



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.398 of 2017

Vijaya Venkataraman

... Petitioner

Vs.

1.Muniammal

2.M/s.Sri Vinayaga Builders,
No.6, Madley Road, Second Floor,
T.Nagar, Chennai – 600 017.

3.Radha Ramachandran

4.Ramachandran

5.Thavasimuthu

6.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
EVR Salai,
Chennai – 600 003.

7.M.Jayakumar

8.P.Neelavathy

9.S Uma Kolam



10.E.Rajagopalan

11.K.Rajasekaran

12.R.Ananda Kumar

13.R.Vinoth Kumar

...Respondents

RR7 to 13 impleaded as party respondents
vide Court order dated 16.04.2019 made in
CMP No.13533 of 2017 in CRP No.398 of 2017.

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 16.12.2016 in I.A.No.11931 of 2016 in O.S.No.838 of 2014 on the file of the IV Assistant City Civil Court, Chennai.

For Petitioner	..	Mr.V.Lakshmi Narayanan For Mr.R.Vishnu
For R1	..	Ms.Jayanthi Sekar
For R5	..	Mr.P.Mohanraj
For R6	..	Ms.Karthika Ashok
For RR7 to 13	..	Mr.P.Valliappan
For R2, R3 & R5	..	No appearance

ORDER

The property at Door No.4-A which was originally Plot No.67, 4th Street, Andavar Nagar, Kodambakkam, Chennai – 600 024 in S.No.7/10, Block No.9, Central Taluk, Chennai District, bearing Patta No.1306 and



totally measuring 3300 Sq.ft had been put up for development and issues relating to such development are being litigated not only before this Court but more vigorously before the Trial Court.

2.The 1st respondent herein, Muniammal was the beneficiary or rather the purchaser of a particular plot. When the property was developed, she had cause to institute O.S.No.2653 of 2005 against the builder and the Corporation Authorities seeking a relief to demolish that portion which according to her were unauthorized construction and for injunction. Owing to the fact that, the builder had by the time the issue had come up for consideration, had built up the entire plots and had also sold then to various parties, he was not interested in the litigation and remained exparte. The Corporation Authorities remained exparte. An ex-parte decree came to be passed on 30.10.2009 by the learned V Assistant City Civil Judge Chennai.

3.Thereafter, the Revision Petitioner herein, had necessity to file O.S.No.6189 of 2012. She filed the said Original Suit owing to the fact that the plaintiff in O.S.No.2653 of 2005, referred *supra*, Muniammal had filed E.P.No.2978 of 2012 seeking execution of the decree which in



effect meant that she wanted to put into effect the mandatory injunction decree which she had obtained, by which, the flats which had been constructed by the builder were sought to be demolished. In one of those flats the revision petitioner / plaintiff in O.S.No.6189 of 2012 was a resident and therefore being deeply aggrieved, she filed O.S.No.6189 of 2012 seeking stay of further proceedings in E.P.No.2978 of 2012 and also for a declaration that the decree / exparte decree in O.S.No.2653 of 2005 was not binding on her. It must be kept in mind that she was not made a party to that particular suit.

4. Thereafter, the original plaintiff, Muniammal, not to be out done by such new event of a suit being filed, another suit in O.S.No.838 of 2014 on the file of the IV Assistant City City Court, Chennai for permanent injunction and I am informed that was with respect to a car park which was somewhere in that complex and again for a mandatory injunction to demolish the particular building which according to her were illegal constructions.

5. In this particular suit she had impleaded the plaintiff in O.S.No.6189 of 2012 as a defendant. That particular defendant, again not



to be out done by the filing of a new suit, filed an application under Order 7 Rule 11 CPC to reject O.S.No.838 of 2014. The order passed in the said application in I.A.No.11931 of 2016 by the learned IV Assistant City Civil Court, Chennai, has been put to test in this particular Civil Revision Petition.

6.The learned IV Assistant City Civil Court, Chennai, had taken up a via media approach. He was faced with a suit seeking the relief of permanent injunction and also mandatory injunction. The application under Order 7 Rule 11 CPC had been filed claiming that the suit was barred by limitation, and that the suit was barred by the principles of res-judicata since an exparte decree had already been granted and that particular suit had been stayed and that the relief which had been sought could have been sought in the earlier suit and therefore, that the second suit was also barred under the provisions of Order 2 Rule 2 CPC.

7.Let me hold on proceeding further, but deviate and narrate one particular fact which had been left out namely, there was an occasion for both the parties to come before this Court by way of filing an earlier Civil Revision Petition in CRP PD No.1170 of 2013 since the relief of



stay of Execution Petition was not granted by the learned Trial Judge as sought in O.S.No.6189 of 2012. I am informed that in CRP PD No.1170 of 2013, E.P.No.2978 of 2012 in O.S.No.2653 of 2005 had been stayed and a direction had been given that it should await the result of the decree or judgment to be passed in O.S.No.6189 of 2012.

8.It can be safely presumed that it would remain stagnant for perpetuity since, owing to the third suit which had been filed in O.S.No.838 of 2014 and the nature of issues framed in O.S.No.6189 of 2012, the parties again travelled to this Court by filing CRP (PD) No.483 of 2014. A learned Single Judge of this Court by order dated 16.12.2015 had applied her mind to the issues framed and passed necessary orders, but towards the end had stated that a joint trial should be conducted with respect to the issues in O.S.No.838 of 2014 and O.S.No.6189 of 2012. It can be reasonably presumed that the learned Judge had probably presumed that the issues in O.S.No.838 of 2014 required to be tested during the course of trial. But before it could be so done, the Application under Order 7 Rule 11 CPC which had referred earlier had come to be filed by the plaintiff in O.S.No.6189 of 2012.



