



C.R.P. (PD) No.2518 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.11.2021

Delivered on : 17.02.2022

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P. (PD) No.2518 of 2017
and
C.M.P.Nos.11894 & 11895 of 2017

Hari Gobindram

... Revision Petitioner

Vs.

1.Latha Ravi
2.N.Srikumar
3.N.Achalu

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order, dated 04.03.2017, in I.A.No.7318 of 2016 in O.S.No.4289 of 2014 on the file of the XVII Assistant City Civil Court, Chennai.

For Petitioner : Mr.Rajkishore Bhagwatsaran

For R1 : Mr.K.Rajasekaran

For R2 & R3 : Set *ex parte* before lower Court,
Notice to R2 & R3 given up.



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ORDER

(Through Video Conferencing)

This Civil Revision Petition has been filed against the order, dated 04.03.2017, in I.A.No.7318 of 2016 in O.S.No.4289 of 2014, passed by the XVII Assistant Judge, City Civil Court, allowing the impleading petition filed by the 1st respondent herein.

2.For the sake of convenience, the petitioner shall hereinafter be referred to as “plaintiff” and the 2nd and 3rd respondents shall be referred to as “defendants” and the 1st respondent shall be referred to as “impleading petitioner”.

3.The facts leading to the filing of the present Civil Revision Petition are as follows :

- The plaintiff is the owner of one of the flats, viz., Door No.19/4 in First Floor of an apartment at Old No.10, New No.19, 48th Street, 9th Avenue, Ashok Nagar, Chennai. The defendants and the impleading petitioner are the owners of other flats, viz., Door Nos.19/1 and 19/2



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respectively in Ground Floor of the same apartment.

- The plaintiff claims that the defendants have encroached the common area adjoining the compound wall and have put up iron grills and gate on the western side of the common area, and have also erected water pipe lines, taps, etc. and have retained the same for their exclusive usage, thereby causing hindrance to the plaintiff from using the common area.
- Therefore, the plaintiff filed a suit in O.S.No.4289 of 2014 on the file of the XVII Assistant City Civil Court, Chennai, against the defendants for an injunction directing the defendants to remove the iron grills and iron gate on the western side of the common area and also to remove all permanent or temporary structures erected by them on the western side of the apartment and also from erecting any other structures thereafter on all sides of the apartment.
- In the said suit, notice was served on the defendants, however, there was no appearance on their behalf before the trial Court, therefore, they have been set *ex parte* and the matter is posted for judgment.
- At this juncture, the impleading petitioner filed an application in I.A.No.7318 of 2016 in O.S.No.4289 of 2014 to implead herself as a



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defendant in O.S.No.4289 of 2014.

- The case of the impleading petitioner is that she is the owner of one of the flats in ground floor of the apartment and the plaintiff had already filed a suit in O.S.No.3952 of 2003 on the file of the XIV Assistant City Civil Court, Chennai, against the impleading petitioner, for the very same relief and the same is pending. While so, the plaintiff has laid the present suit in O.S.No.4289 of 2014 against the defendants who are the owners of another flat in the ground floor of the apartment for the very same relief and as they are set *ex parte*, the outcome of O.S.No.4289 of 2014 will in turn prejudice the impleading petitioner also. Hence, he seeks to implead herself in the present suit in O.S.No.4289 of 2014.
- The trial Court allowed the impleading petition in I.A.No.7318 of 2016 in O.S.No.4289 of 2014, by an order dated 04.03.2017.
- Challenging the said order, the plaintiff has filed the present Civil Revision Petition before this Court.

4.The learned counsel for the plaintiff/revision petitioner submitted that the defendants have encroached the common area of the apartment on



the western side, whereas, the impleading petitioner (defendant in O.S.No.3952 of 2003) has encroached upon the common area in northern, eastern and southern side of the apartment. The defendants in the present suit were served, but have not entered appearance and hence, they were set *ex parte* and when the suit was posted for judgment, the impleading petitioner has come up with this impugned application to implead herself. The learned counsel would further submit that the relief sought for in the suits in O.S.No.4289 of 2014 and O.S.No.3952 of 2003 are distinct and the defendants in the two suits are also distinct. Since the reliefs are distinct, there is no bar in filing two separate suits and they were proceeding in parallel in two different Courts. The learned counsel further submitted that the earlier suit filed against the impleading petitioner in O.S.No.3952 of 2003 has been decreed by the XIV Assistant Judge, City Civil Court, Chennai, after contest, on 25.01.2017, and he has filed a copy of the e-Court proceedings in the typed set of papers. Therefore, the learned counsel submitted that, if the impleading petitioner is allowed to be impleaded as party to the present suit, that would lead to re-agitating the same issues already decided in the earlier suit, which would amount to *res judicata*. The learned counsel concluded his arguments by submitting that



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the impleading petitioner is not a necessary party to the present suit in O.S.No.4289 of 2014 and prayed for dismissal of the impugned application.

