

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM :**THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR**

C.R.P. (PD) Nos.3031 & 3032 of 2013 &
M.P.No.2 of 2013 in C.R.P.3032 of 2013

Mangadu Apartment Owners Welfare Association,
Rep. By its President Mr.G.Thiyagarajan
No.29, Ellaiamman Koil Street,
West Mambalam, Chennai – 600 033. .. Petitioner

Vs.

Mr.K.Pandarinathan,
Proprietor,
Mangadu Amman Constructions,
No.23, Pycrofts 1st Street,
Royapettah, Chennai – 600 014. .. Respondent

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to strike of the suit in O.S.No.1872 of 2013 on the file of the XII Assistant Judge, City Civil Court Chennai to recall the entire records relating to the said suit and to strike off the same from the file of the said Court and against the Order in I.A.No.5105 of 2013 in O.S.No.1872 of 2013 passed by the learned XII Assistant Judge, City Civil Court, Chennai dated 01.04.2013 granting an order of exparte interim injunction and its subsequent extensions and to dismiss the same.

For Petitioner : Mr.S.D.Venkateswaran

For Respondent : No appearance

COMMON ORDER

These revision petitions have been filed to suspend the Order of injunction passed in I.A.No.5105 of 2013 and also to strike of the suit in O.S.No.1872 of 2013 on the file of the XII Assistant Judge, City Civil Court, Chennai.

2. The brief facts leading to filing of these revisions are as follows :

The revision petitioner is the President of the Mangadu Apartment Owners Welfare Association. These revisions have been filed mainly on the ground that the interim Order obtained by the respondent is by playing fraud on the Court and suppressing the earlier two suits filed in respect of the same subject matter and same relief. The present suit is also filed for the same relief and pending before different Courts. When he failed to get an Order of injunction in the earlier suits, this suit has been presented before some other Court and obtained an Order. This is nothing but forum shopping. Hence, it is contended that the suit is an abuse of process of law and the Order of Injunction granted in this suit has to be set aside and the suit has to be struck of.

3. It is curious to note that the respondent, despite service of notice, none appeared for him. He has filed a suit in O.S.No.954 of 2013 on the file of the I

Assistant Judge, City Civil Court, Chennai against the revision petitioner for permanent injunction restraining the Association from disturbing peaceful possession and enjoyment of the respondent in 'B' schedule property. The main allegation in the plaint is that four flats in 'D' block are yet to be constructed and the land in which construction to be carried out is in the possession of the plaintiff.

4. According to the respondent, he is in possession of 14 flats. Further the Association is preventing him from entering into the suit property to carry out the repairs. In the above suit, it appears that he could not obtain any interim Order. It is to be noted that the above suit has been filed before the I Assistant City Civil Court. Having failed in obtaining any relief, he has filed a similar suit in O.S.No.1263 of 2013 on the file of the XVII Assistant City Civil Court, Chennai alleging the same allegations found in O.S.No.954 of 2013 and made an attempt to get an interim Order against the Association. However, he was unsuccessful. The above suit was filed on 01.03.2013. Not stopping with that, he has filed another suit in O.S.No.1578 of 2013 on the file of the V Assistant City Civil Court, Chennai on 14.03.2013. Therein also, he is not successful in obtaining any interim Order. Finally, he filed the present suit in O.S.No.1872 of 2013 before the XII Assistant City Civil Court, Chennai on 26.03.2013 and obtained an interim Order in his favour.

5. It is to be noted that in all the 4 suits, the allegations of the plaintiff are one and the same. The relief sought against the Association is also one and the same. Having failed in his attempt in getting interim Order from the Court of I Assistant City Civil Court, he moved the second suit on similar allegations on 01.03.2013 before another Court. Again having failed in his attempt, he moved the third suit before the V Assistant City Civil Court, Chennai on 14.03.2013. In all the three occasions, he was unsuccessful and finally on 26.03.2013, the present suit, which is sought to be struck off, has been filed before the XII Assistant City Civil Court, Chennai and managed to get an interim Order.

6. It is further to be noted that such suit is totally barred under law. Already similar suits are pending and suppressing the pendency of the suits, obtaining an interim Order behind the back of the of the revision petitioner is nothing but clear abuse of process of law. The manner in which the four suits are filed within a span of 1 ½ months clearly show the conduct of the plaintiff, i.e., the respondent herein was doing forum shopping to get an ex parte Order by suppressing material facts. If such frivolous suits are entertained and such litigants are entertained by the Court of Law, there would be no end to such frivolous litigations. Therefore, this Court is of the view that such suit is liable to be struck off from the file. It is also stated by the revision petitioner that one of the suits has been withdrawn by the respondent. Now two suits are pending. The trial Court, where those two suits are pending, has to take note of the

conduct of the parties filing such suits and take a decision by imposing exemplary cost.

7. Accordingly, these Civil Revision Petitions are allowed and the interim injunction passed in I.A.No.5105 of 2013 in O.S.No.1872 of 2013 is suspended and the suit in O.S.No.1872 of 2013 is struck of. Consequently, the connected miscellaneous petition is closed. No cost.

15.02.2019

vrc

To

1. The I Assistant Judge,
City Civil Court, Chennai.
2. The V Assistant Judge,
City Civil Court, Chennai.
3. The XII Assistant Judge,
City Civil Court, Chennai.
4. The XVII Assistant Judge,
City Civil Court, Chennai.

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N.SATHISH KUMAR, J.

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