

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 20.01.2020

ORDER PRONOUNCED ON :24.02.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(NPD)No.4498 of 2014

and

M.P.No.1 of 2014

J.Samuel Sudhakar

... Petitioner

...Versus...

1.P.Rajah Prabhakaran

2.P.Paul Ravinder

3.David Immanuel

4.D.Lawrence

5.Jacob Reuban Inbanthan

6.Joseph Augustin

... Respondents

PRAYER:This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to strike off the plaint filed in the suit in O.S.No.5915 of 2014 on the file of the learned XI Assistant City Civil Judge, Chennai.

For Petitioner :: Mr.T.K.S.Gandhi

For R1 :: Mr.N.Edwin Jeyakumar

For R2 to R4 :: No appearance

For R5&R6 :: Mr.P.G.Thiagu

ORDER

The third defendant in the suit is the petitioner herein.

2. This petition has filed under Article 227 of the constitution of India to strike off the plaint in the suit in O.S.No.5915/04.

3. The revision petitioner has filed above revision petition to strike off and reject the plaint in O.S.No.5915 of 2014 before learned XI Assistant City Civil Judge, Chennai filed by the respondents 1 to 4 for two permanent injunctions (a) restraining the petitioner from using the name of ' Christ For Every Soul Charitable', Educational & Religious Trust' for conducting public prayer meetings, convention or other form of service including media, satellite, internet or collecting donation or grant in the name of ' Christ For Every Soul Charitable, Educational and Religious Trust' and (b) from in any manner operating the Bank Account stands in the name 'Christ For Every Soul Charitable, Educational and Religious Trust' and under the head of (1) Christ for Every Soul Trust A/c.No.9999, (2) Christ for Every Soul Advt A/c No.10001, (3) Christ for Every

Soul "voice Restoration" Magazine A/c No.10002, (4) Christ for Every Soul Building Fund A/c.No.10003, and (5) Christ for Every Soul TV A/c.No.10007.

4. The brief facts leading to filing of the above Civil Revision Petition is as under:-

The first respondent herein are the Trustees of the Trust " Christ For Every Soul Charitable, Educational and Religious Trust" appointed by Mrs.Josephine Joseph Founder Trustee by passing 2 resolutions on 20.07.2007. As there was some financial irregularity for removal of the petitioner, certain steps have been taken has alleged in the petition and hence, in view of the problem created by the first respondent.

5. The petitioner herein filed O.S.No.4931/2014 against respondents 1&2 herein for permanent injunction restraining them from interfering with the petitioner holding meeting in the name of 'CHRIST FOR EVERY SOUL' which suit is pending before the learned IV Asst.Judge, City Civil Court, Chennai. The petitioner also filed I.A.No.13394/2014 for interim injunction. The petitioner filed the suit on 01.09.2014 and the respondents 1 & 2 caused appearance on 06.09.2014 and took time again and again for counter. But, without filing the counter, they filed Tr.O.P.No.159/2014.

6. The respondents 1 to 4 filed O.S.No.5692/2014 on 07.10.2014 for permanent injunction against the petitioner and respondents 5&6. They filed I.A.No.15299/2014, which was posted before XI Assistant City Civil Judge. On 08.10.2014 as XI Assistant Judge declined to grant interim injunction, the respondents filed a petition to advance the hearing from 06.11.2014 to 08.10.2014 and withdrew the same as 'not pressed' stating

“due to unavoidable circumstances and also some other reasons, the petitioner hereby withdraw above suit after lengthy discussion with the petitioner elders”.

and the suit was dismissed as 'not pressed' by order dated 8.10.2014. The suit was withdrawn without seeking any liberty to file fresh suit.

7. The very next day, 09.10.2014, though there was no fresh cause of action, they filed O.S.No.5742/2014 with application for interim injunction in I.A.No.15445/2014 before the VIII Assistant City Civil Judge. But, as no interim order was granted this suit was also withdrawn as 'not pressed' on 11.10.2014.

Curiously, no reason was assigned for their withdrawing the same. Further, in this suit also, they did not obtain any leave to file fresh suit, on same cause of action for same relief.

8. On 15.10.2014, respondents 1 to 4 filed another suit in O.S.No.5915/2014 against the petitioner and the respondents 5 & 6 herein before the Court of XI Assistant City civil Judge, for same reliefs as prayed for in First and the 2nd suits as stated above. They filed a memo stating falsely that O.S.No.5692/2014 was pending before said Court and so this suit may be posted before same Court. They filed I.A.No.1590/2014 for interim injunction which was adjourned and interim injunction was granted on 17.10.2014.

