



CRP.PD).No. 3091 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No. 3091 of 2017

and

W.M.P.No.14462 of 2017

Ramasamy

.. Petitioner

Versus

1. Chinnapillai
2. Sivabhakiyam
3. Chinthamani
4. Thenmozhi @ Thenmalar
5. Vennila
6. Bhakiyam

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order in I.A.No. 235 of 2014 in O.S.No. 141 of 2012, dated 17.03.2017 on the file of Sub Court, Dharmapuri.



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For Petitioner : Mr.S.C. Vishwanth
For RR 1 to 6 : Mr.K.S. Sathish Kumar

ORDER

This civil revision petition has been filed by the revision petitioner seeking to set aside the fair and decretal order, dated 17.03.2017 in I.A.No. 235 of 2014 in O.S.No. 141 of 2012, on the file of Sub Court, Dharmapuri.

2. The said suit was filed by the respondent/plaintiff for the relief of partition and other consequential relief. The 1st defendant has filed the written statement. Before the trial Court, the petitioner/1st defendant filed IA.No.235 of 2014 under Order 2 Rule 2 of CPC., praying to dismiss the suit stating that, already the suit in O.S.No.111 of 2010 was filed for the relief of partition by the plaintiff and the said suit was dismissed for default on 29.11.2016. Thereafter, another separate suit is filed for the very same relief and therefore, as such, the same is not maintainable.

3.The said application was strongly objected by the plaintiff stating



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that in the earlier suit in O.S.No.111 of 2010 was filed for the relief of partition, subsequently, there were some transactions and that all those members are to be included and those sales were not mentioned in the earlier suit proceedings. Hence, he was advised to file a fresh suit, and the cause of action is continuing to run in the suit for partition. Countering the same, defendant submits that instead deceased the plaintiff, another suit filed by plaintiff as such is not maintainable. In earlier suit plaintiffs not included the persons as well as the properties which were sold thus he filed comprehensive suit including all the members in the present suit. Therefore, it is not coming under Order 2 Rule 2 of CPC., and hence, the said application was dismissed. Challenging the said findings, the petitioner/1st defendant filed this revision.

4. The learned Counsel for the revision petitioner submitted that the trial Court failed to take into account, the facts and circumstances of the case, and that the cause of action for both suits arise from one and the same transaction and after getting into the facts, the plaintiff ought to have amended the plaint and in spite of that, the application which is barred



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under Order 2 Rule 2 of CPC., was not appreciated by the trial Court properly.

5. The learned counsel appearing for the respondent/plaintiff has relied upon the ratio laid down by the Hon'ble Supreme Court in the case of **Bapusaheb Chimasaheb v. Mahesh Vijaysinha Rajebhosale & Anr.**, in **Civil Appeal No.3110 of 2012, dated 25.04.2017**, wherein, the relevant Paragraph Nos.15 and 16 are extracted hereunder:-

"15. Rule 2 Order 2 CPC does not apply if the cause of action in the subsequent suit is different from that of the former suit as held by this Court in **State of M.P. v. State of Maharashtra (1977) 2 SCC 288**. In **State of Maharashtra v. National Construction Co. (1996) 1 SCC 735**, when the first suit was filed to enforce bank guarantee whereas second suit to claim damages for breach of underlying contract, this Court laid down that the subsequent suit was not barred by Order 2 Rule 2 CPC. In the case of continuing or recurring wrong there would be corresponding continuing or recurring causes of action when the



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first suit was based on infringement of plaintiffs trade mark, second suit was on the continuing act or infringement of its trade mark and continuous passing of action subsequent to filing of the earlier suit, in **Bengal Waterproof Ltd. v. Bombay Waterproof Mfg. Co. (1997) 1 SCC 99**, it was held that the cause of actions in two suits were different as such the bar of Order II Rule 2 CPC was not attracted. The essential requirement for applicability of Order II Rule 2 CPC is to establish the identity of causes of action in the previous suit and the subsequent suit so as to attract the bar as held in *Deva Ram v. Ishwar Chand* (1995) 6 SCC 733 and *Gurbux Singh v. Bhooralal* AIR 1964 SC 1810.

16. In the instant case it cannot be said that the second suit for partition was in respect of the same cause of action as that on which the previous suit was based. In respect of the cause of action of the previous suit plaintiff was not entitled to more than one relief. Hence, it could not be said that the plaintiff has omitted to sue for relief for which second suit has been filed. Suit for partition with



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respect to joint property is based on continuing cause of action, as such the suit for partition could not be said to be barred by Order II Rule 2 CPC. Submission to the contrary is too tenuous to be accepted.

6. The essential requirement for applicability of Order 2 Rule 2 CPC is to establish the identity of causes of action in the previous suit and the subsequent suit, so as to attract the bar, as held in **Deva Ram v. Ishwar Chand [(1995) 6 SCC 733]** and **Gurbux Singh v. Bhooralal [AIR 1964 SC 1810]**, in the earlier suit for partition for joint family property lacks some particulars. So, the present suit was filed based upon the continuing cause of action, as such the present suit is not barred under Order 2 Rule 2 of CPC.

7. Considering the facts and circumstances of the case, it reveals that the earlier suit for partition filed by the plaintiff, was not processed due to the lack of particulars, hence, filed the present suit in the comprehensive manner as it is continuous action of cause of action and hence, it is not barred under Order 2 Rule 2 of CPC., the ratio laid in the



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above referred above applicable for the present facts of the case.

Therefore, there is no illegality or irregularity in the impugned order passed by the trial Court and hence, this Court is not inclined to allow the above revision and the same is liable to be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed as devoid of no merits. However, the course open to the 1st defendant is to canvas all the points that will have to be raised before the trial Court. No costs. Consequently, connected Miscellaneous Petition is closed.

17.10.2022

msm

Index : Yes/No

Speaking Order : Yes/No

To

1. The Sub Judge, Dharmapuri.
2. The Section Officer, V.R.Section

High Court, Madras.

T.V.THAMILSELVI, J.



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