

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.08.2021

Delivered on : 19.08.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No. 114 of 2020
and C.M.P. No.719 of 2020

1.Kothanda Naidu
2.Venkatesa Naidu
3.Sudhakar

... Petitioners

Vs.

1.R.Padmachand Jain
2.K.Ramesh
3.Shakila Ramesh

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India,
to set aside the order dated 04.10.2019 in I.A. No.5 of 2019 in O.S. No.55 of
2019 on the file of the I Additional District Judge, Tiruvallur.

For Petitioners

: Mr. N.Manokaran
for Mr. P.Krishnan

For Respondents

: Mr. V.Ragavachari
for R.Munuswamy

O R D E R

This Civil Revision Petition is filed against the order of the learned I Additional District Judge, Tiruvallur, passed in I.A. No.5 of 2019 in O.S. No.55 of 2019 on 04.10.2019.

2. I.A. No.5 of 2019 was filed under Order 7 Rule 11 to reject the plaint filed in O.S. No.44 of 2019. The petitioners' case is that the first respondent filed a suit in O.S. No.44 of 2019 on the file of District Munsif cum Judicial Magistrate, Uthukottai, for the relief of permanent injunction in respect of the suit property measuring 0.47.0 Ares comprised in Survey No.165/4A. The petitioners entered appearance in the suit and filed a written statement and the suit in O.S. No.44 of 2019 is pending. The first respondent along with respondents 2 and 3 filed O.S. No.55 of 2019 before I Additional District Judge, Tiruvallur, claiming the relief of declaring right, title and possession of the first respondent over the suit property and for the relief of permanent injunction. The suit properties in both the suits are identical. The suit in O.S. No.44 of 2018 was filed on 10.07.2018. On the date of filing of suit, the first respondent knew pretty well that the petitioner denied his title in the suit property. The petitioners submitted a representation to the authority for the cancellation of patta in the name of second respondent and they also appeared for the enquiry. However,

without filing a comprehensive suit for declaration of title and for consequential relief of injunction, the first respondent filed only a simple suit for bare injunction. Subsequently, after knowing about the contents of written statement and to get over the defects in the former suit and with a view to give answer to the written statement, the first respondent along with his vendors, the respondents 2 and 3, filed a suit in O.S. No.55 of 2019 on the file of I Additional District Judge, Tiruvallur, seeking relief of declaration of title and for relief of permanent injunction which is prohibited under Order 2 Rule 2 of CPC. Therefore, the petition for rejection of plaint was filed. This petition was contested by the respondents alleging that though there may be over lapping of causes of action; there are certain subsequent events that had taken place after the institution of the suit in O.S. No.44 of 2018. Subsequent events have given the new cause of action for instituting a fresh suit. Therefore, a fresh suit in O.S. No.55 of 2019 was filed on the file of I Additional District Judge. This is a comprehensive suit encompassing all the prayers.

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3. On considering the rival submission, the learned trial judge found that there is a distinct cause of action made out in the subsequent suit in O.S. No.55 of 2019 and it may not be appropriate for the Court to throw out the case of the respondents at the threshold. In this view of the matter, the learned I Additional

District Judge, Tiruvallur, dismissed the petition in I.A. No.5 of 2019.

4. Learned counsel appearing for the petitioner challenging the order of learned Judge submitted that it is a clear abuse of process of law. Even before the suit in O.S. No.44 of 2018 was filed, the first respondent was aware that the petitioners have denied his title and set up title on them in respect of the suit property. The first respondent had also appeared for the enquiry before the Revenue Authorities and participated in the enquiry. The proceedings against the Revenue Authorities were also initiated for the cancellation of patta granted in favour of the second respondent. Despite that he filed only a suit for bare injunction without the seeking a prayer for declaration of title, which he is prohibited for claiming under Order 2 Rule 2 CPC. Even in the cause of action column paragraph in the subsequent suit, it is made clear that the first respondent knew about the denial of his title by the petitioners. Vexing a person twice is impermissible in law and that is scope of Order 2 Rule 2 CPC. The second respondent claims title to the suit property on the basis of oral exchange. The claim of oral exchange is alien to Transfer of Property Act and impermissible in law. Therefore, learned counsel for the petitioners submitted that I Additional District Judge, Tiruvallur, without considering the legal aspects, wrongly dismissed the petition for rejection of plaint. Therefore he

prayed for setting aside the order in I.A. No.5 of 2019 passed by the learned I Additional District Judge, Tiruvallur, and for allowing this civil revision petition. He relied upon the following judgments in support of his contention.

