

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP PD No.3089 of 2016

K.Palanisamy ... Petitioner

Vs.

1. K.Selvaraj
2. K.Jayaraman ... Respondents

Prayer Civil Revision petition filed under Article 227 of the Constitution of India against the order dated 01.06.2016 passed in I.A.No.249 of 2015 in O.S.No.103 of 2015 by the IV Additional District Judge, Coimbatore.

For Revision Petitioner : Mr.M.R.Thangavel

For respondents : Mr.S.Mukund

ORDER

This revision petition has been filed against the order of the trial court, dismissing the application, filed under Order VII Rule 11 of the Code of Civil Procedure to reject the plaint on the ground that there was no cause of action for filing the suit.

2. The revision petitioner is the first defendant in the original suit in O.S.No.103 of 2015 and the plaintiff has filed the suit claiming damages against the defendants for securing the injunction wrongfully. It is the contention of the plaintiff that the suit property was allotted to him through a partition deed dated 30.09.1995 and ever since such date, he has been in possession of the property and the 2nd defendant, who is the brother of the plaintiff, was the attester of the partition deed and the first defendant is father-in-law of the 2nd defendant. The further contention of the plaintiff is that the first defendant has fabricated a lease deed and filed a suit in O.S.No.291 of 2004 on the file of the District Munsif, Coimbatore.

3. At this stage, the first defendant /revision petitioner has filed an application to reject the plaint on the ground that the order of injunction obtained in an earlier suit was vacated only on 17.04.2017, whereas, the suit has been filed in the year 2015 i.e. when the order of injunction was in force. However, the trial court dismissed the petition. Against which, the present revision petition has been filed.

4. The learned counsel appearing for the revision petitioner would contend that originally, the petitioner has filed a suit in O.S.No.291 of 2004 for permanent injunction, not to evict him except due process of law. In the above suit, interim injunction was granted, against which an appeal in CMA No.160 of 2004 was filed, which was also dismissed, confirming the order of interim injunction passed by the trial court. His further contention is that, the suit in O.S.No.291 of 2004 was dismissed on 17.04.2017 and till the disposal of the suit, injunction was in force. Therefore, there was no cause of action to file the suit claiming compensation for securing the order of injunction wrongfully.

5. It is the contention of the learned counsel for the revision petitioner that Article 90 of the Limitation Act stipulates that only when the injunction ceased, the suit for compensation can be filed. According to him, the earlier suit in O.S.No.291 of 2004 was dismissed only on 17.04.2017, whereas, the present suit has been filed in the year 2015, much before the said suit came to be dismissed. It is the contention of the learned counsel for the petitioner that the present suit was presented, when the injunction was very much in

force and therefore, there was no cause of action for claiming compensation and hence he submitted that the trial court has not looked into these aspects and dismissed the application. In support of his submission, the learned counsel for the petitioner relied upon a judgment in ***Yerragorla Narayana Vs. Gavvala Nellesu and others reported in AIR 2006 A.P. 305.***

6. Whereas, the learned counsel appearing for the respondents would submit that the suit has been filed claiming compensation for securing the injunction wrongfully on insufficient grounds, and the suit is very much maintainable under Section 95 of the Code of Civil Procedure. His further contention is that Article 90 of the Limitation Act provides limitation period for filing a suit and it will not debar the plaintiff from claiming compensation under Section 95 of the Code of Civil Procedure and hence, the suit cannot be rejected at this stage and prayed for dismissal of the suit.

7. The fact remains that the revision petitioner claiming to be a tenant, has filed a suit in O.S.No.291 of 2004 seeking permanent injunction not to evict him except due process of law. It appears that

in the above suit, the revision petitioner had obtained an order of interim injunction, which was confirmed by the appellate court by its order dated 28.11.2006 in CMA No.160 of 2004. While confirming the order of injunction, the appellate court directed the trial court to dispose the suit within a period of three months. However, the suit had not been disposed of within three months and it was disposed only on 17.04.2017 and on that date, the suit was dismissed. Now, it appears that an appeal has been filed.

8. Be that as it may, the first respondent has filed the present suit claiming compensation on the ground that lease agreement is a fabricated one and in fact, he is in possession of the premises and an order of interim injunction was obtained in the earlier on insufficient grounds, thereby, he suffered loss and hence, he is entitled for compensation.

