

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                                  |                                    |
|----------------------------------|------------------------------------|
| Orders reserved on<br>02.09.2021 | Orders pronounced on<br>17.09.2021 |
|----------------------------------|------------------------------------|

CORAM

**THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN**

**C.R.P.(PD) No.261 of 2019**

**and**

**C.M.P.No.2059 of 2019**

1. S.Saraswathi  
2. M.Elumalai ...Petitioners

Vs.

1. S.Vijayakumar  
2. The Sub Registrar  
Sub Registrar Office  
Adyar, Chennai - 600 020. ...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.6734 of 2018 on the file of the XI Assistant Judge, City Civil Court, Chennai.

For Petitioners : M/s.R.Balachanderan

For Respondent-1 : Mr.K,Gopinath

For Respondent-2 : No appearance

**ORDER**

This Civil Revision Petition is filed, to strike off the plaint in O.S.No.6734 of 2018 on the file of the XI Assistant Judge, City Civil Court, Chennai.

2. A suit in O.S.No.6734 of 2018 has been filed by the 1<sup>st</sup> respondent herein, to declare the sale deed Document No.2948 of 2017 dated 21.11.2017 as null and void and also for permanent injunction as against the 2<sup>nd</sup> petitioner herein.

3. Pending suit, the petitioners are before this Court with a prayer to strike off the plaint in O.S.No.6734 of 2018 on the file of the XI Assistant Judge, City Civil Court, Chennai.

4. The learned counsel for the petitioners would submit that earlier a suit in O.S.No.3893 of 2018 was filed by one Suresh Kumar, as against the petitioners herein, seeking the following reliefs:-

*(i) to declare the sale executed by the first defendant in favour of second defendant through Document No.2948 of 2017 dated 21.11.2017 registered on the file of the SRO, Adyar is null and void and*

*(ii) to grant permanent injunction order restraining the second defendant, his legal heirs, agents, representatives, servants, etc., from interfering with plaintiff's peaceful possession and against the demolishing the common staircase by the second defendant and pass such further or other order as may be necessary in the circumstances of the case.*

5.The case of the plaintiff in O.S.No.3893 of 2018 is that the suit property is in possession and enjoyment of the plaintiff's father- R.Subramani, till his death on 30.04.1997. After his demise, the plaintiff had been enjoying the property along with co owners, i.e., the 1<sup>st</sup> petitioner herein, who is the mother of the plaintiff and two of his brothers, with 1/4 share in the suit property. While that being so, the 1<sup>st</sup> petitioner herein

created an unregistered sale deed dated 03.06.2013 and unanimously allotted for herself 247 sq.ft., land with house building including staircase. Included a separate clause in that unregistered deed that her sons are entitled to use the staircase as a common passage. Since the plaintiff in O.S.No.3893 of 2018 was having affection and respect towards the 1<sup>st</sup> petitioner herein, he had not raised any question against it. Meanwhile, the 1<sup>st</sup> petitioner herein sold the undivided 1/4 share in the suit property, under a registered sale deed dated 21.11.2017 bearing Document No.2948 of 2017 in favour of the 2<sup>nd</sup> petitioner. She had no authority to sell the suit property without informing the same to other co-owners.

6. The 2<sup>nd</sup> petitioner is a powerful man and he tries to interfere with the peaceful possession of the plaintiff and demolished the common staircase. Therefore, the suit in O.S.No.3893 of 2018 was filed for the aforesaid reliefs.

7. The learned counsel for the petitioners would submit that when a

similar suit in O.S.No.3893 of 2018 was already filed by the other son of the 1<sup>st</sup> petitioner, more or less for the same relief and in respect of the same property, the present suit in O.S.No.6734 of 2018, could not be maintained by the first respondent herein against the petitioners as it is clear abuse of process of law. The learned counsel would further submit that the description of the property as mentioned in O.S.No.3893 of 2018 shows that the extent of the property only 342 sq.ft., whereas, in the subsequent suit filed in O.S.No.6734 of 2018 by the 1<sup>st</sup> respondent herein/son of the 1<sup>st</sup> petitioner, the extent of the suit property was mentioned as 1314 sq.ft. Therefore, on that ground also, the plaint in O.S.No.6734 of 2018 is liable to be struck off.

