



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD) (PD)Nos.898 and 899 of 2011
and
M.P. (MD)Nos.1 and 2 of 2011

Sangeetha :Petitioner/1st Respondents
/1st Defendant in both cases

vs.

1.P.Shanmugham
2.P.Chinnaiah
3.P.Muthukrishnan
4.Leelavathi :Respondents 1 to 4/Petitioner 1 to 4
Plaintiff 1 to 4
5.K.Chinnammal
6.C.Pitchaimuthu
7.C.Palanisamy :Respondents 5 to 7/Respondents 2 to 4
Defendants 2 to 4 in both cases

PRAYER in C.R.P.(MD)(PD)No.898 of 2011: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order, dated 25.02.2011 passed in I.A.No.148 of 2011 in O.S.No.159 of 2011 by the learned District Munsif, Dindigul.

PRAYER in C.R.P. (MD) (PD)No.899 of 2011: Civil Revision Petitions filed under Article 227 of Constitution of India, for striking off the plaint filed by the respondents herein as plaintiffs in O.S.No.159 of 2011 pending on the file of the Principal District Munsif Court, Dindigul.

For Petitioner :Mr.S.Anand Chandrasekar
for M/s.Sarvabhuman Associates

For R1 to R4 :Mr.H.Lakshmi Shankar

For R5 to R7 :No Appearance

COMMON ORDER

C.R.P. (MD) (PD)No.898 of 2011 is filed by the first defendant in the suit in O.S.No.159 of 2011 as against the order in I.A.No.148 of 2011 in O.S.No.159 of 2001.

<https://hcservices.ecourts.gov.in/hcservices/>



2.C.R.P.(MD)(PD)No.899 of 2011 is filed to strike out the plaint in O.S.No.159 of 2001 pending on the file of the Principal District Munsif Court, Dindigul.

3.The brief facts that are necessary for the disposal of these petitions are as follows:

3.1.The revision petitioner is the first defendant in the suit in O.S.No.159 of 2011 pending on the file of the Principal District Munsif Court, Dindigul. The revision petitioner has purchased the property from the plaintiffs in a suit in O.S.No.1721 of 1988, namely, one Magudeeshwaran and others. The suit in O.S.No.1721 of 1988 on the file of the II Additional District Munsif Court, Dindigul, was filed for declaration of title and consequential injunction in respect of 7 items of suit properties. The said suit was partly decreed by the trial Court granting declarative relief.

3.2.The trial Court dismissed the suit for injunction by holding that the plaintiffs have not proved their possession. The plaintiffs in the suit in O.S.No.1721 of 1988 preferred an appeal in A.S.No.490 of 2004 on the file of the Principal Subordinate Court, Dindigul. The appellate Court allowed the appeal and granted the consequential relief of injunction also in favour of said Magudeeswaran and others. As against the judgment and decree of the lower appellate Court in A.S.No.490 of 2004, an appeal in S.A.(MD) No.119 of 2011 was filed by the defendants in that suit. Though the judgment in A.S.No.490 of 2004 was delivered on 17.07.2008, the appeal was numbered only in 2011. It is admitted that no interim stay is granted by this Court suspending the decree of injunction, that was granted in favour of the plaintiff's in O.S.No.1721 of 1988.

3.3.It is admitted before this Court that the suit properties were purchased by the revision petitioner, after the disposal of the appeal in A.S.No.490 of 2004 and before the second appeal got numbered. It is stated that the revision petitioner entered into possession of the suit property pursuant to the sale deeds, dated 20.11.2009 and 14.12.2009. Stating that the respondents herein, who are none else than the defendants in the suit in O.S.No.1721 of 1988, are trying to interfere with the peaceful possession and enjoyment of the suit properties by the revision petitioner, the revision petitioner filed a suit in O.S.No.26 of 2011 on the file of the Additional District Munsif Court, Dindigul.

3.4.During the pendency of the suit, the revision petitioner also filed an application for interim injunction in I.A.No.18 of 2011 in O.S.No.26 of 2011. It is admitted that an order of interim injunction was also granted on 06.11.2010 and the same is still in force. The respondents herein have filed a counter affidavit in I.A.No.18 of 2011 in O.S.No.26 of 2011.

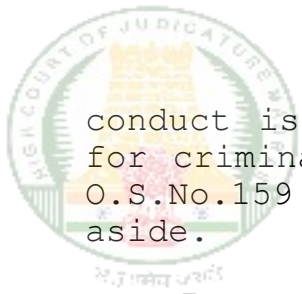


3.5.It is stated that after knowing that the revision petitioner has filed a suit for injunction as against respondents and that an order of injunction was also granted by the Additional District Munsif, Dindigul, the respondents herein filed another suit in O.S.No.159 of 2011 on the file of the Additional District Munsif Court, Dindigul on 25.02.2014. Strangely, the respondents also filed an interim application in I.A.No.148 of 2011 in O.S.No.159 of 2011 for temporary injunction. It appears that the revision petitioner filed a counter affidavit, pointing out that the respondents have filed I.A.No.148 of 2011 suppressing the order passed by the same Court in I.A.No.18 of 2011 granting an order of interim injunction in favour of the revision petitioner.