In the case of *Coffee Board Vs. Ramesh Exports Private Limited* reported in (2014) 6 Supreme Court Cases 424, the Hon'ble Supreme Court has held as under:

“ ...

12. The courts in order to determine whether a suit is barred by Order 2 Rule 2 must examine the cause of action pleaded by the plaintiff in his plaints filed in the relevant suits. Considering the technicality of the plea of Order 2 Rule 2, both the plaints must be read as a whole to identify the cause of action, which is necessary to establish a claim or necessary for the plaintiff to prove if traversed. Therefore, after identifying the cause of action if it is found that the cause of action pleaded in both the suits is identical and the relief claimed in the subsequent suit could have been pleaded in the earlier suit, then the subsequent suit is barred by Order 2 Rule 2.

In the case of *State Bank of India Vs. Gracure Pharmaceuticals Limited* reported in (2014) 3 Supreme Court Cases 595, the Hon'ble Supreme Court has held as under:

“ ...

9. In *Gurbux Singh Vs. Bhooralal* the scope of the above mentioned

provision was further explained as under :

“6. In order that a plea of a bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar.”

In the case of *A.Aswinsolomon Vs. R.Kavinraj* reported in 2018 (2) MWN (Civil) 673 the Hon'ble Supreme Court has held as under:

“In the decision relied upon by the learned senior counsel appearing for the appellant in Sucha Singh Sodhi (D) through L.Rs Vs. Baldev Raj Walia and Another (2018-3-L.W.1), the Apex Court has considered the scope of Order 2 Rule 2 C.P.C. in the following manner:

27) In our opinion, the sine qua non for invoking Order 2 Rule 2(2) against the plaintiff by the defendant is that the relief which the plaintiff has claimed in the second suit was also available to the plaintiff for being claimed in the previous suit on the causes of action pleaded in the previous suit against the defendant and yet not claimed by the plaintiff.

28) Therefore, we have to examine the question as to whether the plaintiff was entitled to claim a relief of specific performance of agreement in

the previous suit on the basis of cause of action pleaded by the plaintiff in the previous suit against the respondents/defendants in relation to suit property.

29) In other words, the question that arises for consideration is whether Sucha Singh (original plaintiff) could claim the relief of specific performance of agreement against the respondents/defendants in addition to his claim of permanent injunction in the previously instituted suit?

30) Our answer to the aforementioned question is in favour of the plaintiffs (appellants) and against the defendants(respondents). In other words, our answer to the aforementioned question is that the plaintiff could not claim the relief of specific performance of agreement against the defendants along with the relief of permanent injunction in the previous suit for the following reasons.

31) First, the cause of action to claim a relief of permanent injunction and the cause of action to claim a relief of specific performance of agreement are independent and one cannot include the other and vice versa.

32) In other words, a plaintiff cannot claim a relief of specific performance of agreement against the defendant on a cause of action on which he has claimed a relief of permanent injunction.

33) Second, the cause of action to claim temporary/permanent injunction against the defendants from interfering in plaintiff's possession over the suit premises accrues when defendant No.1 threatens the plaintiff to dispossess him from the suit premises or otherwise cause injury to the plaintiff in relation to the suit premises. It is governed by Order 39 Rule 1 (c) of the Code which deals with the grant of injunction. The limitation to file such suit is three years from the date of obstruction caused by the defendant to the plaintiff (See Part VII Articles 85, 86 and 87 of the Limitation Act).

34) On the other hand, the cause of action to file a suit for claiming specific performance of agreement arises from the date fixed for the performance or when no such date is fixed, when the plaintiff has noticed that performance is refused by the defendant. The limitation to file such suit is three

years from such date (See Part II Article 54 of the Limitation Act).

35) Third, when both the reliefs/claims namely, (1) Permanent Injunction and (2) Specific Performance of Agreement are not identical, when the causes of action to sue are separate, when the factual ingredients necessary to constitute the respective causes of action for both the reliefs/claims are different and lastly, when both the reliefs/claims are governed by separate articles of the Limitation Act, then, in our opinion, it is not possible to claim both the reliefs together on one cause of action.”

