10 of C.P.C., subsequent suit can be stayed only when the parties and issues involved in both the suits are one and the same and the earlier suit decreed on merits. In the present case, parties are one and the same, but the cause of action and relief sought for in both the suits are different.

11. The learned Judge considering these aspects in proper perspective and rightly dismissed the application by giving cogent and valid reason. In the circumstances, there is no irregularity or illegality in the order of the learned Judge dated 21.08.2012 made in I.A.No.1017 of 2012.

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

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Index:Yes/No

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V.M.VELUMANI,J.

Kj

To

The Principal District Munsif, Bhavani.



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