8. The narration of the facts show that O.S.No.3893 of 2018 was filed by the son of the 1<sup>st</sup> petitioner for the aforesaid reliefs. Reading of the plaint in O.S.No.6734 of 2018 shows that the suit was filed by the 1<sup>st</sup> respondent herein, who is none other than the another son of the 1<sup>st</sup> petitioner claiming that they are living in a separate portion within the suit property and they are having right on the same. Meanwhile, the 2<sup>nd</sup>

petitioner had illegally purchased the share belong to the 1<sup>st</sup> petitioner in the suit property, to an extent of 342 sq.ft., on 23.08.2017. It is highly illegal and required to be declared as null and void. Now, the 2<sup>nd</sup> petitioner is trying to grab the entire suit property, on the strength of the sale deed dated 23.08.2017. Hence, one of the sons of the 1<sup>st</sup> petitioner has filed a suit in O.S.No.3893 of 2018. The 2<sup>nd</sup> petitioner made construction in the suit property and demolished the common staircase. Therefore, the 1<sup>st</sup> respondent herein has filed the present suit in O.S.No.6734 of 2018 seeking the following reliefs:-

*(a) to declare the sale deed Document No.2948 of 2017 dated 21.11.2017 registered on the file of the SRO, Adyar, which is executed by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant is null and void, and,*

*(b) for permanent injunction order against the 2<sup>nd</sup> defendant, restraining him, or his men, his legal heirs, agents, representatives, servants etc., has not to interfering or disturbing the plaintiff's peaceful usage and enjoyment of the common staircase situating in the 1<sup>st</sup> defendant's share and*

*demolish the construction of sealing roof in the common passage made by the 2<sup>nd</sup> defendant in the southern side of the suit schedule property to the extent of 5" x 73" = 365 sq.ft., and pass such further or other orders as may be necessary in the circumstances of the case.*

*(c) Pay the cost of this suit;*

*(d) And pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.*

9. It is further submitted by the learned counsel for the petitioners that except the names of the plaintiffs in both the suit, other averments made in the plaint are almost identical with the earlier suit. Even in the suit in O.S.No.3893 of 2018, the 1<sup>st</sup> respondent's name was originally mentioned as plaintiff, but thereafter, it was struck off and Suresh Kumar's name has been handwritten. It clearly shows that in order to harass the petitioners herein, the present suit has been filed and it is abuse of process of law. Further the averments made in both the plaints are one and the same. There was no

avermment with regard to any new cause of action, to initiate subsequent suit. Plaintiffs in both the suit are different, but both of them are brothers. Prayers in both the suits are similar. Therefore, the learned counsel for the petitioners submitted that the plaint in O.S.No.6734 of 2018 has to be struck off as it is abuse of process of law.

10. In response, learned counsel for the first respondent submitted that the plaintiff in both the cases are different, the properties in both the cases are different and the cause of action in both the suits are different. Earlier suit filed for the relief to declare the sale deed in favour of the second respondent executed by first defendant on 21.11.2017 is null and void and permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the property and demolishing the common staircase. In O.S.No.6734 of 2018, the prayer is to declare the sale deed dated 21.11.2017 executed by the first defendant in favour of the second defendant is null and void, permanent injunction and demolish the construction of ceiling roof in the common passage made by the second defendant to an extent of 365 sq.ft in the schedule property. The

cause of action for both the suits, issues in both the suits, the relief in both the suits are different and therefore, the present suit is maintainable. Therefore, learned counsel for the first respondent prays for dismissal of this Civil Revision Petition.

