

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1726 of 2015
& M.P.No.1 of 2015

1.M/S.Ambi ply panels and Doors
Represented by its Manager Partner
G.Madan Kumar
No.678/2003, Kurumbanur
Dasanoor post
Mettupalayam-641 305.

2.Madhan Kumar

.. Petitioners

Vs.

S.Chokalingam

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 31.07.2014 made in I.A.No.124 of 2011 in O.S.No.37 of 2010 on the file of the Principal Subordinate Court, Coimbatore.

For Petitioners : Mr.S.Mukunth
for M/S.Sarvabhauman Associates

For Respondent : Mr.B.Nedunchezhiyen

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 31.07.2014 made in I.A.No.124 of 2011 in O.S.No.37 of 2010 on the file of the Principal Subordinate Court, Coimbatore.

2. The petitioners are the defendants and respondent is the plaintiff in O.S.No.37 of 2010 on the file of the Principal Subordinate Court, Coimbatore. The respondent filed the said suit for declaration that the sale deed dated 22.12.2006 is invalid and liable to be cancelled and for declaration that the respondent is absolute owner of the suit property. The petitioners filed I.A.No.124 of 2011 under Order VII Rule 11(d) C.P.C., for rejection of plaint as barred by law.

3. According to the petitioners, the respondent earlier filed suit O.S.No.91 of 2008 on the file of the District Munsif Court, Mettupalayam, against the petitioners for bare injunction with regard to the same property. The cause of action and the parties are one and the same. In both the suits, the sale deed dated 22.12.2006 is questioned by the respondent. The relief now sought for was available to the respondent at the time of filing of the earlier

suit itself. Therefore, he cannot file the present suit for the relief to declare the sale deed dated 22.12.2006 is invalid and the suit is barred by the provisions under Order II Rule 2 C.P.C. and prayed for rejection of plaint.

4. The respondent filed counter affidavit and contented that the cause of action for both the suits are different and the relief sought for in both the suits are also different. In the present suit, the relief sought for is declaration of title and the respondent has valued the suit and paid Court fee. The District Munsif Court has no jurisdiction to entertain the suit for declaration and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and plaint, dismissed the application holding that the objection raised by the petitioners can be decided only after trial.

6. Against the said order of dismissal dated 31.07.2014 made in I.A.No.124 of 2011, the present Civil Revision petition is filed by the petitioners/defendants.

7. The learned counsel for the petitioners reiterated the averments made in the affidavit and grounds of revision and contended that the relief now sought for by the petitioners in the present suit was available at the time of filing of the earlier suit itself. The present suit is hit by Order II Rule 2 C.P.C. In support of his contention, the learned counsel for the petitioners relied on the following judgment of the Hon'ble Apex Court reported in **(2014) 6**

SCC 424 (Coffee Board v. Ramesh Exports Private Limited):

"12. The Courts in order to determine whether a suit is barred by Order II Rule 2 must examine the cause of action pleaded by the plaintiff in his plaints filed in the relevant suits. Considering the technicality of the plea of Order II Rule 2, both the plaints must be read as a whole to identify the cause of action, which is necessary to establish a claim or necessary for the plaintiff to prove if traversed. Therefore, after identifying the cause of action if it is found that the cause of action pleaded in both the suits is identical and the relief claimed in the subsequent suit could have been pleaded in the earlier suit, then the subsequent suit is barred by Order II Rule 2."

8. Heard the learned counsel counsel for the petitioners as

<http://www.judis.nic.in> well as the respondent and perused the materials available on

record.

9. The petitioners are seeking rejection of plaint on the ground that the present suit is barred under Order II Rule 2 C.P.C. According to the petitioners, cause of action, suit property and the parties are one and the same. The respondent ought to have included the relief now sought for in the earlier suit itself. The respondent has not obtained leave to file subsequent suit. This contention is contrary to the facts. The earlier suit is filed only against the second petitioner. According to the respondent, the second petitioner on 28.02.2008 and 08.03.2008 interfered with the possession of the respondent. Subsequently, on coming to know of the sale deed in favour of the first petitioner, the respondent has filed present suit for declaration of his title and also to declare the sale deed dated 22.12.2006 as null and void.

10. A reading of the plaint in both the suits reveals that the cause of action for both the suits is different. The cause of action for permanent injunction is different from the cause of action for declaration of title. Further the earlier suit was filed only against second petitioner as he tried to interfere with the possession of the respondent. Whether the suit is barred under Order II Rule 2 C.P.C.

is mixed question of fact and the same can be decided only by appreciating the evidence let in by the parties. In view of the above, the judgment relied on by the learned counsel for the petitioners does not advance the case of the petitioners.

11. The learned Judge has considered all the aspects in proper perspective and dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge dated 31.07.2014.

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

01.02.2018

Index : Yes/No

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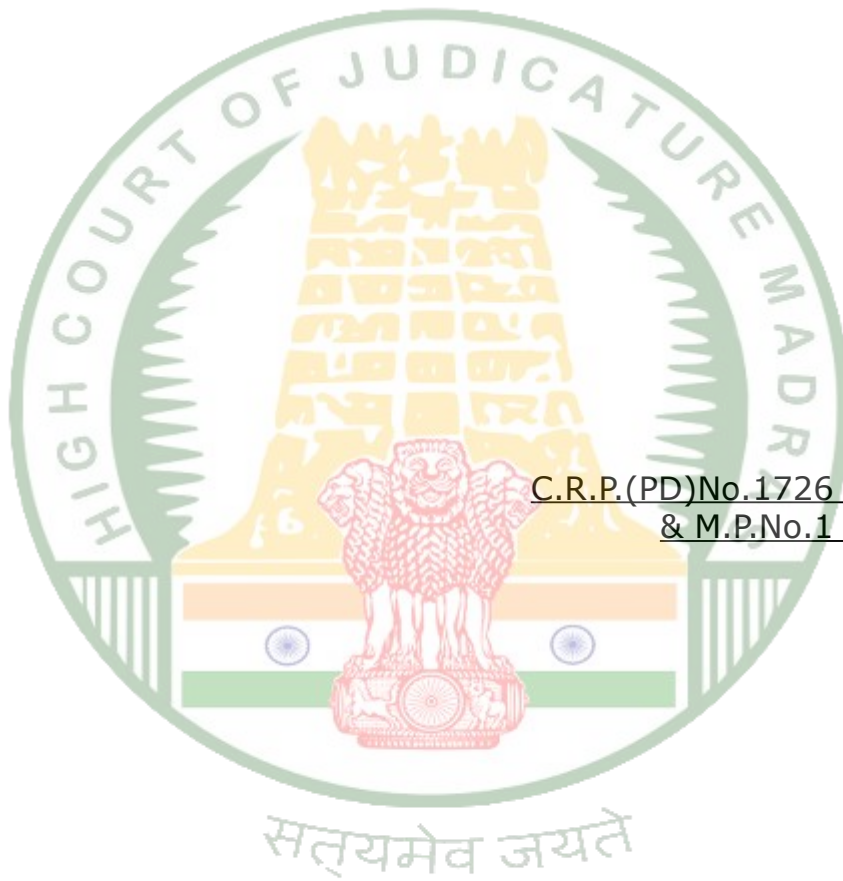
To

The Principal Subordinate Judge
Coimbatore.

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V.M.VELUMANI, J.

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