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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD) NO.330 OF 2017

AND

C.M.P.NO.1502 OF 2017

Rajivi

...Petitioner / Plaintiff

Vs.

1.Subramaniyan

2.State of Tamil Nadu

Rep. By its Collector,
Gundu Salai,
Cuddalore.

...Respondent / Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.11.2016 in I.A.No.666/2016 in O.S.No.8 of 2016 on the file of the Additional District Munsif Court, Cuddalore.

For Petitioner : Mr.T.Sezhian

For R1 : Mr.R.Gururaj

For R2 : Dr.S.Suriya,
Additional Government Pleader

ORDER

The Revision Petition has been filed by the plaintiff in O.S.No.8 of 2016 questioning an order dated 11.11.2016 in I.A.No.666 of 2016. The Suit in O.S.No.8 of 2016 is pending on the file of the Additional District Munsif Court at Cuddalore.

2.O.S.No.8 of 2016 has been filed by the plaintiff/revision petitioner seeking protection of possession with respect to the suit schedule property, which had been described as being situated in R.S.No.8/8, Old Survey No.774, Government Poramboke land of 1.37 acres, within which the suit property was about to 7 cents and situated in Ranganathapuram Village, KurinjipadiTaluk, Cuddalore District.



3.The suit had been laid against two defendants. The second defendant, was the State of Tamil Nadu, represented by the Collector of Cuddalore. The first defendant had entered appearance and had also filed written statement.

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4.Thereafter, I.A.No.666 of 2016 came to be filed by the plaintiff/revision petitioner herein. In the affidavit filed in support of the said application, it had been stated that the suit was filed on 07.01.2016 and on 12.01.2016, the first defendant, accompanied by the Village Administrative Officer and the Revenue Inspector had entered into the suit property and had demolished the superstructure, namely the thatched house and the cattle shed. Claiming that they have caused damages to the extent of Rs.1 lakh, a relief was sought seeking damages of Rs.1 lakh and restricting it to Rs.40,000/-.

5.A counter was filed to the said application by the first defendant in the suit.

6.The said application came up for consideration on 11.11.2016 and the learned Additional District Munsif, Cuddalore had thought it fit to dismiss the said application. Among reasons stated was that the plaintiff had not stated as to which one of the two defendants is liable to pay the damages of Rs.40,000/- as claimed and also that the suit having been originally laid for permanent injunction, the learned Additional District Munsif wondered as to whether the relief of damages could also be included as it arose on a subsequent cause of action.

7.Questioning that particular order, the present Revision Petition has been filed.

8.Heard the learned counsel for the revision petitioner and the learned counsel for the respondents.

9.It is the contention of Mr.T.Sezhian, learned counsel for the revision petitioner that though the property is a Government Poramboke land, the plaintiff has been in possession consequent to payment of penal charges levied at regular intervals by the Government and that those documents have been filed to substantiate the fact of possession. It was also stated that to the West of the suit property the patta land of the plaintiff is situated and that to the South of the compound wall is the Vinayagar Temple and the East is bounded by a main road. It was also stated that the suit property is used by the plaintiff's family to access the road. It was also stated that though the Government had been impleaded as the second defendant in the suit, no relief had been sought against the Government. The learned counsel for the revision petitioner also stated that no



prejudice would be caused to the second defendant by allowing the application for damages and therefore assailed the impugned order of the learned Additional District Munsif, Cuddalore.

10.Mr.R.Gururaj, learned counsel for the first respondent however widened the scope of arguments. According to Mr.R.Gururaj, the object of the plaintiff in instituting the suit was to demolish the compound wall of the Vinayagar Temple. The learned counsel pointed out that the first defendant was a Trustee of the said Temple. It was also stated that notice under Section 80 of the Code of Civil Procedure had not been issued to the Government prior to the institution of the suit and that application under Section 80(2) of CPC had also not been filed seeking to dispense with such notice. It was therefore urged by Mr.R.Gururaj, that the suit itself is bad and has to be dismissed as not maintainable. It was also pointed out that there has been a shift in the cause of action and therefore, this Court, exercising power under Article 227 of the Constitution of India though, the defendants are the respondents in the revision petition can still interfere and touch upon the maintainability of the suit itself.

11.The learned counsel also relied on AIR 1971 SC 442, [Gangappa Gurupadappa Gugwad versus Rachawwa and others] with particular reference to paragraph No.10 which as follows:

"10.No doubt it would be open to a Court not to decide all the issues which may arise on the pleadings before it if it finds that the plaint on the face of it is barred by any law. If for instance the plaintiff's cause of action is against a Government and the plaint does not show that notice under Section 80 of the Code of Civil Procedure claiming relief was served in terms of the said Section it would be the duty of the Court to reject the plaint recording an order to that effect with reasons for the order. In such a case the Court should not embark upon a trial of all the issues involved and such rejection would not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. But, where the plaint on the face of it does not show that any relief envisaged by Section 80 of the Code is being claimed, it would be the duty of the Court to go into all the issues which may arise on the pleadings including the question as to whether notice under Section 80 was necessary. If the Court decides the various issues raised on the pleadings it is difficult to see why the adjudication of the rights of the parties, apart



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from the question as to the applicability of Section 80 of the Code and absence of notice thereunder Should not operate as res judicata in a subsequent suit where the identical questions arise for determination between the same parties."

