

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.3791 of 2015
and M.P.No.1 of 2015

T.Valliammal ... Petitioner

Vs.

1. Sadiq Batcha
2. Matheena Beevi ... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 15.07.2015 passed in I.A.No.16875 of 2014 in O.S.No.13828 of 2010 on the file of the learned VII Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.P.Vasanth

For Respondents
For R1 &R2 : Mr.E.Udayachander

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ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 15.07.2015 passed by the learned VII Additional Judge, City Civil Court, Chennai, in I.A.No.16875 of 2014 in O.S.No.13828 of 2010, thereby dismissing the petition filed for rejection of plaint.

2. The petitioner is the first defendant in the suit in O.S.No.13828 of 2010 filed by the respondents for partition in respect of the suit schedule property and also for permanent injunction with mesne profit. The respondents filed earlier suit in C.S.No.508 of 1996 on the file of this Court as against the petitioner and another, for declaration and recovery of possession with mesne profit. The respondents claimed that they have purchased the suit property by two different sale deeds dated 12.07.1995 and 17.07.1995. They also stated that the petitioner and his sister are tenants in the suit schedule property. They purchased half of the suit property from one A.Pachiappan and three others and another half of the suit property from one T.Pathumalai Chettiar and four others. The vendors are having equal undivided share in the suit schedule property. Further the vendors

stated that the petitioner and another are tenants and they are liable to pay a sum of Rs.1,500/- p.m., each as rent.

3. The said suit was dismissed by this Court by the judgment and decree dated 13.04.2006. While dismissing the suit, this Court concluded that it is not known what is the share to which Pathumalai Chettiar and his legal heirs are entitled to in the suit property. Even assuming that Pathumalai Chettiar or his heirs are entitled to any share in the suit property, which was also the subject matter of C.S.No.523 of 1984, in view of the fact, preliminary decree alone has been passed and final decree has not been passed. The purchasers, if at all, ought to have impleaded themselves as parties, if permissible, in C.S.No.523 of 1984 and ought to have moved the petition for allotment of the share, pursuant to preliminary decree. In the absence of final decree in C.S.No.523 of 1984, the respondents having purchased undivided share, which was not carved out and they are not entitled to have any share in respect of the suit property.

4. It is relevant to extract the cause of action in the earlier suit in C.S.No.508 of 1996, which reads as follows :-

"5. The cause of action for the suit arose at Madras on 12.07.1995 and 17.07.1995; when the plaintiffs purchased the suit property on 15.09.1995; when the plaintiffs sent the lawyer's notice to the defendants calling upon to attorn the tenancy on 24.09.1995; when the defendants sent a reply notice through their Advocate denying the plaintiffs right and title and claiming the titles in themselves and subsequently."

5. Whereas, the present suit in O.S.No.13828 of 2010 has been filed on the following cause of action:-

"12. The cause of action for the suit arose at Chennai on 1.6.64 when the suit property was purchased in favour of Meenakshi Ammal, on 2.6.1974 when Meenakshi Ammal died leaving behind Pathumalai Chettiar, Arumuga Chettiar and defendants 1 and 10 as legal heirs, in the year 1984, when Deivanayaki D/o. Arumugam Chettiar filed C.S.No.523/84 on 18.12.1989 when

defendants 1 & 10 executed settlement deed in favour of the other defendants, on 13.08.1990 when a judgment and preliminary decree were passed in C.S.No.523/84, on 23.9.1993 when final decree was passed, on 12.7.1995 & 17.7.1995 when plaintiffs purchased each one-half undivided share of suit property, in 1996 when plaintiffs filed C.S.No.508/96, on 13.4.2006 when the suit was dismissed holding that the suit for the relief prayed for therein was not maintainable and that only a partition would lie, and subsequently."

For the very same cause of action the present suit has been filed by the respondents for partition for the very same property. In the present case, the cause of action arose on 13.08.1990, when the judgment was passed in C.S.No.523 of 1984 and when the respondents purchased each one-half undivided share of the suit property on 12.07.1995 & 17.07.1995.

