

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.09.2021

PRONOUNCED ON : 14.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.153 of 2021
and C.M.P. No.1416 of 2021

Theagaraya Chetty Educational Institutions
Managing Committee Trust,
Rep. by its Secretary & Correspondent,
P.Kumarasamy,
No.345/1047, T.H.Road,
Old Washermenpet, Chennai.

Petitioner /
Defendant

versus

Korukkupettai Naangu Chakkara
Vazhana Urimaiyalargal Matrum
Ootunargal Nala Sangam,
Rep. by its Secretary
R.Dhanasekar,
No.79/235, Illaya Street,
Old Washermenpet,
Chennai - 600 021.

Respondent /
Plaintiff

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order dated 09.03.2020 in I.A.No.3 of 2019 in O.S.No.6019 of 2019 on the file of the I Assistant City Civil Court, Chennai.

For Petitioner : Mr.B.Ravi

For Respondent : Mr.K.B.Vivekanandhan

ORDER

This petition is filed to set aside the order passed in I.A.No.3 of 2019 in O.S.No.6019 of 2019 on the file of the learned I Assistant City Civil Judge, Chennai.

2. I.A.No.3 of 2019 was filed under Order VII Rule 11 of C.P.C. for rejecting the plaint in O.S.No.6019 of 2019.

3. The learned counsel for the petitioner submitted that, O.S.No.2575 of 2017 was filed by the Korukkupettai Naangu Chakkara Vazhana Urimaiyalargal Matrum Ootunargal Nala Sangam, against the petitioner for the relief of permanent injunction, restraining the defendant, their men, agents, power holders, servants or anybody acting on their behalf, from interfering with peaceful possession and enjoyment of the schedule mentioned property, as a statutory tenant thereof, either by forcibly evicting or in any other manner, except through due process of law and that suit was dismissed for default, on 30.10.2018. Again the same Association, has filed

the present suit in O.S.No.6019 of 2019 seeking the same relief of permanent injunction, restraining the defendant and their men, agents, representatives are restrained by an order of permanent injunction, from evicting the plaintiff by an unlawful means except by due process of law from the suit scheduled premises.

4. When the earlier suit was dismissed for default, subsequent suit for the same relief, cannot be maintained. That apart, the present suit is filed by Korukkupettai Naangu Chakkara Vazhana Urimaiyalargal Matrum Ootunargal Nala Sangam, represented by its Secretary, without filing the petition under Order 1 Rule 8 of C.P.C. or under Order 3 Rule 2 of C.P.C., the present suit, is not maintainable. In this regard, the learned counsel for the petitioner relied on the judgments of the Hon'ble Supreme Court in the case of **SURAJ RATTAN THIRANI vs. AZAMABAD TEA CO. LTD.** reported in **AIR 1965 SC 295**; the Hon'ble Division Bench of the Kerala High Court in **THE WORKMEN OF THE COCHIN LIGHTERAGE CORPN. vs. M/S.PAUL ABRAO** reported in **(1974) 2 LLJ 206**; judgments of this Court in **ASSISTANT**

COMMISSIONER, H.R.&C.E., SALEM vs. NATTAMAI K.S.ELLAPPA
reported in *Volume 100 L.W. 240 MHC*; and **U.P. CRICKET ASSOCIATION vs. U.P. CRICKET ASSOCIATION** reported in *(2007) 5 MLJ 849*.

5. He also relied on the judgment of **K.AKBAR ALI vs. K.UMAR KHAN** reported in *(2021) 3 SCALE 47*, for the proposition that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. The provisions of Order VII Rule 11 are not exhaustive and the Court has inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court. In paragraph No.7, it is stated observed as follows;

"7. In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in ITC v. Debts Recovery Appellate Tribunal reported in (1998) 2 SCC 70: AIR 1998 SC 634, clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious

and clever drafting of the plaint Moreover, the provisions of Order VII Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court."

