



A.S(MD)No.191 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.10.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

A.S(MD)No.191 of 2014

and

M.P(MD)Nos.1 and 2 of 2014

M/s.Kumaran Auto Mobiles Pvt.Ltd.,
Nagercoil,
having its registered office at
58/1, Sumitha Bhavan,
1st Cross Street, Nesamani Nagar, Nagercoil,
Kanyakumari District and Administrative Office at
27/1, 253 E/1, K.P.Road, Nagercoil,
through Managing Director and represented by its
authorised Signatory
G.Antony Ravindran ... Appellant / Respondent/Plaintiff

-Vs-

1.F.Stalin

2.F.S.Derik Stalin

.. Respondents/Petitioners/
2nd & 3rd Defendants

3.K.Subramanian

.. Respondent/2nd Respondent/
1st Defendant



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PRAYER: Appeal is filed under Section 96 of the Civil Procedure Code, against the Fair and decreetal order dated 09.07.2014 made in I.A.No.191 of 2013 in O.S.No.87 of 2013, on the file of the learned Principal District Judge, Tirunelveli.

For Appellant	: Mr.N.Dilip Kumar
For Respondents	: Mr.M.Vallinayagam Senior Counsel for Mr.D.Nallathambi for R1 and R2
	: Mr.S.Palanivelayutham for R3

JUDGMENT

J.NISHA BANU,J.
and
N.ANAND VENKATESH, J.

The plaintiff has filed this appeal against the Judgment and Decree of the Principal District Judge, Tirunelveli, made in O.S.No.87 of 2013, dated 09.07.2014, rejecting the plaint under Order VII Rule 11 of CPC.



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2. The appellant filed the suit seeking for the relief of declaration of title and for a consequential permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit properties.

3. The defendants 2 and 3 filed a petition in I.A.No.191 of 2013 under Order VII Rule 11 of CPC praying for the rejection of plaint. The application was filed on the ground that the plaintiff filed an earlier suit in O.S.No.434 of 2013 against the same defendants, making the same allegations, claiming for the relief of permanent injunction. Even when the said suit was filed, there was cause of action for the plaintiff to have sought for the relief that was claimed in the present suit in O.S.No.87 of 2013 and inspite of the same, the larger relief was not sought for. The said suit in O.S.No.434 of 2013 was dismissed as not pressed through Judgment and Decree dated 29.11.2013 and the plaintiff did not seek any leave or liberty to prosecute the subsequent suit filed in O.S.No.87 of 2013. In view of the same, the defendants contended that the suit is barred under Order II Rule 2 of CPC and hence, sought for the rejection of plaint. The plaintiff filed a counter affidavit and took a stand that the present suit in O.S.No.87 of 2013 was filed for a different cause of action and there was one more additional property that was added to the schedule based on



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the claim made by the first defendant and the suit was filed seeking for a larger relief and hence, the same is not barred under Order II Rule 2 of CPC.

4. The Court below, on considering the ground taken by the defendants and the response given by the plaintiff, found that the suit is clearly barred under Order II Rule 2 of CPC, since the plaintiff did not get leave when the earlier suit was filed in O.S.No.434 of 2013 and since both the suits are founded on the same cause of action, the Court below rejected the plaint as barred by the law of *res judicata*. Aggrieved by the same, the present Appeal has been filed before this Court.

5. Heard Mr.N.Dilip Kumar, learned counsel for the appellant, Mr.M.Vallinayagam, learned Senior Counsel for Mr.D.Nallathambi, learned counsel for the respondents 1 and 2 and Mr.S.Palanivelayutham, learned counsel for the third respondent.

6. The cause of action that was pleaded when O.S.No.434 of 2013 was filed on 10.9.2013 is as follows:

“8. The cause of action for the suit arose on during 2007 when the 1st Defendant and his father approached Mr.Nazareth Charles to lent



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monetary help and promised to buy the schedule property in the name of the plaintiff company and also subsequent days, when Mr.Nazerath Charles became the Managing Director of the Plaintiff company and on subsequent days when the 1st schedule property was purchased by utilized funds provided by the Nazerath Charles in the name of the 1st Defendant in a clandestine Manner on subsequent days when the plaintiff company remaining in physical possession and enjoyment of the schedule property when the 1st Defendant colluded with the Defendants 2 &3 and brought into existence the alleged sale deed with regard to the schedule property and on subsequent days when Mr.Nazerath Charles came to know about the defendants illegal activities and lodged a complaint before the superintendent of police Nagercoil through its Authorized Signatory and a criminal case was registered on 4.9.2013 by the District crime branch Nagercoil, and the criminal case pending on JM-1



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Nagercoil, and on subsequent days when Defendants attempts to interfere with the plaintiff's company peaceful possession and enjoyment of the schedule property at konganthanparai, Palayamkottai Taluk, Tirunelveli District where the schedule property situate all within the jurisdiction of this Hon'ble court.”