6. As stated above, this Court dismissed the earlier suit in C.S.No.508 of 1996 by the judgment and decree dated 13.04.2006 and categorically mentioned that final decree has not been passed in C.S.No.523 of 1984 and the respondents ought to have filed petition for allotment of

share in pursuant to the sale deed. In the absence of final decree in C.S.No.523 of 1984, the respondents are not entitled to have any decree of declaration in respect of the suit property. This Court further observed that the suit is not one for partition and therefore, this Court refrains its view regarding the shares which the respondents are entitled to, if the sale deeds are valid. The said observation never gives any room for filing this present suit on the very case cause of action.

7. Admittedly, the respondents purchased the suit property from their vendors in respect of their half of undivided share by the sale deeds dated 12.07.1995 and 17.07.1995. When already a preliminary decree was passed in C.S.No.523 of 1984 in the partition suit, in respect of the very same property, even till today no final decree was passed. The petitioners and other sharers are very much in possession and enjoyment of the suit property. Further the respondents are failed to file any appeal as against the judgment and decree passed by this Court and it become final.

8. The learned counsel appearing for the petitioner pointed out

that the present suit is nothing but re-litigation and it amounts to clear abuse of process of law. Further there is a clear bar under Order VII Rule 2 of C.P.C., when the present suit filed on the same cause of action. In support of his contention, he relied upon the judgment reported in **(2006) 2 LW 259** in the case of **S.Jayakumar & anr Vs. K.Kandasamy Gounder**, which reads as follows:-

"26. One of the most abuse of process of Court is re-litigation. Re-litigation is an abuse of process of Court and contrary to justice and public policy. When the party re-agitates the same subject matter on the same cause of action, the same may or may not be barred by resjudicata; but if the same subject matter is sought to be re-agitated, it amounts to abuse of process of the Court. Such tendency of filing frivolous or vexatious suits are to be curbed by strong Judicial Hand especially where the proceedings are culmination of several rounds of litigation. In exercising the power of superintendence the High Court has the power to stop summarily to prevent the time of the Public and Court being wasted. Power to stop the proceedings should be

sparingly exercised only in rare cases. The case in hand is one such instance where there are several rounds of litigations rendering the present suit O.S. No. 278 of 1999 as a vexatious and is to be struck off."

This Court held that re-litigation is an abuse of process of Court and contrary to justice and public policy. When the party re-agitates the same subject matter on the same cause of action, the same may or may not be batted by resjudicata. It amounts to abuse of process of the Court.

9. In the case on hand, as stated supra, the respondents already filed suit in C.S.No.508 of 1996, in respect of the very same property, which was purchased by the sale deed dated 12.07.1995 vide document No.507/1995 and by the sale deed dated 17.07.1995 vide document No.533/1995, and the same was dismissed by this Court by the judgment dated 13.04.2006. Therefore, the present suit is nothing by re-adjudication of the same issue in the name of partition in respect of the very same property. It is also to be noted that already the family members filed suit for partition for the very same property in C.S.No.523 of 1984 before this Court

and preliminary decree was passed. Thereafter no one has filed petition for final decree and no final decree was passed in C.S.No.523 of 1984. When it being so, the present suit for partition is nothing but re-agitation of the same issue and it would amount to clear abuse of process of Court and contrary to justice and public policy.

10. The learned counsel appearing for the petitioner also relied upon the judgment reported in **(2019) 6 SCC 621** in the case of **Pramod Kumar and anr Vs. Zalak Singh and ors**, which reads as follows :-

"40. The High Court has proceeded to reason based on Order II Rule 3. It is open to the plaintiff to combine causes of action. Order II Rule 3 reads as follows:

"3. Joinder of causes of action (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.”

41. It is undoubtedly true that the law does not compel a litigant to combine one or more causes of action in a suit. It is open to a plaintiff, if he so wishes, however to combine more than one cause of action against same parties in one suit. However, it is undoubtedly true that the embargo in Order II Rule 2 will arise only if the claim, which is omitted or relinquished and the reliefs which are omitted and not claimed, arise from one cause of action. If there is more than one cause of action, Order II Rule 2 will not apply. It is undoubtedly also true that Order II Rule 2 manifests a technical rule as it has the effect of posing an obstacle in the path of a litigant ventilating his grievance in the Courts. But as already noted, there is an equally important principle that no person shall be vexed twice on the same cause of action.