In the case of *Virgo Industries (Eng.) Private Limited Vs. Venturetech Solutions Private Limited* reported in (2013) 1 SCC 625 this Court has held as under:

“ 17. The learned Single Judge of the High Court had considered, and very rightly, to be bound to follow an earlier Division Bench order in *R.Vimalchand Vs. Ramalingam* holding that the provisions of Order 2 Rule 2 CPC would be applicable only when the first suit is disposed of. As in the present case the second set of suits were filed during the pendency of the earlier suits, it was held, on the ration of the aforesaid decision of the Division Bench of the High Court, that the provisions of Order 2 Rule 2(3) will not be attracted. Judicial discipline required the learned Single Judge of the High Court to come to the aforesaid conclusion. However, we are unable to agree with the same in view of the object behind the enactment of the provisions of Order 2 Rule 2 CPC as already discussed by us, namely, that Order 2 Rule 2 CPC seeks to avoid multiplicity of litigations on the same cause of action. If that is true object of the law, on which we do not entertain any doubt, the same would not stand fully subserved by holding that the provisions of Order 2 Rule 2 CPC will apply only if the first suit is disposed of and not in a situation where the second suit has been filed

during the pendency of the first suit. Rather, Order 2 Rule 2 CPC will apply to both the aforesaid situations. Though direct judicial pronouncements on the issue are somewhat scarce, we find that a similar view had been taken in a decision of the High Court at Allahabad in Murti Vs. Bhola Ram and by the Bombay High Court in Krishnaji Ramachandra Vs. Raghunathy Shankar.”

In the case of *B.S.Garg s/o. Lachhu Ram Vs. R.Meena Sundar* reported in 2016 (4) CTC 278 this Court has held as under:

“15. The filing of the present suit for declaration that the sale deed executed by the revision petitioner/first defendant in favour of the respondents 2 to 5/defendants 2 to 5 is sham and nominal, null and void and not binding on her, and for a permanent injunction restraining the defendants 2 to 5 from alienating or encumbering the suit property and from putting up any construction in the suit property without filing a suit for specific performance and after having failed to obtain leave under Order II Rule 2 CPC in the previous suit, will show that it is a glaring example of abuse of process of court besides attracting the bar provided under Order II Rule 2 CPC bringing the plaint within the purview of Order VII Rule 11(d) of CPC. Hence this court comes to the conclusion that the learned trial Judge committed an error in exercise of jurisdiction by holding that the plaint could not be rejected under Order VII Rule 11 CPC. The order of the trial court dismissing I.A.No.12877/2012 cannot be sustained in law. The revision petitioner has clearly made out a case for rejection of the plaint under Order VII Rule 11 CPC not only on the ground that the cause of action alleged is not real but illusory, but also on the ground that the present suit is barred by Order II Rule 2 CPC, besides being an abuse of process of court, based on which, this court can strike off the plaint using its power under Article 227 of the Constitution of India.”

In the case of *T.Arivandandam Vs. T.V. Satyapal and Another* reported in (1977) 4 SCC 467 the Hon'ble Supreme Court has held as under:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good." "

5. In response, learned counsel for the respondents submitted that the first suit in O.S. No.44 of 2018 was filed only to protect the possession of the suit property against the petitioners who tried to interfere with the possession

and enjoyment of the suit property by the first respondent. Subsequent to the filing of suit, the patta granted in favour of the second respondent was cancelled. A writ petition was filed before this Court in W.P. No.1142 of 2019 and an interim stay was granted on 18.01.2019. On the strength of cancellation of patta in favour of the second respondent, the petitioners were trying to create documents and encumber the property and they were also trying to interfere with the possession of the first respondent. Therefore, a comprehensive suit was filed including the prayer for declaration of title. Defendants 4 to 7 have been impleaded as parties for binding adjudication. There are new causes of action available for filing subsequent suit. New defendants were ordered in the subsequent suit. The plaint has to be read as a whole to understand what constitutes the cause of action for filing the suit. Finding that the second suit has a distinct and separate cause of action, learned trial Judge has rightly dismissed the petition. Therefore the learned counsel appearing for the respondents prayed for dismissal for this petition. In support of his contentions, he relied upon the judgments reported in 1964 AIR 1810, 1970 AIR 987, 1970 AIR1059, 1980 AIR 161, 1993 AIR 1756, 1996 SCC 735, 2002 Law Weekly 527, 2004 SCC 277, 2005 SCC 210.

