

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.06.2019

DELIVERED ON: 11.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (PD) No.4472 of 2013 and
M.P.No.1 of 2013 and
M.P.No.1 of 2014

1. S.Ramanathan
2. E.J.Ayyappan

.... Petitioners

Vs.

1. S.Valliammai
2. Meena
3. Muthumeena

.... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 24.06.2013 passed in I.A.No.7712 of 2013 in O.S.No.2320 of 2013 by the VI Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.M.S.Krishnan, Senior Counsel,
for Mr.N.Damodaran (for P1)
Mr.M.Santhana Mari (for P2)

For Respondents : Mr.B.S.Jhothiraman (R1 to R3)

ORDER

The civil revision petitioners are the defendants in O.S.No.2320 of 2013 on the file of the VI Assistant Judge, City Civil Court, Chennai. The respondents/plaintiffs filed the above suit for a declaration that the Power of Attorney dated 04.11.2011 as null and void and for a permanent injunction restraining the revision petitioners/defendants from alienating the suit A and B schedule properties. The defendants entered appearance in the said suit and filed a petition in I.A.No.7712 of 2013 under Order VII Rule 11 of the Code of Civil Procedure praying to reject the plaint, since the suit in O.S.No.2320 of 2013 is barred under Order II Rule 2 of the Code of Civil Procedure. The respondents/plaintiffs filed I.A.No.6381 of 2012 under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure praying for grant of an ad interim injunction restraining the defendants from alienating or encumbering the suit properties pending disposal of the suit. The learned VI Assistant Judge vide his fair and decreetal order dated 24.06.2013, dismissed the petition in I.A.No.7712 of 2013 filed by the present revision petitioners/ defendants and allowed the petition in I.A.No.6381 of 2012 filed by the respondents/plaintiffs. Aggrieved over the same, the defendants in O.S.No.2320 of 2013 filed the present civil revision petition.

2. The first respondent and her late husband M.Sokkalingam were plaintiffs in O.S.No.4722 of 2012 on the file of VII Assistant Judge, City Civil Court, Chennai. Late M.Sokkalingam was the absolute owner of the suit A and B schedule properties, as shown in the plaint schedule in O.S.No.2320 of 2013. The couple have three children, one son and two daughters. The properties were settled by way of an oral settlement on 01.11.2011 amongst the three children. The two daughters had received Rs.9crores each by way of two cheques each and had relinquished their right over the properties through a deed dated 02.11.2011 in favour of their brother Ramanathan, the first petitioner herein. The first revision petitioner admittedly got two properties as his share, which was settled to him by one E.J.Ayyappan, who is the 2nd revision petitioner herein, the power agent of late M.Sokkalingam,

3. Subsequent to all these events in 2011, O.S.No.4722 of 2012 was filed by the parents of the first revision petitioner before the VII Assistant Judge, City Civil Court, Chennai seeking permanent injunction restraining the first revision petitioner herein from interfering with the peaceful possession and enjoyment of the property in which they were living and also with the operation of a bank account in which, only two of them were the account holders and operators. In the said plaint, both of

them had alleged that their son had obtained two properties settled in his favour by compulsion. In O.S.No.4722 of 2012, the first revision petitioner submitted to decree stating that he was not inclined to interfere with the property in which his parents were residing nor interested in fiddling with the bank account, they were operating. The said suit was decreed in favour of the plaintiffs.

4. Subsequently, the respondents herein filed O.S.No.2320 of 2013 before the VI Assistant Judge, City Civil Court for a relief of declaration that the Power of Attorney dated 04.11.2011 executed by M.Sokkalingam is null and void and for a consequential relief of permanent injunction restraining the present revision petitioners from interfering with their peaceful possession and enjoyment of the suit property.

