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C.R.P (PD) No.3417 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.R.P (PD) No.3417 of 2016
and C.M.P. No.17374 of 2016

1.CSI St. Paul's Hr. Sec. School
Rep. by its Correspondent
Mrs.Prescillal Premavathy
Vepery, Chennai - 7

2.The Head Master
Mr.Joseph Mohan
CSI St. Paul's Hr. Sec. School
Vepery, Chennai - 7

... Petitioners

Vs.

M/s.Parveen Travel (P) Ltd.,
Rep. by its Managing Director, Mr.Afzal
A.B. Towers, 148, Perambur Barracks Road
Purasawakkam, Chennai - 600 007

... Respondents

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 01.07.2016 passed in I.A. No.3303 of 2016 in O.S. No.5980 of 2015 on the file of XI Asst Judge, City Civil Court, Chennai allow the said IA and thereby reject the plaint in O.S. No.5980 of 2015 on the file of XI Asst Judge, City Civil Court, Chennai.

For Petitioners : Dr.A.Thiyagarajan, Senior Counsel



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for M/s.M.Nallathambi

For Respondents : Mr.V.Palanikumar
for Mrs.Malarvizhi Udhayakumar

ORDER

The defendants/petitioners have filed this civil revision petition aggrieved by the fair and final order passed in I.A. No. 3303 of 2016 in O.S. No.5980 of 2015 by the XI Assistant Judge, City Civil Court, dated 01.07.2016, dismissing the application filed under Order VII Rule 11 CPC to reject the plaint filed by the respondent/plaintiff.

2. Heard Dr.A.Thiyagarajan, learned senior counsel appearing for the petitioners and Mr.V.Palanikumar, learned counsel appearing for the respondent and perused the materials available on record.

3. The respondent/plaintiff filed an earlier suit in O.S. No.2116/2015 against the petitioners. For proper appreciation, the cause of action that was pleaded in the said suit and the relief sought for, are extracted hereunder:

"13. That the cause of action for the suit arose at Chennai and within the jurisdiction of this Hon'ble Court that when the defendants had given permission letter dated



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12.02.2010 to plaintiff business for operating bus transports and parked vehicles and defendants issued a letter dated 27.03.2015 to plaintiff and plaintiff had issued a reply letter to the defendants on 31.03.2015. The suit property is situated within the jurisdiction of this Hon'ble Court.

15. The plaintiff therefore prays for a judgment and decree against the defendant as follows:

a) To grant permanent injunction restraining the defendants and their men, agents and anyone acting in trust for or on behalf of all the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property;

b) For costs of this suit;

c) For such other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice."

4. In the above suit, the petitioners filed an application in I.A. No.8388/2015 for rejection of plaint in O.S. No.2116 of 2015 and the application was allowed by an order dated 22.07.2015.

5. The respondent/plaintiff filed the present suit in O.S. No.5980 of 2015 and for proper appreciation, the cause of action and the relief sought for in this



suit, are extracted hereunder:

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"14. That the cause of action for the suit arose at Chennai and within the jurisdiction of this Hon'ble Court that when the defendants had given permission letter dated 12.02.2010 to plaintiff business for operating bus transports and parked vehicles and defendants issued a letter dated 27.03.2015 to plaintiff and plaintiff had issued a reply letter to the defendants on 31.03.2015, on 22.07.2015 the date on which suit in O.S. No.2116 of 2015 was rejected and property is situated within the jurisdiction of this Hon'ble Court.

The plaintiff therefore prays for a judgment and decree against the defendant as follows:

a) declaring that the letter/order issued by the defendants dated 27.03.2015 as null and void and consequently grant a decree of permanent injunction restraining the defendants and their men, agents and anyone acting in trust for or on behalf of all the defendants from interfering with plaintiff's peaceful possession and enjoyment of the suit property for parking their vehicles, except due process of law;

b) For costs of this suit;

c) For such other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice."



6. The petitioners filed I.A. No.3303 of 2016 under Order VII Rule 11 CPC for rejection of plaint on the ground that the present suit in O.S. No.5980 of 2015 is barred by Law and it is hit by the principles of *res judicata*. The court below dismissed the application mainly on the ground that the prayer that has been sought for by the respondent/plaintiff is different and that the subsequent suit is not barred, when the earlier plaint was rejected by virtue of Order VII Rule 13 of CPC.

7. In the considered view of this court, the court below, completely misdirected itself while dealing with the application filed for rejection of plaint. The court below failed to see that even in the earlier suit that was filed in O.S. No.2116 of 2015, a letter dated 27.03.2015 was specifically mentioned as a cause of action and in respect of the same, the respondent/plaintiff preferred to seek for the relief of permanent injunction. In the present suit, the cause of action is exactly the same and the only addition that has been done by the respondent/plaintiff is to seek for a declaration that the letter dated 27.03.2015 is null and void. The court below did not notice the crucial fact that the letter dated 27.03.2015 was already a cause of action in the earlier suit and the plaintiff even at that point of time could have sought for a declaration to declare the letter dated 27.03.2015 as null and void. If the same has not been done,



then obviously the respondent/plaintiff is barred by constructive *res judicata* to maintain the present suit. Merely because the prayer has been altered, that does not mean that the suit has been laid for a different cause of action. While dealing with an application for rejection of plaint, the court is duty bound to go through the entire plaint and consider the averments made therein and decide the true nature of the suit. To merely look at the prayer by disregarding all the other averments made in the plaint, is a patent error that was committed by the court below, which requires the interference of this court.

8. In the considered view of this court, the subsequent suit that was filed by the respondent/plaintiff in O.S. No.5980 of 2015 is nothing but an abuse of process of court. It was also brought to the notice of this court that proceedings were initiated by the respondent/plaintiff in RCOP No.1160 of 2015 to deposit the rent and the same was also dismissed through order dated 06.09.2016. It is therefore, clear that the respondent/plaintiff is attempting to initiate litigation one after the other to prevent the petitioners from taking possession of the property. The agony faced by the petitioners must no longer continue and hence this court has absolutely no hesitation to interfere with the fair and final order passed by the court below in I.A. No.3303 of 2016 dated 01.07.2016 and the said application is allowed and the plaint filed in O.S. No.5980 of 2015 is



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rejected.

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9. In the result, the civil revision petition stands allowed. No costs.

Consequently, the connected civil miscellaneous petition is closed.

08.12.2022

Asr

To

The XI Assistant Judge, City Civil Court, Chennai



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N.ANAND VENKATESH, J.,

Asr

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