In the case of *Gurbux Singh Vs. Bhooralal*, reported in 1964 AIR 1810,

the Honble Supreme Court has held as under:

“ From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under o.2 r.2, Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits.”

In the case of *Vallabh Das Vs. Madan Lal & others*, reported in 1970 AIR 987, the Honble Supreme Court has held as under:

“ The expression “subject – matter” is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said that the subject-matter of the second suit is the same as that in the previous suit.”

In the case of *Sidramappa Vs. Rajashetty and others*, reported in 1970

AIR 1059, the Honble Supreme Court has held as under:

“ As seen earlier the cause of action on the basis of which the previous suit was brought does not form the foundation of the present suit. The cause of action mentioned in the earlier suit, assuming the same afforded a basis for a valid claim, did not enable the plaintiff to ask for any relief other than those he prayed for in that suit. In that suit he could not have claimed the relief which he seeks in this suit. Hence the trial Court and the High Court were not right in holding that the plaintiff's suit is barred by Order 2, Rule 2, Code of Civil procedure.”

In the case of *Kewal Singh Vs. Lajwanti*, reported in 1980 *AIR 161*, the Honble Supreme Court has held as under:

“ A perusal of Order 2 Rule 2 would clearly reveal that this provision applies to cases where a plaintiff omits to sue a portion of the cause of action on which the suit is based either by relinquishing the cause of action or by omitting a part of it. The provision has, therefore, no application to cases where the plaintiff basis his suit on separate and distinct causes of action and chooses to relinquish one or the other of them. In such cases, it is always open to the plaintiff to file a fresh suit on the basis of a distinct cause of action which he may have relinquished..”

In the case of *Inacio Martins Deceased through lrs. Vs. Narayan Hari Naik & others*, reported in 1993 *AIR 1756*, the Honble Supreme Court has held as under:

“2.1. Order 2 Rule 2 CPC is based on, the salutary principle that a defendant or defendants should not be twice vexed for the same cause by splitting the claim and the reliefs. It does not preclude a second suit

based. on a distinct cause of action.

2.2. The doctrine of res judicata differs from the rule embodied In Order 2 Rule 2, in that, the former places emphasis on the plaintiff's duty to exhaust all available grounds in support of his claim while the latter requires the plaintiff to claim all reliefs emanating from the same cause of action.

2.3. The cause of action for the former suit was based on an apprehension that the defendants were likely to forcibly dispossess the plaintiff. The suit was for an injunction and not for possession of the demised property. It was not on the premise that the plaintiff had in fact been illegally and forcibly dispossessed and needed the court's assistance to be restored to possession. Therefore, the subsequent suit was based on a distinct cause of action not found in the former suit. The High Court was not right in concluding that the suit was barred by Order 2 Rule 2(3) of the Code of Civil Procedure, and that the difference in the reliefs claimed in the two suits was immaterial and irrelevant. In the previous suit, the relief for possession was not claimed whereas in the second suit the relief was for restoration of possession. That makes all the difference.”

In the case of *Deva Ram and another Vs. Ishwar Chand and another*, reported in (1995) 6 SCC 733, the Hon'ble Supreme Court has held as under:

“ 14. What the rule, therefore, requires is the unity of all claims based on the same cause of action in one suit. It does not contemplate unity of distinct and separate causes of action. If, therefore, the subsequent suit is based on a different cause of action, the rule will not operate as a bar.

15. In Sidramappa Vs. Rajashetty, it was laid down that if the cause of action on the basis of which the previous suit was brought, does not form the

foundation of the subsequent suit and in the earlier suit the plaintiff could not have claimed the relief which he sought in the subsequent suit, the latter namely, the subsequent suit, will not be barred by the rule contained in Order 2 Rule 2, CPC. “

In the case of *Moolchand and others Vs. Fatima Sultana Begum and others*, reported in (1995) 6 SCC 742, the Hon'ble Supreme Court has held as under:

“ In Sidramappa Vs. Rajashetty [AIR 1970 SC 1059 at pp. 1060-61=(1970) 1 SCC 186 at 189 at 189], this Court held that where the cause of action on the basis of which the previous suit was brought, does not form the foundation of the subsequent suit, and in the earlier suit, the plaintiff could not have claimed the relief which he sought in the subsequent suit, the plaintiff's subsequent suit is not barred by order 2 Rule 2. Applying this ruling to the facts of the present case, it is clear that, in the first suit, the appellants could only claim reliefs in respect of Rs.14,12,836/- which was the maximum amount stipulated in the performance guarantee. They could not have claimed reliefs of Rs.1,13,27,298.16 which they did in the second suit on the basis of the contract relating to the work to be performed by the contractor.”