5. The bone of contention in the suit in O.S.No.2320 of 2013 filed by the respondents (the wife and the two daughters of late M.Sokkalingam) is that the Power of Attorney dated 04.11.2011 executed by late M.Sokkalingam in favour of the 2nd revision petitioner is vitiated by coercion. M.Sokkalingam reportedly expired on 13.03.2013 and the suit in O.S.No.2320 of 2013 is subsequent to his death. The civil revision petitioners filed I.A.No.7712 of 2013 to reject the plaint under Order VII

Rule 11 of the Code of Civil Procedure, since the subsequent suit in O.S.No.2320 of 2013 is barred under Order II Rule 2 of the Code of Civil Procedure.

6. The crux of the entire proceedings lies on whether the plaint in O.S.No.2320 of 2013 is barred under Order II Rule 2 of CPC.

7. The learned trial judge has concluded that the suit is not barred under the said provision and his observation is that " the cause of action for both the suits are distinct and different with each one". The trial court has also doubted the peculiar manner, in which the suit properties (described as A and B schedule properties) have been settled through a third party i.e. the 2nd revision petitioner. The trial court also doubted the settlement executed through the Power of Attorney in haste when there was a Will executed by the deceased Sokkalingam having the same effect. In such circumstances, the trial court did not find favour in the contention of the civil revision petitioners that the plaint in O.S.No.2320 of 2013 was barred under Order II Rule 2 of the Code of Civil Procedure.

8. Mr.M.S.Krishnan, learned senior counsel appearing for the revision petitioners contended that the Power of Attorney dated 04.11.2011

was executed in the presence of the second and third respondents, as witnesses and was registered with the Sub Registrar, Periamet on 04.11.011. His further contention is that two daughters of late Sokkalingam were in full knowledge of Power of Attorney and its contents and that both of them are well educated. His next contention is that the claim of the respondents 1 to 3 that they were ignorant of the Power of Attorney itself is a blatant lie and has been done to cover up the deficiency in the suit.

9. He also relied on the decision in *State of M.P. Vs. Saleem alias Chamaru and another reported in 2005(5) Supreme Court Cases 554* and contended that whatever relief the petitioners desired to claim from the civil court on the basis of the averment with regard to the registered Power of Attorney dated 04.11.2011, could and ought to have been claimed in the previous suit in O.S.No.4722 of 2012 and that the 2nd suit claiming indirectly the relief of declaration and injunction are apparently barred under Order II Rule 2 of the Code of Civil Procedure.

10. He further relied on the decision in *Virgo Industries (Eng.) Private Limited Vs. Venturetech Solutions Private Limited reported in 2013 (1) Supreme Court Cases 625*, wherein it has been held thus.

9. Order II Rule 1 requires every suit to include the whole of the claim to which the plaintiff is entitled in respect of any particular cause of action. However, the plaintiff has an option to relinquish any part of his claim if he chooses to do so. Order II Rule 2 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 CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order II Rule 2(2) 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. Such leave of the court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave

of the court had been obtained. It is therefore, clear from a conjoint reading of the provisions of Order II Rules 2(2) and (3) CPC that the aforesaid two sub rules of Order II Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situations where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit proved that at the time of omission to claim, the particular relief he had obtained leave of the court in the first suit.

11. The learned counsel for the petitioners also contended that there is similarity in the cause of action and wondered how the trial court has misinterpreted the cause of action to conclude that it was different in both the suits. He also drew the attention of this court to the averments made in the plaint in O.S.No.4722 of 2012 and in O.S.No.2320 of 2013. He also pointed out the similarities in both the suits. His specific contention is that the suit in O.S.No.2320 of 2013 is clearly barred under

Order II Rule 2 of the Code of Civil Procedure and therefore prayed for rejecting the plaint in O.S.No.2320 of 2013.