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9.I am also informed by the learned counsels that the order in CRP (PD) No.483 of 2014 was not brought to the notice of the learned Judge, while disposing of I.A.No.11931 of 2016 which was filed under Order 7 Rule 11 CPC. Even if had been, the learned IV Assistant City Civil Judge, had not referred to the said order. He proceeded to examine the rival contentions and had passed an order which is very seriously assailed by the learned counsel for the revision petitioner.

10.It had been held that the relief seeking permanent injunction is barred by the law of limitation. It was then held that the relief of mandatory injunction cannot be deemed to be barred by the law of limitation and therefore, the suit was permitted to proceed on that particular ground. With respect to the contention under Order 2 Rule 2 CPC, it was stated that since the applicant in I.A.No.11931 of 2016 was not a party in O.S.No.2653 of 2005 it would not be proper to take recourse to Order 2 Rule 2 CPC.

11.Thereafter, with respect to issue of res-judicata, it had been held that further defendants had been added in O.S.No.838 of 2014, the issue of res-judicata would not arise.



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12. Heard the learned counsels. I must admit that I have given only a brief hearing to them since arguments appeared to go around tangentially. I am of the opinion that it would only be appropriate that the learned IV Assistant City Civil Court Chennai is again given an opportunity to re-apply his mind with respect to the order passed by him particularly, with respect to the issues of res-judicata and Order 2 Rule 2 CPC.

13. The learned counsel for the revision petitioner stated that the IV Assistant Judge, City Civil Court Chennai, had struck out the plaint in O.S.No.838 of 2014 with respect to the relief of permanent injunction. The plaintiff in O.S.No.838 of 2014 does not seem to have any grievance over that particular aspect and since the plaintiff is not prepared to lead any evidence on that particular fact, I would go with the order of the IV Assistant City Civil Court, Chennai, striking out the relief of permanent injunction. But the suit cannot be bifurcated and the suit be struck off with respect to one relief and be retained with respect to the other reliefs.



14. Therefore, even though I had expressed an opinion that the relief of permanent injunction had been become redundant, when the matter is reheard by the IV Assistant Judge, City Civil Court, Chennai, necessary reasons have to be given as to why he had struck off the relief of permanent injunction and whether the plaint can still be proceeded with respect to the reliefs of mandatory injunction or whether the said relief of mandatory injunction would be hit under Order 2 Rule 2 CPC and whether to seek such relief under Order 2 Rule 2 CPC, it is imperative that the plaintiff therein / applicant should be a party in the earlier suit or that this relief should also have been sought in the earlier suit and had been omitted to be included in the earlier suit in O.S.No.2653 of 2005. That is one aspect which has to be examined.

15. The other aspect is with respect to res-judicata. Section 11 of CPC states that where between the parties to a suit the issues had been earlier decided, then the decision in the earlier suit would stare in the face of the learned Judge who decides a similar issue in a subsequent suit.



16. Let me put the concepts in very simple terms. Here a decree already passed in O.S.No.2653 of 2005 and if the observations therein are binding, then putting the parties for trial once again would only be a redundant exercise. Whether such exercise is actually required or not is yet another issue which has to be examined by the learned IV Assistant City Civil Court, Chennai.

17. More importantly the 1st respondent herein / plaintiff in O.S.No.838 of 2014 should be called upon to explain, why in the earlier suit in O.S.No. 2653 of 2005, where the Execution Petition had been now filed, the reliefs now sought had not been sought. An explanation will have to be given and if such explanation is not to the satisfaction of the learned Judge, then he could very well proceed to exercise the provisions under Order 7 Rule 11 CPC in manner known to law.

18. All these requires re-hearing of the entire application in I.A.No.11931 of 2016. But, as I stated the relief of permanent injunction appears to have been abandoned by the plaintiff themselves. The effect of abandonment has been explained in order 23 Rule 1(4) CPC. If it is felt that relief of permanent injunction is abandoned since it is not urged



before this Court and no revision has been filed against that particular relief being struck out by the learned IV Assistant City Civil Court, Chennai, it is not necessary for the Trial Court to take up that particular issue, but concentrate on the issue of mandatory injunction, concentrate on the provisions under Order 2 Rule 2 CPC, concentrate on the effect of Section 11 of CPC and also concentrate on the effect of the order in CRP No.483 of 2014 dated 16.12.2015 and then pass a considered order.

19.The learned IV Assistant Judge, City Civil Court, Chennai, may also re-examine the issue whether the relief of mandatory injunction is barred by law of limitation and whether it still survives. The entire issues have to be re-heard after giving due opportunity to both the parties at *lis*.

20.The order under revision namely, I.A.No.11931 of 2016 in O.S.No.838 of 2014 dated 16.12.2016 is set aside. But since no arguments had been put by the 1st respondent with respect to the rejection of relief of permanent injunction it can be safely presumed that the said relief has been abandoned and the interplay of Order 23 Rule 1(4) of CPC may be examined along with the issue of mandatory injunction.



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Petition is allowed. No order as to costs. Consequently, connected Civil
Revision Petition is closed.

06.04.2022

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To,
The IV Assistant City Civil Court, Chennai.



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C.V.KARTHIKEYAN,J.

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