In the case of *Kunjan Nair Sivaraman Nair Vs. Narayanan Nair and others*, reported in (2004) 3 SCC 277, the Hon'ble Supreme Court has held as under:

“ The expression “ cause of action” has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In

the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action".

In the case of *Popat and Kotecha Property Vs. State Bank of India Staff Association*, reported in (2005) 7 SCC 510, the Hon'ble Supreme Court has held as under:

" 23. Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."

6. In reply, learned counsel for the petitioners submitted that it is not as if that the first respondent did not know about the proceedings pending before the fifth defendant before filing a suit in O.S. No.44 of 2018. The first respondent

appeared before the fifth defendant for enquiry. Defendants 4 to 7 were impleaded only as formal party and no relief has been claimed against them. The suit is clearly hit by Order 2 Rule 2 CPC.

7. In order to appreciate the rival claim, it is necessary to understand the facts on the basis of which these two suits have been filed and the relief claimed. The suit in O.S. No.44 of 2018 was filed by the first respondent against the petitioners claiming that his vendor namely K.Shakila Ramesh, got the property through registered settlement deed dated 25.10.2016 executed by her husband namely Ramesh. The said Ramesh got this property through his father Mathava Naidu and Madhava Naidu got the property through an oral exchange with first and second petitioner's father in the year 1990. After the death of his father, Ramesh was enjoying the property. The National Highway acquired a portion of the suit property in the year 2011 and paid compensation to him. After purchase, the first respondent tried to put up the compound wall in the suit property and the petitioners interfered with his possession. Therefore, he filed a suit for relief of permanent injunction against the petitioners from interfering his peaceful possession and enjoyment of the suit property. The petitioner had filed a detailed written statement in this case disputing the claim of title and ownership claimed by the second respondent Ramesh by way of

exchange and they claim that they are the owners of the property. Subsequently, the present suit in O.S. No.55 of 2019 was filed by the respondents against the petitioners and D4 to D7, the Government Officials.

8. In this suit, the case of the respondents is set out in detail especially with regard to tracing of title to the suit properties in favour of second respondent through oral exchange, subsequent transfer of patta in his name, acquisition of property by National Highways, payment of compensation to him, etc. In brief, the case of the respondents in O.S. No.55 of 2019 is that the suit property with vast extent of lands in Manjankaranai Village belonged to Rajagopal Naidu, his son, Madhava Naidu and grand son Ramesh. The patta was muted in the name of Ramesh in the year 1984-85. The land comprised in Survey No.165/4, measuring an extent of 1.21 cents (0.49.0 Hectare) of Manjankaranai Village, originally belonged to Subba Naidu and his joint family. Thereafter, this land was possessed and enjoyed by Veerasamy Naidu and Kesavalu Naidu upon death of Subba Naidu. The land in Survey No.157/1, measuring an extent of 1.51 Acre of Manjankaranai Village was possessed by Rajagopal Naidu, who got this property through a family partition dated 22.05.1959. Veerasamy naidu and his joint family members and Rajagopal Naidu and his joint family members are permanent residents of Manjankaranai