6. It is further submitted by the learned counsel for the petitioner that, the suit filed for the same relief, after the dismissal of the earlier suit for the same relief, without invoking the provision under Order 1 Rule 8 of C.P.C. or Order 3 Rule 2 of C.P.C., is not maintainable and therefore, he prayed for setting aside the order of the learned trial Judge and for allowing this petition.

7. In response, the learned counsel for the respondent submitted that, the earlier suit was filed on the basis of cause of action that arose when the petitioner tried to disturb the possession and enjoyment of the respondent. The present suit is filed on the basis of new cause of action, which arose subsequent to the dismissal of the earlier suit and therefore, the present suit is maintainable. The respondent has made out a cause of action for filing the suit. There are triable issues involved in this suit. Therefore,

the suit must go for trial. The learned trial Judge has also found that, there are triable issues involved in this case and rightly dismissed the petition. The learned counsel for the respondent prayed for confirming the order of the learned trial Judge and for dismissal of this Petition.

8. Considered the rival submissions and perused the records.

9. No doubt, the plaintiff in both the suits is same person, namely, the respondent herein, that is, Korukkupettai Naangu Chakkara Vazhana Urimaiyalargal Matrum Ootunargal Nala Sangam. Both the suits have been filed on the basis of the claim made by the respondent that, its members are the tenants in respect of the suit property and they are parking their four wheelers, on payment of rent. It is seen from the affidavit filed in I.A.No.3 of 2019, the petitioner admitted that, 74 persons have been given permission to park their vehicles in the schedule mentioned property, on payment of rent. Thus, it is clear from this affidavit that, the members of the

respondent Association are using the schedule mentioned property for parking their vehicles, on payment of rent.

10. Earlier suit was filed on the basis of threat made by some unidentified persons on 16.05.2017 to vacate the premises and refusal on the part of the petitioner to receive the rent and demand of huge sum as rent. The cause of action for the present suit is that, on 09.07.2019, the petitioner's men Mani along with rowdy elements entered into the suit premises and threatened the members of the respondent and on 10.07.2019, a complaint was lodged against the petitioner. Both the suits are for the relief of permanent injunction, on the basis of separate cause of action. Therefore, this Court is of the considered view that the dismissal of the earlier suit, is not a stumbling block for filing the present suit on a fresh cause of action for the relief of permanent injunction, restraining the respondent, from enjoying the property unless by due process of law.

11. With regard to the submission of the learned counsel for the petitioner that, the present suit filed without invoking the provision

under Order 1 Rule 8 or C.P.C. or Order 3 Rule 2 of C.P.C. cannot be accepted for the reason that, on behalf of members of an Association, a suit can be maintained. It is not necessary for the Association to file a petition under Order 1 Rule 8 of C.P.C. or Order 3 Rule 2 of C.P.C. for maintaining the suit.

12. It is seen from the list of documents produced that, the respondent Association, is a registered Association and it has bye-laws. As a registered Association, the respondent is entitled to file the suit on behalf of its members. The judgments relied on by the learned counsel for the petitioner to state that the suit, is not maintainable, without filing petition under Order 1 Rule 8 of C.P.C. cannot be accepted for the reason that, the judgment in ***THE WORKMEN OF THE COCHIN LIGHTERAGE CORPN. vs. M/S.PAUL ABRAO*** reported in (1974) 2 LLJ 206 deals with Section 36 of the Industrial Disputes Act, 1947 with regard to the maintaining a suit by an Union. We are not dealing an Union registered under Industrial Disputes Act. Therefore, this judgment, is not applicable to this case.

13. Similarly, the judgment in ***ASSISTANT COMMISSIONER, H.R.&C.E., SALEM vs. NATTAMAI K.S.ELLAPPA*** reported in ***Volume 100 L.W. 240 MHC*** deals with the suit filed by the individual persons as plaintiffs, on behalf of common interest of other persons, as well. In those circumstances, it was held that the suit filed, without invoking Order 1 Rule 8 of C.P.C., is not maintainable.

