

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 24.10.2019

Pronounced On : 13 .11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.4513 of 2013

and M.P.No.1 of 2013

T.Tamilselvan

...

Petitioner

..Vs..

Arpudharaj

...

Respondent

Prayer: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order and decretal order passed in I.A.No.24154 of 2013 in O.S.No.12700 of 2011 dated 14.08.2013 on the file of the learned IV Assistant Judge, City Civil Court, Madras.

For Petitioner : Mr.S.Nagarajan

For Respondents : Mr.A.Mohan

ORDER

The defendant in OS No.12700 of 2011 on the file of the learned IV Assistant Judge, City Civil Court at Chennai, is the petitioner herein.

2. Initially, the respondent herein filed the above referred suit as against the revision petitioner, seeking the relief of permanent injunction,

restraining the revision petitioner, his men, agents, servants or subordinates, in any way interfering with his peaceful possession and enjoyment of the suit schedule property, in any manner whatsoever.

3. The revision petitioner after entering appearance in the above referred suit, filed an interlocutory application in IA No.21454 of 2013, under Order VII Rule 11 of Code of Civil Procedure, to reject the plaint. The learned IV Assistant Judge, City Civil Court at Chennai, after hearing the objections raised by the respondent herein by order dated 14.08.2013 had dismissed the application filed by the revision petitioner. Aggrieved over the same, the revision petitioner is before this Court with the Civil Revision Petition, praying to set aside the order dated 14.08.2013 and to allow the interlocutory application IA No.21454 of 2013, filed to reject the plaint.

4. The learned counsel appearing for the revision petitioner would submit that before instituting the present suit, the revision petitioner through his Power Agent T.Latha, filed a suit as against the respondent herein, in OS No.3109 of 2006 before the learned VII Assistant Judge, City Civil Court at Chennai, for the same relief of permanent injunction in respect of the same suit property. By judgment and decree dated 08.04.2010, the said suit was partly decreed with costs and thereby permanent injunction,

has been granted in favour of revision petitioner. Suppressing the above fact, respondent herein, has filed the present suit, for the same relief, which is necessarily hit by the principles of *res judicata* and without appreciating the above aspects, the learned IV Assistant Judge, City Civil Court, at Chennai, has dismissed the application filed by the revision petitioner, which is erroneous in law.

5. Resisting the claim made by the revision petitioner, the learned counsel appearing for the respondent herein made submission that the present suit has been filed based on the new cause of action. The learned counsel further contended that since the suit has been filed for the relief of permanent injunction, the principles of *res judicata*, is not applicable to the present case and there is no error in the impugned order passed by the Court below.

6. Submissions made by the learned counsel on either sides are considered.

7. Now, on going through the impugned order passed, the Court below has observed that Document Nos. 6 and 7 produced along with the plaint, proves the fact that the revision petitioner/defendant attempted to

dispossess the respondent/plaintiff and the same had taken place on 28.10.2010. Further, it is observed that since the suit is filed for the limited purpose, the Court cannot look into the truth and falsity of the alleged cause of action. It is further observed by the Court below that the Court is bound to analyse the truth in respect of the alleged possession of the respondent/plaintiff in pursuance to the tenant vacated, who were inducted by the revision petitioner/defendant and the same could be resolved only after a full fledged trial, since it involves mixed question of fact and law.

8. In this aspect, there is no denial on the part of either side that the earlier suit viz., OS No.3109 of 2006 and the present suit viz., O.S.12700 of 2011, are in respect to the same property. Further it is admitted that in both the suits, the parties to the proceedings are one and the same. Moreover, in the earlier suit, a decree of permanent injunction has been granted in favour of the revision petitioner/defendant and challenging the same, no appeal is preferred. Thus, the said decree has reached its finality.

9. In this occasion, in the present suit, the respondent herein, by enclosing Document Nos. 6 and 7 along with the plaint, has introduced a new cause of action. As of now, the respondent herein alone is in the possession of the suit schedule property. Now, on going through the details of

documents enclosed along with the plaint, Document No.6, dated 30.09.2010, is the letter of third parties and Document No.7 dated 07.10.2010, is the NJS letter of third parties.

10. This Court do not know under what basis those documents prove the fact that the revision petitioner/defendant attempted to dispossess the respondent herein from the suit schedule property. It is unbelievable that after getting the decree in the month of April 2010, revision petitioner/defendant attempted to dispossess the respondent herein from the suit schedule property. If really the respondent herein is a law abiding citizen, he has to file an appeal against the judgment and decree dated 08.04.2010 passed in OS No.3109 of 2006. Instead of filing an appeal, filing one another suit in the same year, creates a doubt whether the respondent has approached the trial Court with bonafide reasons or not. In otherwise, the parameters laid down under Section 11 of the Code of Civil Procedure, is correctly applicable to the interlocutory application filed by the revision petitioner. Without proving the change of circumstances, it cannot be said that the suit filed by the respondent herein, is not hit by the principles of *res judicata*.