Village and they are relatives. For the purpose of convenience and enjoyment, there was an arrangement and understanding of oral exchange of the land between family of Veerasamy Naidu, his sons, petitioners 1 and 2 and Eashwaraiah Naidu on one part; and Rajagopal Naidu, Madhava Naidu, the second respondent, on another part. In early 1970, it was decided that the land owned by Rajagopal Naidu measuring an extent of 0.80 cents in the total extent of 1.51 cents in Survey No.157/1, shall be owned by Veerasamy and others. Similarly, the land owned by Veerasamy and others to an extent of 0.80 cents in Survey No.165/4, shall be owned, possessed and enjoyed by Rajagopal Naidu and others. Necessary deed of exchange was prepared on 02.07.1972, but for some reason or other it did not take place. During early 1980's, the aforesaid parties again muted the idea with slight variation and extent of exchange of lands. Accordingly, Veerasamy Naidu, petitioners 1 and 2, Easwaraiah on the one part; and Rajagopal Naidu, Madhava Naidu, the second respondent, on other part, decided that the land owned by Rajagopal Naidu to an extent of 0.82 Cents in Survey No.157/1, shall be owned, possessed and enjoyed by Veerasamy Naidu and others. Similarly the land owned by Veerasamy Naidu and others to an extent of 1.21 cents, comprised in Survey No.165/4, shall be owned and possessed by Rajagopal Naidu and others. Accordingly they orally exchanged the lands and gave effect to the said understanding.

9. The aforesaid property in Survey No.165/4 was in possession and enjoyment of the Rajagopal Naidu and his family members. Patta had been transferred in the name of second respondent in 1984-85. The petitioners knew well that second respondent was alone in possession and enjoyment of the property after this exchange. The second respondent and his family members are in absolute, uninterrupted and continuous possession and enjoyment of the property for more than forty years. The land in Survey No.157/1, was subdivided and the land exchanged and given to Veerasamy Naidu and others was divided in Survey No.157/1A, to an extent of 82 cents and the remaining extent of 0.69 cents retained by the second respondent was assigned as Survey No.157/1B. The petitioners have partitioned the property in Survey No.157/1A to an extent of 0.82 cents and the first petitioner was allotted 0.41 cents and the second and third petitioners were allotted 0.41 cents. The first petitioner sold certain portion in Survey No.157/1A to one D.Shanthi on 29.09.1992. The petitioners 2 and 3 have sold a portion comprised in Survey No.157/1A to D.Shanthi, on 10.08.1993. It clearly shows that the exchange was true and acted upon. Shanthi sold that property to the third respondent on 10.10.1996. In the year 2011, Tamil Nadu Highways Department acquired 138 sq.meters in Survey No.165/4. Remaining extent of 1.16 cents is available in Survey No.165/4A. The second respondent made claim for higher compensation for the

land acquired in survey No.165/4 which is now surveyed as Survey No.165/4B. The second respondent settled the property in favour of third respondent on 25.10.2016. Due to financial constraints, the property was sold to the first respondent on 17.11.2016, by the respondents 2 and 3. All of a sudden, the second respondent received summons from the fifth defendant dated 23.05.2018 and he was asked to appear for an enquiry on 29.05.2018. In June 2018, when the petitioner tried to disturb the peaceful possession of the first respondent, he filed a suit in O.S. No.44 of 2018. The second respondent received summons on 13.08.2018, from the fifth defendant for enquiry on 29.08.2018. He filed objections to the claim of cancellation of patta granted in favour of the second respondent.

10. By an order dated 20.12.2018, in proceedings in Na.Ka.10806/2018/A3, the fifth defendant had cancelled the patta granted in favour of the second respondent. Therefore, he filed a writ petition in W.P. No.1142 of 2019, before this Court and the same was admitted and interim stay was granted against the said order of fifth defendant on 18.01.2019. Subsequently, the petitioners tried to interfere with the possession and enjoyment of the suit property by the first respondent. Therefore, the suit in O.S. No.55 of 2019 came to be filed.

11. A comparative reading of the plaints in O.S. No.44 of 2018 and O.S. No.55 of 2019, shows that the earlier suit was filed only to protect the possession of the first respondent in the suit property. True it is that even before filing the first suit, the second respondent knew that the petitioners denied his title. It is not known whether the first respondent knew that the petitioners denied the title of the second respondent in respect of the suit property. Learned counsel for the petitioners claim that the first respondent had also participated in the enquiry. However, this is a matter for evidence and proof. As narrated above, in O.S. No.55 of 2019, the respondents seek to trace title to the suit property. Earlier suit was filed only for relief of permanent injunction. It is made clear that cancellation of patta in favour of the second respondent was ordered only subsequent to the filing of O.S. No.44 of 2018. The second respondent filed W.P. No.1142 of 2019 before this Court, against cancellation of patta and got interim stay. On the basis of cancellation of patta, the petitioner were trying to create the document and encumber the property and interfere with the possession of the property from January 2019. These are fresh causes of action which came into existence after the filing of O.S. No.44 of 2018. There are claims and counter claims with regard to the tile to the suit property. These disputed and vexed question is purely a question of fact and that have to be

decided in the trial by producing relevant oral documentary evidence.