12. Per contra, Mr.B.S.Jhothiraman, learned counsel appearing for the respondents contended that in the earlier suit in O.S.No.4722 of 2012, the plaintiffs did not seek for a relief of declaration that the Power of Attorney deed dated 04.11.2003 was obtained by compulsion and therefore, the subsequent suit is not barred under Order II Rule 2 of the Code of Civil Procedure. He also drew the attention of this court to the averments in paragraph No.4 of the plaint in O.S.No.4722 of 2012 and contended that the plaint in O.S.No.4722 of 2012 is only about the settlement deed dated 04.11.2011 and not about the Power of Attorney deed dated 04.11.2011 mentioned in the plaint in O.S.No.2320 of 2013. His contention is that the subsequent suit in O.S.No.2320 of 2013 is not barred by the provisions of Order II Rule 2 of the Code of Civil Procedure and the trial court is perfectly right in dismissing the application filed by the revision petitioners praying to reject the plaint in O.S.No.2320 of 2013.

13. Reliance was also placed upon the decision in *Inbasegaran and another Vs. S.Natarajan(dead) through LRs reported in 2014(6) CTC 445* by the learned counsel appearing for the respondents who contended

that only if the two suits and the reliefs claimed therein are based on the same cause of action, the subsequent suit would become barred under Order II Rule 2 of the Code of Civil Procedure. He also relied on the decision in ***Rathnavathi & another Vs. Kavita Ganashamdas reported in 2014(6) CTC 333***, wherein, it has been held that in order that a plea of bar under Order II Rule 2(3) of the Code of Civil Procedure should succeed the defendant, who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the court omitted to sue for the relief for which the second suit had been filed. He stressed that from the analysis it would be seen that the defendant would have to establish primarily that the cause of action for both the suits are one and the same.

14. His another contention is that merely because the pleadings are similar to some extent, would not give any right to the defendants to raise the plea of bar contained in Order II Rule 2 of the Code of Civil Procedure and that it is the cause of action, which is material to determine the applicability of bar under Order II Rule 2 of the Code of Civil

Procedure. According to him, the cause of action in both the suits are totally different from each other and therefore, the subsequent suit in O.S.2320 of 2013 filed by the present respondents cannot be said to be barred under Order II Rule 2 of the Code of Civil Procedure.

15. This suit is as a result of family dispute. The plaint in O.S.No.4722 of 2012 tells the dispute between the family members with the first revision petitioner, the son on one side and his sisters along with their parents on the other side. The respondents 1 to 3 have not disputed the oral family settlement, the letters of release, given by the respondents 2 and 3 and the execution of Power of Attorney dated 04.11.2011 by the deceased father Sokkalingam in the presence of the respondents 2 and 3 as witnesses and also the letter purportedly written by the 2nd respondent in her own hand writing on behalf of her father late Sokkalingam, requesting the Sub Registrar, Periamet to make a home visit for registering the Power of Attorney etc. The plaintiffs in O.S.No.4722 of 2012 though mentioned that the earlier settlement was out of compulsion, they have not claimed any relief on that account. The relief sought was only to protect the property in which the deceased Sokkalingam and his wife were residing and the savings bank account in their names. '

16. It is relevant to extract the averments in paragraph 4 of the plaint in O.S.No.4722 of 2012, which read thus:

" The plaintiff respectfully submits that the defendant by intimidating the plaintiffs and also by exploiting their emotions forced them to execute some documents on 04.11.2011, when the 2nd plaintiff was in the semi conscious state. The registrar was brought to the house and the thumb impression of the 2nd plaintiff was obtained. The 1st plaintiff was also compelled to execute the settlement deed dated 04.11.2011, on the file of Periamet settling the property described in the schedule A hereunder to the son of the defendant after reserving the life interest for the 1st plaintiff. No provision for the life interest has been made in favour of the 2nd plaintiff. The defendant has also taken all the original title deeds and documents from the house of the plaintiff. Though the documents were executed by exerting emotional influence over the 1st plaintiff, she did not opt for any legal proceeding against the defendant considering the relationship and the family prestige. Thus, the plaintiffs are put to lot of emotional

trauma and tension because of the conduct of the defendant therein."

17. However, paragraph No.7 of the plaint in O.S.No.4722/12, it is averred that.

While being so, the defendant whose greed has not been satisfied with the settlement deed executed by compelling the 1st plaintiff and parting of several properties, like namely 1 and 1/2 acres of the land in Ooty with the bungalow and several valuable properties at Pudukottai District belonging to the 2nd plaintiff, is now started to have his eye upon the bank account.

