



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.02.2019

PRONOUNCED ON : 27.04.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CRP(MD) .No.2816 of 2018

and

C.M.P. (MD) .Nos.12227 of 2018

and

C.M.P. (MD) .No.348 of 2019

M.Kalyani : Petitioner/Petitioner/2nd Defendant

Vs.

1. R.Sivaraman
- B. Muralidaran (Died)
2. A.Radhakrishnan (Rtd. Sub-Registrar)
3. R.Panjali

4. The Sub Registrar,
Sub Registrar Office,
NRT Nagar,
Theni Taluk & District.

5. The District Registrar,
Office of the District Registrar,
South Agraharam,
Periyakulam Town,
Periyakulam Taluk,
Theni District.

6. The District Collector,
Theni District.

7. J.Thangam ... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 29.06.2018 passed in I.A.No.101 of 2018 in O.S.No.157 of 2013 on the file of the District Munsif Court, Theni.

For Petitioner : Mr.T.S.R.Venkataramana

For R1 : Mr.Issac Mohanlal,

Senior Counsel

for Mr.Sadiqraja

For R3 and R7 : Mr.J.Thomas Rasadurai

For R4 and R5 : Mr.M.Murugan

Government Advocate

: Mr.Gunaseelan Muthiah

Addl. Government Pleader

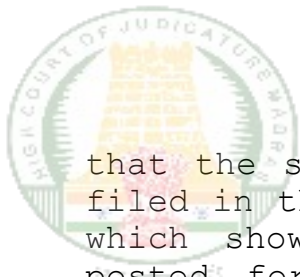
**ORDER**

This Civil Revision Petition has been preferred against the order dated 29.06.2018, passed in I.A.No.101 of 2018 in O.S.No.157 of 2013 on the file of the District Munsif Court, Theni.

2.The revision petitioner, who is the second defendant in the suit, has filed a petition in I.A.No.101 of 2018 to reject the plaint in O.S.No.157 of 2013.

3.In the suit, the revision petitioner/second defendant has contended that the first respondent/plaintiff has no right over the suit property and the facts stated in the plaint are false and he is not entitled to get any relief and as such, the suit has to be rejected at the first instance, since the suit is barred under Order 23 Rule 1(4) of C.P.C. Further, it is contended that the first respondent/plaintiff has already filed a suit in O.S.No.181 of 2011 before the District Munsif Court, Theni, for the same relief, as claimed in the present suit. In the said suit, the first defendant has filed a written statement. Thereafter, the said suit was withdrawn by filing a Memo stating that the parties have interested in settling the issue amicably and on that basis, the said suit was withdrawn. The afore stated fact is admitted by the plaintiff, which is also stated in the present suit also. Further, he has not obtained any permission in the memo for preferring any suit in future, if necessary. Since the plaintiff has abandoned his right and he has not sought for any permission to file a fresh suit and the said suit was dismissed, based on the said memo, the plaintiff once again filed the present suit claiming the same relief, as claimed in the earlier suit.

4.The second defendant has filed the Interlocutory application, wherein, the plaintiff as first respondent, has contended that the suit in O.S.No.181 of 2011 was withdrawn, but abandoned his right, since there was an amicable settlement among the parties on 01.01.2012 and there was also an assurance by the petitioner/second defendant that he will act upon the terms of settlement, which was arrived at between the family members and based on the said arrangement only, a memo was filed and the suit was dismissed as not pressed. The said fact was also mentioned by the first respondent/plaintiff in his affidavit. As the said suit was not filed under Order 23 Rule 1 of CPC., there is no necessity arose for the petitioner to seek permission under Order 23 Rule 1(3) of C.P.C. After dismissal of the said suit in the year 2012, the petitioner/second defendant and the respondents 2 to 4 have engaged themselves in giving trouble to the first respondent/plaintiff for his possession and enjoyment of the suit property and they are also indulging in illegal acts and hence, the necessity arose for him to file the present suit in the year 2013 for permanent injunction. Regarding the said relief, the suit can be filed at any time and there is no bar for claiming such relief. Further, it is contended



that the said suit is pending for nearly 5 years and since it was filed in the year 2013, I.A was filed at present by the petitioner, which shows his illegal obstruction. Further, the case is also posted for arguments in I.A.No.39 of 2016, which is filed for temporary injunction. Hence, the respondent vehemently objected the petition filed by the defendant for rejecting the plaint.