12. With regard to the contention of the learned counsel for the petitioners that the concept of oral exchange is not known and it is impermissible under Transfer of Property Act; claim by the respondents that the oral exchange of property had been acted upon, these are disputed facts. The petitioners have sold the properties allotted to them through oral exchange to Shanthi. It is also claimed by the second respondent that patta was granted in his favour in 1984-85 for the property exchanged and the property was enjoyed by him and his family members. Again, this is a disputed question of fact and that has to be considered only in the trial. Since there are new causes of action available and new parties have been impleaded, this Court is of the considered view that the issues arose out of these causes of action and impleadment of the parties, have to be necessarily tried. As rightly pointed out, the entire plaint has to be read, as a whole, to consider the causes of action. When the entire plaint is read, it is made clear that plaintiffs have made out clear and new cause of action for initiating the suit. The issue with regard to bar of the suit under Order 2 Rule 2 CPC, in the considered view of the Court can be left open to be decided in the trial Court by framing appropriate issue.

13. In this view of the matter, this Court is of the considered view that the learned I Additional District Judge, Tiruvallur, has considered the matter properly and rightly dismissed the petition to reject the plaint. Hence, this Court finds no reason to interfere with the order dated 04.10.2019, in I.A. No.5 of 2019 in O.S. No.55 of 2019. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed.

19.08.2021

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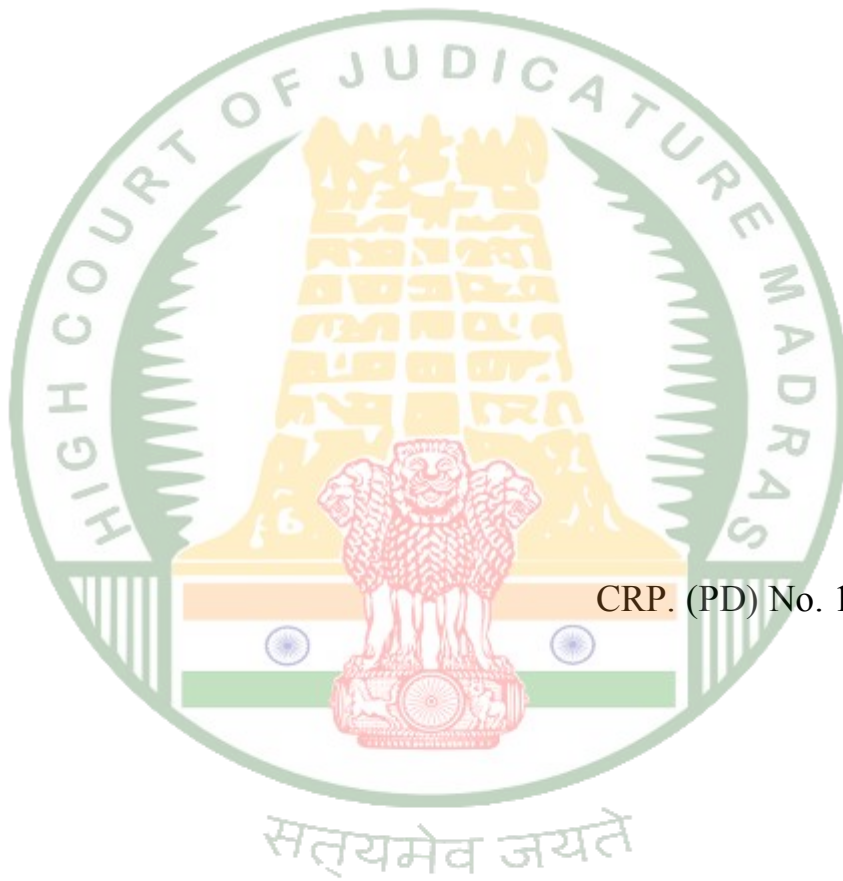
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The I Additional District Judge,
Tiruvallur

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G.CHANDRASEKHARAN. J.,

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