5.Per contra, the learned counsel appearing for the respondent/impleading petitioner submitted that the defendants in the present suit in O.S.No.4289 of 2014 are residing in U.S.A. and therefore, taking advantage of the fact that they cannot enter appearance, the plaintiff has conveniently filed the suit against the defendants, who are the other co-owners of the flats, for the very same relief as that of O.S.No.3952 of 2003 and is attempting to get an *ex parte* decree. The learned counsel further submitted that, if the suit is allowed to be decreed *ex parte*, that would in turn affect the impleading petitioner, as both the suits are for very same relief. Therefore, the learned counsel submitted that the impleading petitioner should be allowed to put forth his case in the present suit in O.S.No.4289 of 2014 and the trial Court has rightly allowed the impleading petition and therefore, prayed for dismissal of this Civil Revision Petition.

6.This Court gave its anxious consideration to the rival submissions and also perused the entire materials available on record.



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7.The admitted facts in this case are as follows :

- The plaintiff is the owner of one of the flats in first floor of the apartment.
- The defendants are the owners of one of the flat in the ground floor of the apartment.
- The impleading petitioner is the owner of another flat in the ground floor of the apartment.
- Initially, the plaintiff filed O.S.No.3952 of 2003 against the impleading petitioner for removal of encroachments from the common area of the apartment, adjoining the compound wall, and the suit was taken on file by the XIV Assistant Judge, City Civil Court, Chennai.
- Thereafter, the plaintiff filed the present suit in O.S.No.4289 of 2014 against the defendants for removal of encroachments from the common area of the apartment, adjoining the compound wall, and the suit was taken on file by the XVII Assistant Judge, City Civil Court, Chennai.
- While both suits were proceeding simultaneously in two different Courts, the defendants in O.S.No.4289 of 2014 were set *ex parte* and



the case was posted for judgment.

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- On coming to know of that, the impleading petitioner, who is the defendant in the earlier suit in O.S.No.3952 of 2003, filed the impugned application for impleading herself in O.S.No.4289 of 2014, on the apprehension that the outcome of O.S.No.4289 of 2014 would in turn cause prejudice to her, as according to her, both the suits are for very same relief.

8.A careful scrutiny of the pleadings in O.S.No.3952 of 2003 and plaint in O.S.No.4289 of 2014 would go to show that, though the prayer sought for in both the suits are different against different persons, the issues in both the suits are identical, viz., to remove the encroachment/structures in the common area, i.e., iron gate and iron grill, water pipe lines, taps, etc., in which, O.S.No.3952 of 2003 (earlier suit) pertains to northern, southern and eastern portion and O.S.No.4289 of 2014 (subsequent suit) pertains to western portion of the same area.



9. Instead of being grouped together, the cases were being tried before two different Courts and were proceeding parallelly. On 25.01.2017, the earlier suit in O.S.No.3952 of 2003 was decreed after contest. In the interregnum, while the suit was pending, the impleading petitioner came to know about the *ex parte* order against the defendants in the subsequent suit in O.S.No.4289 of 2014 and wanted herself to be added in that suit also, in order to put forth her arguments, apprehending that the *ex parte* decree, if any, would prejudice her. However, this Court is of the view that, when the similar issues between the plaintiff and the impleading petitioner have already been decided against the impleading petitioner, the impleading petitioner cannot be allowed to once again advance her arguments in the subsequent suit, which would be hit by *res judicata*. Section 11 of the Code of Civil Procedure reads as follows :

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”



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The impleading petitioner herself admits that both the suits are for same relief, and when the issues between her and the plaintiff have already been decided in favour of the plaintiff, she cannot be permitted to re-agitate the same issues before the same Court once again.

10. Though the disposal of the earlier suit in favour of the plaintiff was brought to the notice of the learned Judge, the learned Judge has allowed the impleading petition merely on the ground that the impleading petitioner is a co-owner of the apartment. Assuming if the earlier suit had not been decreed while passing the impugned order, a chance could have been given to the impleading petitioner to put forth her arguments as a co-owner, as the defendants in the subsequent suit were set *ex parte* and the case stood unresisted; but the fact remains that the decree of the earlier suit will only be binding on the impleading petitioner and she would not be directly affected by the outcome of the subsequent suit, as the prayers sought for in both the suits do not overlap. Hence, the apprehension of the impleading petitioner in this regard need not be countenanced. Anyhow, the earlier suit has been decreed as early as 25.01.2017, before passing of the impugned order. Therefore, adding the impleading petitioner as a party in subsequent suit



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after she failed in the earlier suit, would lead to contest between the same parties once again on identical issues before the same Court, which would render useless and therefore, the impugned application is liable to be dismissed. If at all the impleading petitioner has got any grievance, the remedy available to her is before the appellate forum and not before the same Court in a different suit involving identical issues.

11. Therefore, the impugned order in I.A.No.7318 of 2016 in O.S.No.4289 of 2014 on the file of the XVII Assistant City Civil Court, Chennai, is liable to be set aside and the same is accordingly set aside. Consequently, this Civil Revision Petition is allowed. No costs. Connected miscellaneous petitions are closed.

17.02.2022

Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

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To



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1.The XIV Assistant Judge,
City Civil Court,
Chennai.

2.The XVII Assistant Judge,
City Civil Court,
Chennai.

S. KANNAMMAL, J.



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Pre-Delivery Order in
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