11. In this occasion, in fact the respondent herein has stated in his counter affidavit that the revision petitioner/defendant is not actually occupying the suit schedule property and one Annapurani and Rajasekar, are only residing there, claiming to be the tenants under the revision petitioner / defendant. So, the said averment makes it clear that the revision petitioner, is in the possession and enjoyment of the suit property. Further, in paragraph No.6 of the plaint itself, the respondent herein has admitted the fact that the revision petitioner is in the possession of the suit schedule property. Further it is not known as to why the respondent herein has filed a suit for the relief of permanent injunction against the revision petitioner, even after knowing the fact that a decree has been granted in favour of the revision petitioner and even after admitting the possession of the revision petitioner in the suit schedule property.

12. Since the decree passed in OS No.3109 of 2006 becomes final one, filing of the present suit by the respondent herein, for the reliefs stated supra, on the basis of two letters, that too, executed by third parties, is nothing but an abuse of process of the Court. Therefore, the same should not be allowed by way of another litigation.

13. Under Order VI Rule 16 of Code of Civil Procedure , the Court may at any stage of proceedings, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of process of Court. In this aspect in a decision of our Hon'ble Supreme Court in the case of ***K.K.Modi Vs. K.N.Modi***, reported in **1998 (2) AIR SCW 1166**, our Hon'ble Apex Court has elaborately considered as to what is meant by “abuse of process of Court” and at paragraph Nos.42 to 46, held as below:

“.... This Court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation...

...The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstance. And for this purpose considerations of public policy and the interests of justice may be very material.

.... Frivolous or vexatious proceedings may also amount to an abuse of the process of Court especially where the proceedings are absolutely groundless. The Court then has the power to stop such proceedings summarily and prevent the time of the public and the Court from being wasted. Undoubtedly, it is a matter of Courts' discretion whether such proceedings should be stopped or not..”

14. In the said circumstances, it is open to the respondent herein to file a suit for the relief of declaration and for recovery of possession and not otherwise, by way of filing another one suit for the same relief, already granted in favour of the revision petitioner. Accordingly, this Court is of the opinion that the impugned order passed by the Court below is having material irregularity.

15. Therefore, in the light of the above discussion and the decision of our Hon'ble Apex Court quoted supra, this Court is inclined to set aside the impugned order. Accordingly, the order dated 14.08.2013, passed by the learned IV Assistant Judge, City Civil Court at Chennai, in IA No.21454 of 2013 in OS No.12700 of 2011, is set aside and the Civil Revision Petition is allowed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No.

Internet: Yes.

Speaking / Non-speaking Order

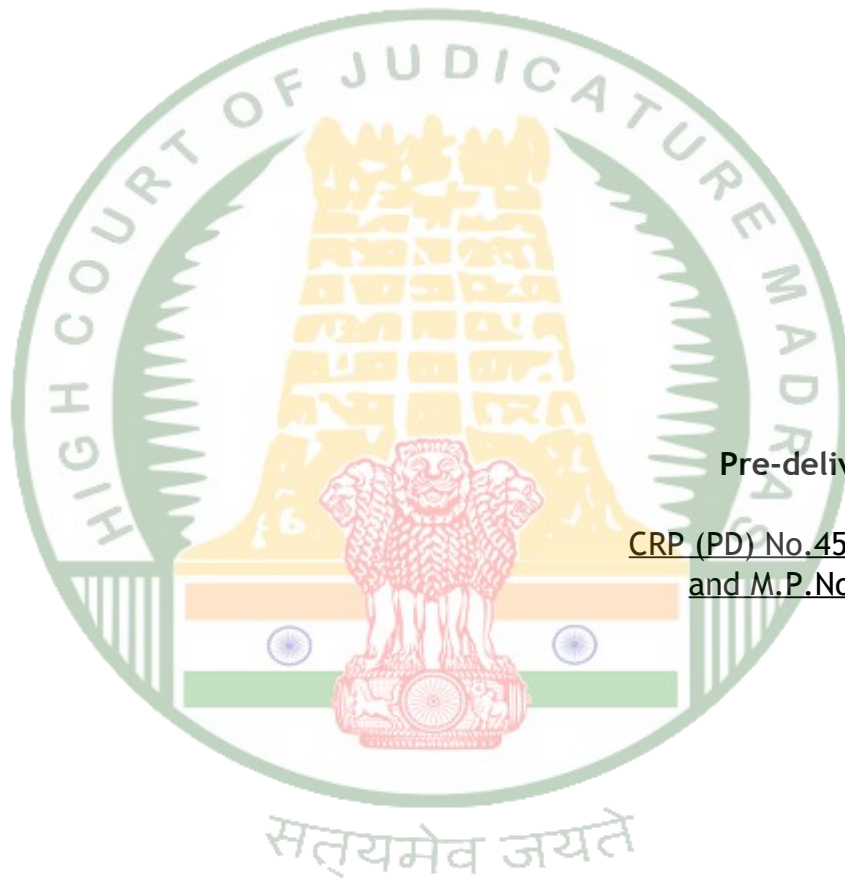
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To

The IV Assistant Judge, City Civil Court at Chennai.

R.PONGIAPPAN, J.,

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Pre-delivery order

CRP (PD) No.4513 of 2013
and M.P.No.1 of 2013

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