7. The cause of action as pleaded in O.S.No.87 of 2013, when the same was filed on 21.10.2013 is as follows:

“The cause of action for the suit arose during 2007 when the 1st Defendant and his father approached Mr.Nazareth Charles to lend money and promised to buy the schedule property in the name of the plaintiff company and also subsequent days when Mr.Nazereth charles became the Managing Director of the Plaintiff company, the 1stscheduleproperty was purchased by utilizing the funds of plaintiff company in name of the 1stDefendant in a Clandestine Manner, when the



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plaintiff company is remaining in physical possession and enjoyment of the schedule property and on subsequent days when the 1st defendant colluded with the defendants 2 & 3 and brought into existence the alleged sale deed with regard to the 1st schedule property belonging to the company and on subsequent days when Mr.Nazarath charles came to know about the defendants illegal activities lodged a complaint before the superintendent of police, Nagercoil through its Authorized Signatory and a criminal case was also registered on 4.9.2013 by the District crime branch Nagercoil, and the criminal case is pending on the file of Judicial Magistrate court No.1 Nagercoil, and on subsequent days when Defendants attempts to interfere with the plaintiff company's peaceful possession and enjoyment of the schedule property and when the plaintiff company filed O.S. No. 343/2013 on the file of 1st Additional District Munsif, Tirunelveli and on subsequent days when Defendants 2 and 3 are claiming right over the 1st



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schedule property and 1st defendant is claiming right over the 2nd schedule property the plaintiff was constrained to file the suit for declaration and injunction all at Konganthanparai, Palayamkottai Taluk, Tirunelveli District and Mathalamparai, Tenkasi Taluk where the schedule property situate all within the jurisdiction of this Hon'ble court."

8. This Court carefully went through the plaint filed in both the suits and it is found that the averments as found in both the plaints are the same and infact, it is word by word the same averment. Admittedly, when the suit in O.S.No.434 of 2013 was filed, the plaintiff did not obtain the leave of the Court under Order II Rule 2 of CPC to claim for a larger relief and the plaintiff sought for a lesser relief, when the relief sought for in the latter suit in O.S.No.87 of 2013 could have been claimed in the earlier suit filed in O.S.No.434 of 2013. That apart, the earlier suit was dismissed as not pressed and even at that point of time, the plaintiff failed to get the liberty to file the subsequent suit on the same cause of action.

9. The bar under Order II Rule 2 of CPC will stand automatically attracted where the previous suit forms the foundation of the



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subsequent suit and the plaintiff could have claimed the reliefs sought for in the subsequent suit, in the earlier suit and more particularly, when both the suits are between the same parties. The plea of bar under Order II Rule 2 of CPC will apply even where the second suit is filed during the pendency of the first suit and it is not necessary that the first suit should have been disposed of when the second suit is filed. The law on this issue has been considered in detail by this Court in ***Suresh Kumar Kankariya v. K. Jigibai @ Pushpammal*** reported in **2022 (2) LW 799**.

10. In the facts of the present case, the Court below was perfectly right in rejecting the plaint filed in O.S.No.87 of 2013, since it is barred under Order II Rule 2 of CPC and just because one more property was added to the schedule, the plaintiff cannot escape from the clutches of Order II Rule 2 of CPC, since the cause of action was very much available for the plaintiff to have added that property also in the earlier suit and claimed for a larger relief.

11. In the result, this Court does not find any infirmity or illegality in the Order passed by the Court below rejecting the plaint and consequently dismissing the suit and accordingly, this Appeal stands dismissed. Considering the facts and circumstances of the case, there shall



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be no order as to costs. Consequently, connected miscellaneous petitions
are closed.

[J.N.B, J.] & [N.A.V., J.]

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Index : Yes/No
Internet : Yes/No
PJI

To
The Principal District Judge,
Tirunelveli.



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**AND
N.ANAND VENKATESH, J**

PJL

Judgment made in
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