4.It is the grievance of the revision petitioner that the lower Court, instead of dismissing the interlocutory application, has granted an order of interim injunction and adjourned the matter subsequently. It is seen that on 25.02.2011 interim order was granted. Though counter affidavit was filed on 11.03.2011 pointing out the decree in earlier suit and the interim injunction in I.A.No.18 of 2011, it is admitted that the interim order passed in I.A.No.148 of 2011 is extended periodically. Having regard to the facts narrated above, the Court, which has granted an order of interim injunction in the suit filed by the revision petitioner, is not expected to pass an order of injunction in favour of a person, who had suffered an order of injunction.

5.The Court is expected to follow the basic principles settled by several precedents and the procedures. The person, who had suffered an order of injunction, cannot come before the same Court in a different suit and get an order of interim injunction on any ground. In the present case, the facts would further lead to the conclusion that the suit filed by the respondents in O.S.No.159 of 2011 is not sustainable, as they have already suffered a decree for injunction in the prior suit in O.S.No.1721 of 1988. It is shocking and disturbing to find that the learned Additional District Munsif has granted an order of interim injunction in I.A.No.148 of 2011 in O.S.No.159 of 2011, despite it was brought to the notice that the revision petitioner has obtained an order of injunction in I.A.No.18 of 2011 in O.S.No.26 of 2011 earlier against the petitioner in I.A.No.148 of 2011. This unfortunate situation was due to the fact that the material facts are suppressed by the respondents herein, who are also the plaintiffs in O.S.No.159 of 2011.

6.When the decree for injunction is in force, pursuant to the judgment and decree in O.S.No.1721 of 1988, on the file of the II Additional District Munsif Court, Dindigul, the same persons are not entitled to file another suit for injunction. The suit is nothing but an abuse of process of law. If this is permitted, that will be a threat to the administration of justice and the conduct of the respondents in filing a suit suppressing the earlier proceedings and the orders passed would show that the respondents'



conduct is contumacious and they are liable to be prosecuted even for criminal contempt. The interim order in I.A.No.148 of 2011 in O.S.No.159 of 2011 is therefore unsustainable and accordingly set aside.

7. Insofar as C.R.P.(MD)No.899 of 2011 is concerned, this Court has already found that the suit filed by the respondents in O.S.No.159 of 2011 is not maintainable. The defendants, who suffered a decree for permanent injunction, cannot file an independent suit for injunction, even though the matter is pending in second appeal. After suffering a decree for injunction, the respondents herein, cannot have a cause of action to file another suit for bare injunction, unless, the decree is set aside in the manner known to law. This instance would only show that the respondents have indulged in re-litigation and the suit is nothing but an abuse of process of law.

8. In view of the settled principles of law, this Court has power to strike off the plaint, if it is found that the suit is an abuse of process of law. Having regard to the admitted facts, this Court has no other option, but to strike off the plaint in O.S.No.159 of 2011. Accordingly, this Civil Revision Petition in C.R.P.(MD)No.899 of 2011 is also allowed and the suit in O.S.No.159 of 2011 is struck off.

9. Though the learned Counsel for the revision petitioner submitted that they have an independent cause of action to file a suit as against the respondents herein, this Court do not agree with the proposition. The predecessor-in-interest of the revision petitioner has succeeded in filing a suit as against the same set of defendants in the earlier suit. When a decree for injunction granted in the earlier suit filed by the predecessor-in-interest of the revision petitioner is in force, the revision petitioner cannot plead a separate cause of action for seeking the same relief. Merely because, the revision petitioner has purchased the suit property from the plaintiffs in the suit in O.S.No.1721 of 1988, that does not mean that they have independent cause of action, merely because, they were not impleaded as party in the earlier proceedings. It is right time for the revision petitioner to implead herself as a party to the proceedings by invoking Order 22 Rule 10 of CPC in the pending second appeal. Even though earlier suit is not finally decided, the suit filed by the revision petitioner is also a re-litigation and cannot be permitted. It is also open to the respondents to file an application to stay the suit under Section 10 of CPC and raise an objection, as to the maintainability of the suit in O.S.No.26 of 2011 pending on the file of the Additional District Munsif Court, Dindigul.



WEB COPY

C.R.P.(MD)(PD)Nos.898 and 899 of 2011

10. Accordingly, these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal District Munsif, Dindigul.
2. The District Munsif, Dindigul.
3. The Additional District Munsif, Dindigul.
4. The II Additional District Munsif, Dindigul.

+2 CC to Mr. SARVABHAUMAN ASSOCIATES, Advocate SR-78441 & 78440.
+2 CC to Mr. H. LAKSHMI SHANKAR, Advocate SR-78374 & 78375.

C.R.P. (MD) (PD) Nos. 898 and 899 of 2011

29.07.2019

CS (20.08.2019) 5P 9C