42. That on the same cause of action, the plaintiffs having omitted to sue in respect of the

sale deed in question, we would think that bar under Order II Rule 2 would apply. In this view of the matter we do not think it necessary to pronounce on the question relating to constructive res judicata. In the light of this, we allow the appeal and set aside the judgment of the High Court. Parties to bear their respective costs.

The Hon'ble Supreme Court of India held that the law does not compel a litigant to combine one or more causes of action in a suit. It is open to a plaintiff, if he so wishes, however to combine more than one cause of action same parties in one suit. However, it is undoubtedly true that the embargo in Order 2 Rule 2 will arise only if the claim, which is omitted or relinquished. Therefore, no person shall be vexed twice on the same cause of action by filing two suits.

11. In view of the above discussion, the present impugned plaint cannot be sustained as against the petitioner and it is liable to be rejected. Therefore, the order passed by the Court below is perverse and liable to be set aside. Accordingly, the order dated 15.07.2015 passed by the learned VII Additional Judge, City Civil Court, Chennai, in I.A.No.16875 of 2014 in

O.S.No.13828 of 2010 is hereby set aside and the plaint in O.S.No.13828 of 2010 on the file of the learned VII Additional Judge, City Civil Court, Chennai is hereby struck of.

12. In the result, the Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

19.03.2021

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

1. The VII Additional Judge,
City Civil Court, Chennai.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

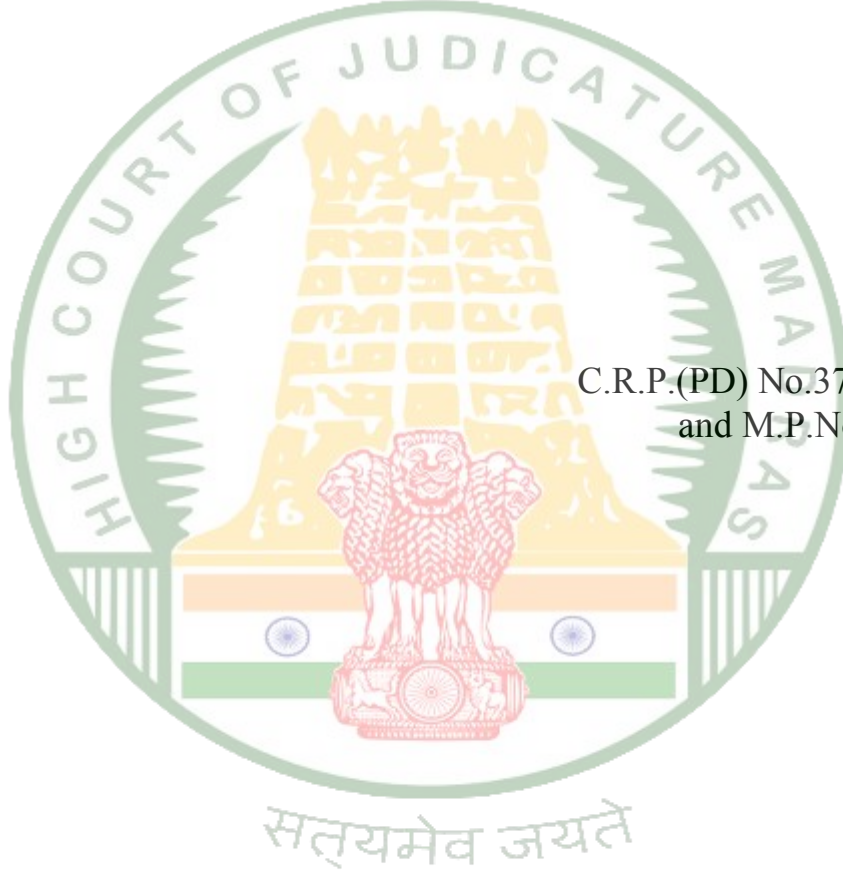


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G.K.ILANTHIRAIYAN, J.

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