9. At this juncture, it is relevant to extract Section 95 of the Code of Civil Procedure.

95. Compensation for obtaining arrest, attachment or injunction on insufficient grounds. (i) Where, in any

suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section-

(a) it appears to the court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails and it appears to the court that there was no reasonable or probable ground for instituting the same.

the defendant may apply to the court, and the court, may , upon such application award against the plaintiff by its order such amount (not exceeding fifty thousand rupees), as it deems a reasonable compensation to the defendant for the (expense or injury (including to reputation) caused to him

Provided that a court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

10. On perusal of above section, it makes very clear that where in any suit in which a temporary injunction was obtained and it appears to the court that such order was obtained on insufficient grounds, the party, who suffered such order can seek compensation under clause 1(a) of Section 95 of CPC. Clause 1(b) of Section 95 of CPC deals with the right of the parties to claim compensation, after the dismissal of the suit. Section 95 Clause 1(a) of CPC makes it very clear that in any suit, if an order has been obtained on insufficient grounds, which enables the party suffered the order, he can seek compensation.

11. Article 90 of Limitation Act deals with the period of limitation for claiming compensation for the injury caused by the injunction wrongfully obtained. On careful perusal of Article 90 of the Limitation Act, it is clear that the limitation starts from the day, when injunction wrongly obtained, ceased. Therefore, it cannot be

construed to mean that only after injunction is vacated, the suit can be filed for claiming compensation. Article 90 of the Limitation Act deals with the period of limitation and commencement of limitation. The commencement of limitation cannot be treated to mean that only when the injunction ceased, the parties are entitled to seek compensation. Such interpretation is not possible for the simple reasons that Section 95(1)(a) of the Code of Civil Procedure enable the parties to claim compensation in any suit, where the order of injunction obtained on insufficient grounds. That being the position, the contention of the counsel appearing for the revision petitioner that there was no cause of action for the present suit, cannot be countenanced. Hence, I am of the view that the order of the trial court does not suffer to any illegality and the same is liable to be confirmed.

12. In the result, the Civil Revision petition is dismissed.

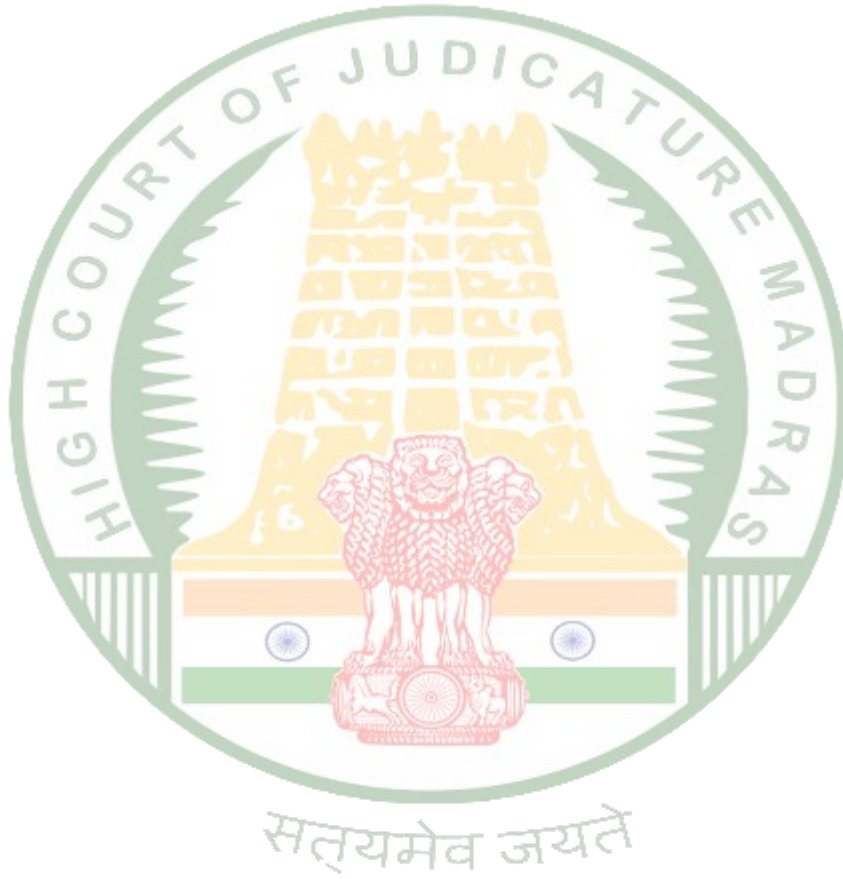
No costs. The order of the trial court is confirmed.

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25.04.2019

Index : yes/no
Internet : yes/no
Speaking order/non-speaking order
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To
The IV Additional District Judge, Coimbatore.



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N.SATHISH KUMAR. J.,



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