12.The above Judgment was cited by Mr.R.Gururaj, to urge, that due to the failure of the plaintiff to issue notice under Section 80 of the Code of Civil Procedure, and owing to not even getting a dispense with order under Section 80(2) of CPC, this Court could proceed to reject the plaint.

13. In the case cited, the Hon'ble Supreme Court had stated that, in the absence of notice under Section 80 CPC, it would not be open to the Court to proceed to decide the issues which may arise. It was stated that the notice under Section 80 was imperative and should have been issued prior to the institution of the suit or exemption should have been obtained under Section 80(2) of CPC.

14.The learned counsel for the first respondent also relied on AIR 1978 SC 484 [M/s.Ganesh Trading Company versus Moji Ram]. This Judgment was relied on to urge that by way of introducing the relief of damages, there has been a shift in the cause of action and therefore such amendment to the plaint should not be permitted. Reference was made to paragraph No.5 therein which reads as follows:

"It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there. the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time. But, mere failure to set out even an essential fact does not, by itself. Constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit. If any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could sometime be viewed as equivalent to an



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introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This, however, is not the only possible interpretation to be put on every defective state of pleadings. Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute a cause of action where there was none, provided necessary conditions, such as payment of either any additional court fees, which may be payable, or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings."

15. Perusal of the facts in the above particular case reveals that the appellant, M/s. Ganesh Trading Company had filed the suit based on a promissory note dated 25.08.1970 against the respondent/defendant therein. The suit was filed on 24.08.1973. The written statement was filed on 05.06.1974. In that particular written statement, it was stated that the suit was barred owing to non-registration of the partnership firm and therefore Section 69 of the Indian Partnership Act would come in to play. Thereafter, the plaintiff had filed an application seeking amendment, stating that certain material facts had been omitted to be stated in the plaint and that the plaintiff/Firm had actually been dissolved on 15.07.1973, even earlier to the filing of the suit. When that amendment was sought to be introduced, the Hon'ble Supreme Court held that the cause of action had already arisen on the date of the suit and there cannot be a shift in the cause of action to introduce a fact which was already known at the time of institution of the suit.

16. The above two decisions of the Hon'ble Supreme Court, relied on by the learned counsel for the first respondent are distinguishable on the facts of this case and they may not be directly applicable to the case on hand.

17. In the instant case, the suit itself had been filed seeking protection of possession. The complaint in the I.A is that, pending the suit, the first defendant along with the Village Administrative Officer and the Revenue Inspector, had trespassed and had demolished the thatched house and the cow shed. This demolition, is what is now sought to be projected by seeking damages of the suit. Therefore, any demolition, if it had occurred, would only be an extension of the relief already



sought for permanent injunction. A complaint of subsequent trespass pending the suit will always lie in a suit for permanent injunction. The plaintiff only seeks to amend the plaint to include relief for damages for such trespass.

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18. The issue as to whether which one of the two defendants has to pay the damages has apparently played on the mind of the learned Additional District Munsif, Cuddalore.

19. If that had been the case, the application should have been returned, calling upon the plaintiff to specifically mention against whom such a relief has been sought for. That should have been done at the Registry level of the Court. The learned Judge should not take such issue as a point of law, but rather, during the course of trial, the plaintiff should be permitted to plead as to who has to pay the damages and either of the both defendants can plead that they are not liable or that the other party is liable. But once the Interlocutory Application has been taken on file, then revolves around a triable issue. The Court could have returned the application at the time of filing seeking to specify which party against whom the damages was sought. The Court had however permitted the plaintiff to present the application. Only during the course of evidence, can it be determined whether such damages, if at all arises to be paid, and if the cause had arisen then to determine whether it should be paid by the first defendant or by the second defendant or by both.

20. I would keep that issue open to be decided during the course of trial. I would also hold that the issue of maintainability of the suit can be taken up by the first defendant at any point of time prior to commencement of trial by way of an application or by introducing it in the written statement just already pleaded in manner known to law. But the issue whether notice had been issued under Section 80 CPC or an order of exemption under Section 80(2) CPC had been obtained is left open by me and not addressed by me. If as a fact, notice had not been issued and if as a fact, an exemption had not been obtained under Section 80(2) CPC, then either the first defendant or the second defendant is always at liberty to take up that issue in manner known to law before the Trial Court and an obligation is placed on the Trial Judge to address that particular issue if it is taken up.

21. Allowing this revision petition, would certainly does not mean that either one of the two defendants are jointly or severally liable to pay the damages. The plaintiff will have to let in evidence regarding alleged encroachment, regarding alleged accompaniment by the Village Administrative Officer and the Revenue Inspector and alleged demolition. The defendants can



also plead that they have a right enter into the property because even according to the plaintiff the property is a Government Poramboke land.

22. These are issues which have to be taken up only at the time of trial. They are a triable issues and the plaintiff will have to prove them in manner known to law.

23. With the above observation, the revision petition stands allowed. The order under Revision in I.A.No.666 of 2006, dated 11.11.2016 is set aside. All the issues raised in this Civil Revision Petition can be taken up during the course of trial. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

ssi

To:

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

2. The Section Officer,
V.R. Section,
High Court of Madras.

+1cc to M/s.R.Meenal, Advocate, Sr.No.17938

+1cc to the Special Government Pleader (CS), Sr.No.18295

C.R.P.(PD) No.330 of 2017

RSI (CO)
RVM(30/03/2022)