9. Thus, the respondents 1 to 4 herein filed the above 3 suits with same averments, cause of action and same documents but through different counsel. However, deliberately suppressed the filing two suits earlier and hence, this Civil Revision Petition filed by the petitioner.

10. Heard both sides and perused the records.

11. It appears from the records that the respondents herein suppressed filing of petitioner's earlier suit which is pending, in which they filed vakalat and took time for counter. They have also suppressed their filing Transfer O.P to transfer the petitioner's said suit by levelling allegations against the Presiding Officer. The petitioner has filed counter on 31.10.2014 in detail giving entire facts.

12. In the second suit in O.S.No.5742 of 2014 was filed showing the first respondent herein as second plaintiff and second respondent as first plaintiff. There is no mention of earlier suits in O.S.No.5692 and 5742 of 2014, withdrawal of the same and pendency of the petitioner's suit in O.S.No.4931 of 2014 and Tr.O.P.No.159 of 2014 filed by them. As stated above, in view of withdrawing previous suits without obtaining leave to file fresh suit.

13. On perusal of the records, it is seen that after withdrawal of the first suit and the second suit namely the first respondent herein, being the plaintiff, filed O.S.No.5692 of 2014 on 07.10.2014 before XI Assistant City Civil Judge

and withdrew the same on the next day, that he again filed O.S.No.5742 of 2014 before learned VIII Assistant City Civil Judge on 09.10.2014 and withdrew the same on 11.10.2014 and then he filed another suit O.S.No.5915 of 2014 on 15.10.2014 before XI Assistant City Civil Judge, Chennai. But in respect of both previous two suits, the respondents 1 to 4 herein did not take any leave to file any suit afresh on same cause of action and for same relief. Curiously, all the above 3 suits contain same averments, line by line, like Photo copies Hence, the plaint has to be rejected.

14. It is also seen from the typed set of papers that the respondents 1 to 4 had suppressed the filing of the first suit in second suit and the filing of both the earlier 2 suits in the present third suit which amounts to suppression of material facts. There was no fresh cause of action for preferring from the other two earlier suits and suit filed by petitioner. The prayer in the interim application and the main suit being identical in nature the suit.

15. Thus, this Court finds that the respondents 1 to 4 having filed above suit by suppressing the fact of earlier suit filed by petitioner in respect of same cause of action ought to be struck-off as abuse of process of Courts. The suit

having been filed without obtaining leave of the Court after withdrawal of the earlier suits cannot be sustained.

16. Thus, this Court finds that the present suit is a third round litigation on the basis of same cause of action. Apparently, suits filed earlier were withdrawn by respondent and those were dismissed. As set of rights and legal status of parties, pleaded and agitated by the respondent, stand waived and the present institution of plea is visibly barred.

17. Yet another point is that no averment is found in the plaint about earlier suits and their withdrawals and the respondent has not obtained any leave from the concerned Court under Order 23 Rule 1 either by showing that the earlier suits have formal defects in order to sue again with same cause of action.

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18. The Apex Court in K.K.Modi Vs.K.N.Modi 1998 3 SCC 573. That under Order 6 Rule 16, the Court may at any state of proceeding Order to be struck out inter-alia any matter in any pleading which is otherwise an abuse of

process of the Court. Further this Court has inherent powers to strike out the pleadings or to stay or dismiss the proceedings which manifestly appears from a bare reading of plaint and given circumstances in and around the suit cause.

19. Hence, having regard to the facts and circumstances of the case and also law laid down on this point in the above referred decision, this Civil Revision Petition is allowed and suit in O.S.No.5915 of 2014 on the file of the learned XI Assistant City Civil Judge shall stands struck off. No costs. Consequently, connected Miscellaneous Petition is closed.