18. It is pertinent to extract the schedule of properties indicated in subsequent suit in O.S.No.2320 of 2013, which reads thus:

Schedule A

All that piece and parcel of the land and building known as Regent Palace bearing R.S.No.3907/2A, S.No.C263 part, New S.No.43, situate in Ward E, Block No.6, admeasuring approximately 1 acre and 56 cents, situated at 374, 375 and 376, Peyton road, opposite Ratan Tata

Officer's Home, Ootacamaund, Nilgiris and building thereon and bounded on the North by Hadsfield road now known as Peyton Road, south in property in R.S.No.4068, east by the portion of the land in R.S.No.3907 and west by R.S.Nos.3906 and 4068 before teh Office of the Sub Registrar, Ootacamund, of Nilgiris Registration District.

Schedule B

All that piece and parcel of the vacant land situated at Door No.1/29, Rayavaram main road, (Kadiyapatti Village), Ramachandrapuram, Panangudi Vatta, Thirumayam Taluk, Pudukottai District, comprised in Old S.No.177 (natham), New S.No.90/11, 76-7-0 Kuli, situated in Ward No.1, bounded on the north by Kuttapuli Oorani south by Thirumayam Rayavaram Main Road, east by vacant property belonging to STS, N.Chokkalingam @ Subramaniam. Measuring east-23st 97.3 feet, North-West 58 feet, measuring an extent of 5643.4 sq.ft. approximately within the Sub Registration District, Thirumayam of the Puddukottai Registration District.

Therefore, it is clear from the averments in paragraph No.7 of the plaint in O.S.No.4722 of 2010 that the first respondent was aware that the properties in the present suit were already given to the share of the first revision petitioner. In paragraph No.4 of the plaint in O.S.No.4722 of 2012, it is clearly averred that the plaintiffs did not take any legal proceedings against the defendants considering the relationship and family prestige. Paragraph No.4 of the plaint in O.S.No.4722 of 2012 clearly spells the various documents executed on the said date by summoning the Sub Registrar to home to register all the documents.

19. It is also pertinent to point out that the Power of Attorney deed dated 04.11.2011 was not challenged by late Sokkalingam during his life time. In fact, the suit in O.S.No.2320 of 2013 was filed by his wife and two daughters challenging the Power of Attorney. It is also seen from the averments made in O.S.No.4722 of 2012 that the suit was filed by Sokkalingam and his wife based on certain apprehension and was rather preventive in nature to safeguard their interest.

20. The first revision petitioner had submitted to a decree by stating that he was not staking his claim either for the suit property in O.S.No.4722/2012 or for the savings bank account operated by his parents.

The suit in O.S.No.2320 of 2013 was filed after the demise of Sokkalingam. The prayer in the suit, especially in the light of the fact that both the 2nd and 3rd respondents executed a release deed after receipt of Rs.9 crores each as full and final settlement of the estate of their parents, cannot be stated to have holy intentions. That they were parties to all the events including the oral and family settlement and related release deeds and subsequent execution of Power of Attorney express their intentions.

21. The only point which has to be considered is whether the suit in O.S.No.2320 of 2013 is barred under Order II Rule 2 of the Code of Civil Procedure. It is relevant to extract Order II rule 2 of the Code of Civil Procedure, which reads thus.

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 internationally 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.

22. Order II Rule 1 requires every suit to include the whole of the claim to which the plaintiff is entitled in respect of any particular cause of action. However, the plaintiff has an option to relinquish any part of his claim if he chooses to do so. Order II Rule 2 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 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) does not contemplate omission or relinquishment of any portion of the plaintiffs' claim with the leave of the court so as to entitle them to come back later to seek what has been omitted or relinquished. Leave of the court is contemplated by Order II Rule 2(3) in situations where a plaintiff being

entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave of the court had been obtained.