14. It was held in ***U.P. CRICKET ASSOCIATION vs. U.P. CRICKET ASSOCIATION*** reported in ***(2007) 5 MLJ 849*** that, the suit filed by the Honorary Treasurer, is not maintainable, when the bye-law authorises only the Honorary Secretary to file the suit. That is not the case here. Therefore, this judgment, is not applicable to this case. Subsequent suit is prohibited under Order 9 Rule 9 of C.P.C. only when subsequent suit is filed on the same cause of action. In this case, subsequent suit is filed on a different cause of action and therefore, the judgment of ***SURAJ RATTAN THIRANI vs. AZAMABAD TEA CO. LTD.*** reported in ***AIR 1965 SC 295***, is not applicable to the facts of this case.

15. Thus, from the perusal of records and the submissions made by the learned counsel for the parties, this Court comes to the conclusion that, when there is no dispute with regard to the fact that the members of the respondent Association are using the suit property for parking their vehicles, on payment of rent, the suit filed on the basis of a fresh cause of action, is maintainable. The learned trial Judge has rightly dismissed the petition. Therefore, this Court finds no reason to interfere with the order of the learned I Assistant City Civil Judge, Chennai, in I.A.No.3 of 2019 in O.S.No.6019 of 2019 dated 09.03.2020 and the order is hereby confirmed.

16. In fine, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

14.09.2021

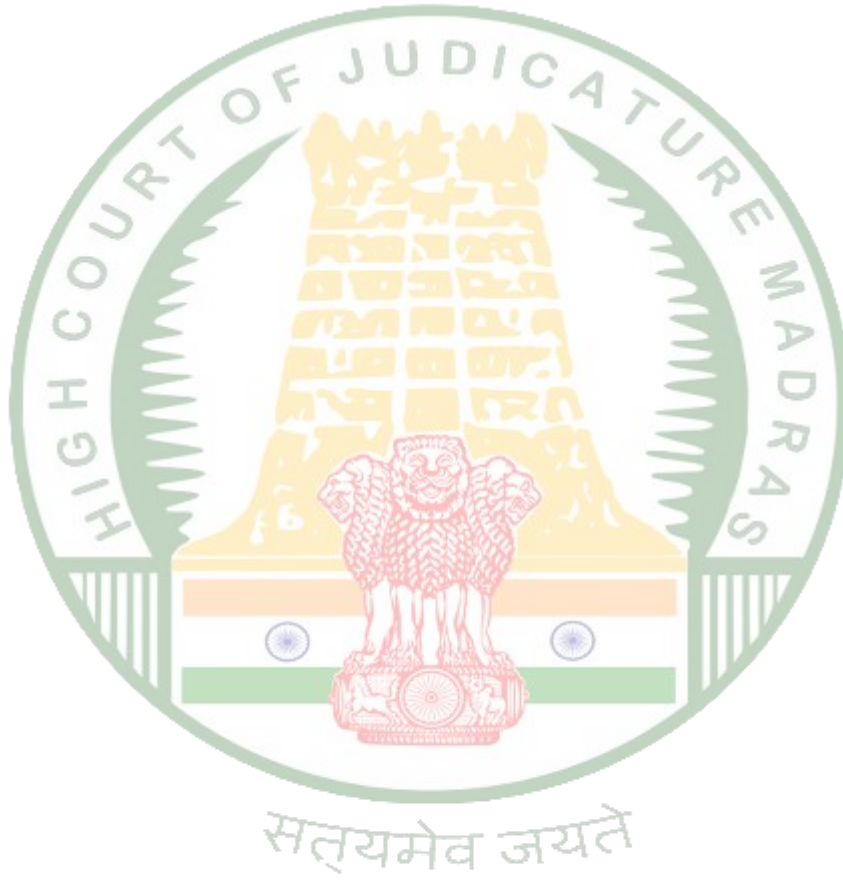
Speaking order / Non-speaking order
Index : Yes / No

sri

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To

The I Assistant City Civil Court,
Chennai.



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G.CHANDRASEKHARAN, J.

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Pre-Delivery Order made in
C.R.P. (PD) No.153 of 2021
and C.M.P. No.1416 of 2021

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