11. As narrated above, both the suits have been filed by the sons of Saraswathi. It is seen from the copy of the sale deed dated 23.08.2017 that Saraswathi has sold an extent of 342 sq.ft with old building in S.No.22, T.K.Kabali Street, M.G.Nagar, Tharamani Village. She had also executed an unregistered settlement deed in favour of her son Vijayakumar on 03.06.2013 in respect of 234 sq.ft in the aforesaid survey number. The total extent in this S.No is 1314 sq.ft. So, it is claimed that this total extent was enjoyed by Saraswathi and her children. Saraswathi said to have sold her share to Elumalai. O.S.No.3893 of 2018 was filed to declare the sale deed in favour of Elumalai as null and void and for permanent injunction against the defendants not to interfere with the possession of the plaintiff and from demolishing the common staircase. Subsequent suit in O.S.No.6734 of 2014 was filed for the relief of declaration that the sale deed in favour of

9/12

Elumalai is null and void and for permanent injunction and for removing the ceiling roof in the common passage. Thus, it is seen that the reliefs in both the cases are different. Though the substantive part of the pleadings in both the cases are same, plaintiff in both the cases are different and causes of action for both the cases are different. The portion sold to Elumalai was shown as suit property in O.S.No.3893 of 2018, but in O.S.No.6734 of 2018, the entire extent was shown as suit property and the portions sought to be removed is shown as 365 sq.ft. Thus, it is made out that there is fresh cause of action for filing the suit in O.S.No.6734 of 2018. There are triable issues involved in this case. Filing of the suit by a different plaintiff for a different relief on different cause of action cannot be considered as abuse of process of Court. In this view of the matter, this Court finds that the prayer for striking a plaint cannot be entertained and this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

mra

17.09.2021

10/12

WEB COPY

Index:Yes/No

Internet:Yes/No

Speaking Order: Yes/No

To

1. The XI Assistant Judge, City Civil Court, Chennai.
2. The Section Officer, VR Section, High Court of Madras.

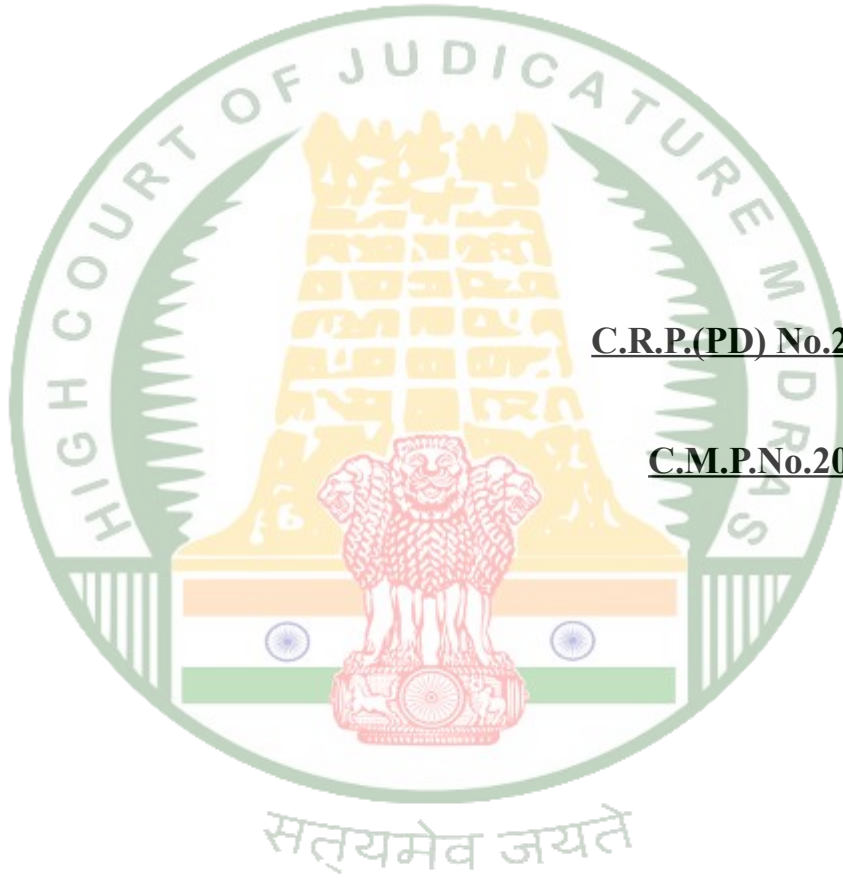


WEB COPY

C.R.P.(P.D).No.261 of 2019

**G.CHANDRASEKHARAN.J,**

mra



**C.R.P.(PD) No.261 of 2019**

**and**

**C.M.P.No.2059 of 2019**

**WEB COPY** 17.09.2021