23. Admittedly, in the instant case, the first respondent did not seek the leave of the court to file another suit for the reliefs omitted to be claimed in O.S.No.4722 of 2012. In fact, the contention of the plaintiffs in O.S.No.4722 of 2012 is that considering the relationship and family prestige, they did not take any legal proceedings against the defendants in respect of the transactions that took place on 04.11.2011. Merely because there is an omission to mention about the Power of Attorney in the earlier suit in O.S.No.4722 of 2012, it will not give rise to a separate cause of action to file another suit.

24. It is also clear from the averments made in both the plaints that the plaintiffs in both the suits were aware of the execution of the Power of Attorney dated 04.11.2011. The averments made in paragraph No.3, 4 and 5 of the plaint in O.S.No.2320 of 2013 clearly shows that the family properties were partitioned. The entire averments in O.S.No.4722 of 2012 and O.S.No.2320 of 2013 clearly go to show that the cause of action

for both the suits are one and the same. The respondents 1 to 3 were parties to all the events, including the oral family settlement and the related release deeds and subsequent execution of Power of Attorney.

25. The trial court has erred in concluding that the cause of action are different in the two suits. The trial court has also deviated from its jurisdiction by going into the aspect that for why and what purpose the Power of Attorney was executed, brushing aside the fact that the respondents 2 and 3 were witnesses to the said document. The trial court has further observed that late Sokkalingam was suffering from various ailments as is evidenced by Ex.P2 and Ex.R4, certificates issued by Doctors. Ex.P2 was issued by Dr.A.Chandrasekaran on 03.01.2013, certifying that it would be difficult for the first respondent herein (Valliammai) to attend the court proceedings and it has no relevance to Ex.R4, which is a certificate dated 04.11.2011 given by Dr.S.Mahendran stating that M.Sokkalingam is suffering from recurring urinary infection and has developed an Abscess near the Cervical Cord and that he would not be able to sign any document. Therefore, the observation of the trial court that both the documents would prove that late Sokkalingam was suffering from ailments is incorrect.

26. The trial court has also not properly appreciated Ex.R3 letter written by the 2nd respondent/2nd plaintiff requesting the Sub Registrar, Periamet to make a home visit to register a Power of Attorney Deed in favour of E.J.Ayyappan, the 2nd revision petitioner. When the second respondent had written the said letter addressed to the Sub Registrar, Periamet in her own handwriting and signed the Power of Attorney as a witness, cannot subsequently take a u-turn and contend that she came to know about the Power of Attorney only after filing of the written statement by the first petitioner herein in the suit in O.S.No.4722 of 2012.

27. Further more, the Power of Attorney dated 04.11.2011 was executed for a specific purpose and on its fulfilment, the Power of Attorney has become infructuous. The principal also died and the power attorney ceased to be an agent. As per the Power of Attorney dated 04.11.2011, the property is also settled in favour of the first revision petitioner by the second revision petitioner. Therefore, the apprehension of the respondents/plaintiffs that the 2nd revision petitioner is likely to alienate the property based on the Power of Attorney, may not also be accepted.

28. Similarly, the release letters executed by the daughters were also signed by their mother, the first respondent. It is not the case that there was no bitterness in the family dispute. But O.S.No.2320 of 2013 is clearly an attempt to open the healing wound.

29. Since it is held by this court that the cause of action in O.S.No.4722 of 2012 and O.S.No.2320 of 2013 are one and the same, the subsequent suit in O.S.No.2320 of 2013 is clearly barred under Order II Rule 2 of the Code of Civil Procedure.

30. In the result,

(i) The civil revision petition is allowed. No costs. The connected miscellaneous petitions are closed.

(ii) The orders passed by the trial court is set aside and the suit in O.S.No.2320 of 2013 is rejected with costs.

11.07.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
Note: Issue today
mst

To

The VI Assistant Judge, City Civil Court, Chennai.

R.HEMALATHA,J.
mst



Predelivery Order in
CRP (PD) No.4472 of 2013 and
M.P.No.1 of 2013 and
M.P.No.1 of 2014

WEB COPY

11.07.2019