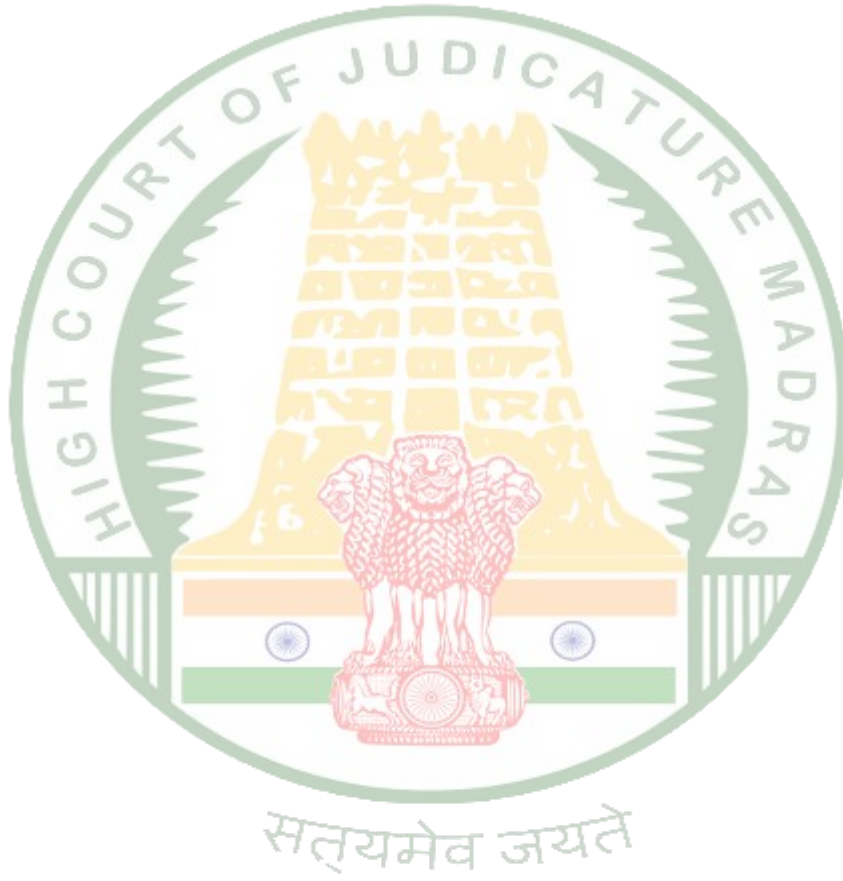
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Index:Yes/No
Internet:Yes/No
Speaking Order:Yes/No
To

The XI Assistant City Civil Judge, Chennai.

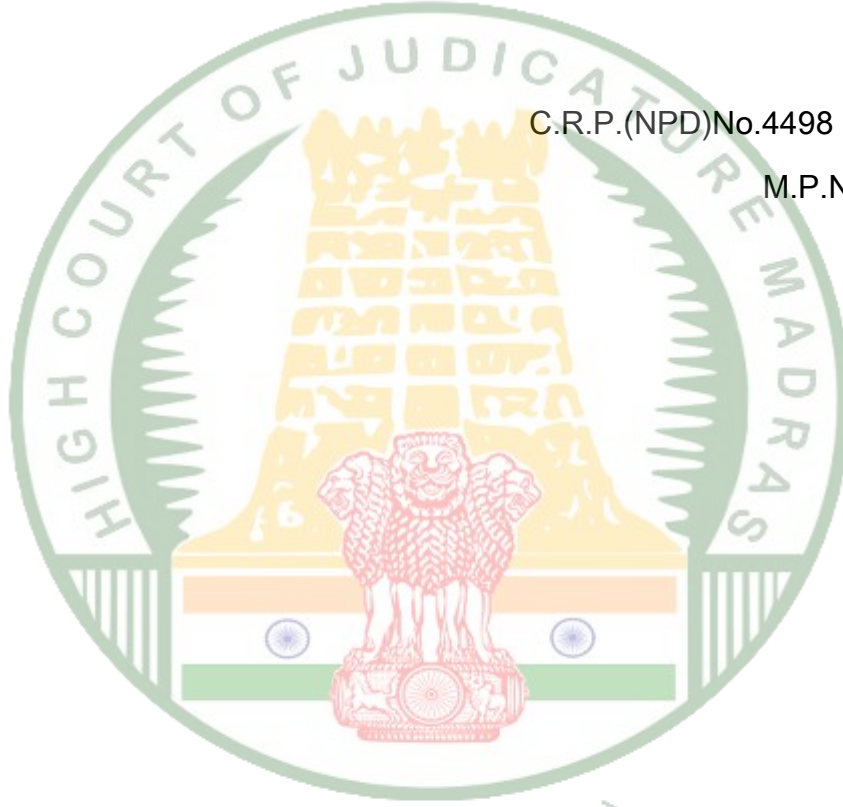
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RMT.TEEKAA RAMAN,J.,

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order in
C.R.P.(NPD)No.4498 of 2014 and
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