

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02..01..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.3985 of 2018 &
C.M.P.No.22085 of 2018

and

Civil Revision Petition No.3987 of 2018

C.R.P.No.3985 of 2018

L.Chandrasekaran Petitioner/Plaintiff

-Versus-

D.Kusumlatha ... Respondent/Defendants

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 20.08.2018 made in I.A.No.123 of 2018 in O.S.No.4667 of 2016 by the learned XVIII Additional Judge City Civil Court, Chennai.

C.R.P.No.3987 of 2018

L.Chandrasekaran Petitioner/Plaintiff

-Versus-

- 1.Mr.P.Dharamachand
- 2.Mrs.B.Kusumlatha
- 3.Mr.P.Shantilal
- 4.Mrs.Renu

... Respondents/Defendants

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 10.09.2018 made on Memo in O.S.No.3640 of 2014 by the learned XVIII Additional Judge City Civil Court, Chennai.

For Petitioner : Mr.R.Natesh Kumar for
petitioner in both CRPs
For Respondent(s) : Mr.P.Vasanthakumar
Visweswaran for respondent
in CRP 3985 of 2018 and
respondents 1 to 4 in CRP
3987 of 2018

COMMON ORDER

The former revision petition has been directed against the order passed by the learned XVIII Additional Judge, City Civil Court, Chennai, dismissing the application filed by the petitioner herein seeking to reject the counter claim filed by the respondent/defendant and the latter revision has been directed against the order passed by the learned XVIII Additional Judge, City Civil Court, Chennai, rejecting the memo filed by the petitioner seeking a direction for a joint trial of the suits in O.S.No.4667 of 2016 and O.S.No.3640 of 2014.

2. The petitioner in both the revision petitions is the plaintiff in both the suits. Originally, the petitioner filed a suit in O.S.No.3640 of 2014 for permanent injunction restraining the defendants or their legal heirs, agents or representatives from interfering with the peaceful possession and enjoyment of the shop portion viz., Abirami Juice Shop situated at R.K.Mutt Road, Mylapore, Chennai 600 004, more fully described in the schedule to the plaint. Subsequently, the petitioner herein filed another suit in O.S.No.4667 of 2016 for mandatory injunction (i) directing the defendants 1 to 4 to put up construction in accordance with the agreement dated 02.12.1999 and allot a shop of 500 square feet in the ground floor facing R.K.Mutt Road of a minimum extent of 200 square feet to enable the plaintiff to continue his business uninterruptedly during the construction till the completion of the proposed building and (ii) directing the defendants 1 to 4 to execute the sale deed together with proportionate undivided share together with right to common amenities with road facing entrance of minimum 15 feet together with electricity, drinking water and drainage facilities and marble flooring forming part of 'A' schedule property and more fully described in the schedule 'B' after receiving the balance sale consideration of Rs.12,00,000/-. Pursuant to the orders of the learned Principal District Judge, Chennai, on the transfer application filed by the respondent herein, the above said suit in O.S.No.3640 of 2014 has been transferred to filed of the learned XVIII Additional Judge for

simultaneous trial along with O.S.No.4667 of 2016. Pending suit in O.S.No.4667 of 2016, the petitioner filed an interlocutory application in I.A.No.123 of 2018 seeking to reject the counter claim on the ground that the counter claim is barred by limitation and the cause of action for filing the counter claim has got expired as early as in the year 2016 itself and therefore, the counter claim made in the year 2017 is barred by limitation. The trial court dismissed the application holding that the question of limitation could be decided only after ascertaining the date of accrual of cause of action based on the materials during trial and that the counter claim cannot be rejected at the threshold. Challenging the same, the petitioner has come up with revision in C.R.P.No.3985 of 2018.

3. So also, the petitioner had filed a memo before the court below seeking to order for a joint trial of the suits in O.S.No.3640 of 2014 and O.S.No.4667 of 2018 which was rejected by the court below on the ground that already, the learned Principal Judge, City Civil Court, Chennai had directed for simultaneous trial in the suits and without challenging the same, the petitioner could not seeking for joint trial. Challenging the same, the petitioner is before this court with C.R.P.No.3987 of 2018.

4. I have heard the learned counsel for the petitioner and the learned counsel for the respondents and also perused the records carefully.

5. So far as the former revision petition is concerned, the sole respondent had filed a counter claim. According to the petitioner, he had filed a suit for injunction in the year 2014 and therefore, cause of action arose for filing the cross objection in the year 2014 itself, but, the respondent did not do so and as such he cannot make counter claim in the subsequent suit filed in the year 2016. The court below after having considered the materials available on record, rejected the application on the ground that the question of limitation is a matter for evidence and it could be decided during trial. I have gone through the impugned order and the materials available on record and I find no illegality or irregularity in the same warranting interference at the hands of this court.

6. As far as CRP No.3987 of 2018 is concerned, on the application filed by the respondents/defendants for transfer of the suit in O.S.No.4667 of 2016 which was filed for mandatory injunction for trial along with O.S.No.3640 of 2014, the suit in O.S.No.4667 of 2016 was directed to be transferred for simultaneous trial along with O.S.No.3640 of 2014. That order

has not been challenged by the petitioner herein. When that be so, it is not open to the petitioner to seek for joint trial of the suit. The court below has rightly approached the issue and rejected the memo filed by the petitioner in which this court does not find any illegality or irregularity warranting interference.

7. Thus, for the discussions made herein above both the revision petitions are liable only to be dismissed.

In the result, both the revision petitions are dismissed. However, considering the submission made by the learned counsel on either side that pleadings have been completed and the suits are ripe for trial, the learned XVIII Additional District Judge, City Civil Court, Chennai, is directed to dispose of the suits by conducting trial simultaneously in both the suits and dispose of the same on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. The parties are directed to fully cooperate with the court below for early disposal of the suits and they shall not get unnecessary adjournments and file any unnecessary applications. No costs. Consequently connected CMP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

1.The XVIII Addl. Judge,
City Civil Court, Chennai.

+2cc to Mr.R.Natesh Kumar, Advocate SR.289,290

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Common order

in

Civil Revision Petition

Nos.3985 and 3987 of 2018

PP(CO)

CB(18/06/2020)

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