5.The trial Court has observed the contentions raised by both sides and considering the petition filed by the plaintiff seeking rejection of the plaint and the proceedings of the earlier suit and the relief sought for in the present suit that the earlier suit was withdrawn, in view of the family arrangement made among the family members of the plaintiff, and thereafter, the petitioner/second defendant was not acted upon as per the family arrangement, the defendants 1 to 4 are also indulging in encroaching the suit property and hence, the necessity arose for the plaintiff to file the present suit. It is further observed that the 8th defendant is also added as a party. When the suit is pending, sale transaction was made by the defendants and hence, the present suit has been filed by the plaintiff for the said relief is very much maintainable.

6.The trial Court has observed the fact that the revision petitioner/second defendant is the sister of the first respondent/plaintiff and the plaintiff has purchased the property by himself and he is in enjoyment of the suit property. Thereafter, the plaintiff has executed a Power of Attorney in favour of the revision petitioner/second defendant and her husband, but however, the possession was not given to them and only power is given to them to maintain the property, whereas the defendants 1 to 4 have joined together and encroached the suit properties and sold it to third parties and hence, the plaintiff has cancelled the power of attorney given to the defendants 1 and 2. In such circumstances, with an ulterior motive, the defendants 1 to 4 have created encumbrance over the suit property and therefore, the earlier suit was filed for the said relief. Based on the family arrangement, the earlier suit was not proceeded with and as per the family arrangement, the petitioner/second defendant has not acted upon. Thereafter, the defendants 1 to 4 are colluded together to encumber the suit property. Since 16.10.2013 the defendants 1 to 4 have indulged in causing disturbance to the possession and enjoyment of the suit property by the plaintiff, necessity arose to file the present suit.

7.The trial Court is of the view that when the defendants 1 to 4 have indulged in encroaching the suit property from 16.10.2013, a cause of action arose for filing the said suit by the plaintiff and this fact will be proved only during trial and in no way the suit is barred and the I.A filed by the petitioner/second defendant for rejecting the plaint is not maintainable and dismissed the same. Against which, the present Civil Revision Petition has been filed.



8. On a perusal of the records, it is observed that the earlier suit was filed by the plaintiff for the same relief. The said suit was dismissed as not pressed, since there was a compromise entered among the parties and hence, no relief was ordered. Hence, the present petition was filed.

9. Earlier a case was filed by the plaintiff for the very same relief, as claimed in the present suit and the earlier suit was withdrawn and hence, the plaintiff cannot file another suit for the same relief with the same cause of action, which is not maintainable. Based on the compromise, the suit was not proceeded and no order was passed on merits. Further, as per the settlement, the earlier suit was not proceeded with by the plaintiff, but subsequently, due to the interference made by the defendants 1 to 4 by way of sale transaction and by encroaching the suit property to disturb the possession and enjoyment of the plaintiff, necessity arose for the plaintiff to file the present suit.

10. Since the suit is for injunction, the relief can be sought for by the plaintiff at any time and hence, the petitioner has filed the present I.A., for rejecting the plaint. Therefore, the order passed by the Trial Court is very much reasonable, which does not require any interference.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

sd/
Assistant Registrar(crl. side)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif Court,
Theni.

2. The Record Keeper, V.R. Section (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr. T. S. R. VENKAT RAMANA, Advocate (SR-63275[F] dated 27/04/2019)

+1 CC to Mr. D. SADIQ RAJA, Advocate (SR-63574[F] dated 27/04/2019)

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