



WEB COPY



CRP No. 2213 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Revision Petition No. 2213 of 2020
and
C.M.P.No.13926 of 2020

M.Ramakrishnan

.. Petitioner

Versus

Ponnammal

.. Respondent

Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 29.10.2020 made in I.A.No.5 of 2020 in O.S.No.254 of 2020 on the file of the District Munsif Court, Komarapalayam.

For Petitioner	:	Mr. R. Marudhachalamurthy
For Respondent	:	Mr. B.S. Manikandan

ORDER

The defendant in O.S. No. 254 of 2020 (O.S.No.104 of 2016) on the file of the District Munsif Court, Komarapalayam has come forward with this Civil Revision Petition.

2. The respondent herein has filed the aforesaid suit praying to grant permanent injunction restraining the revision petitioner/defendant, his men,



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servants, agents or any persons claiming under him from in any manner disturbing or preventing him from using “ABC” portion of the suit “ABCDE” cart tract which is the only ingress and egress to reach the plaintiff's agricultural land comprising in S.F.No.172/1E.

3. On notice in the suit, the revision petitioner/defendant has filed a written statement repudiating the plaint averments. Notwithstanding the filing of the written statement, the defendant/revision petitioner has also filed the instant interlocutory application in I.A. No. 5 of 2020 under Order 7 Rule 11 of CPC to reject the plaint on the ground that there is no cause of action arise for the plaintiff to file the instant suit and that the present suit is nothing short an abuse of process of law.

4. In the application in I.A.No.5 of 2020, it was mainly contented by the defendant that in connection with the very same dispute already one Periyasami has filed a suit in O.S. No. 675 of 1982 before the District Munsif Court, Tiruchengode and obtained a decree thereof. The litigation reached this Court in Second Appeal No. 1592 of 1988 and the same was partly allowed by this Court on 11.06.2002. Pursuant to the judgement passed by this Court in S.A. No. 1592 of 1988 dated 11.06.2002, the plaintiff herein has purchased the



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property in question from the above said Periyasami on 11.03.2005. Thus, the issues involved in the present suit have already been adjudicated by this Court in S.A.No.1592 of 1988. While so, in connection with the same cause of action, the instant suit in O.S.No.254 of 2020 has been filed and therefore, the present suit is hit by the principals of *res-judicata*. According to the defendant/revision petitioner, there is no cause of action for the plaintiff to file the present suit. The present suit is nothing short an abuse of process of law. While so, the defendant need not undergo the ordeal of lengthy trial in the present suit. When the issues arises for consideration in the suit have already been adjudicated, a further adjudication at the instance of the plaintiff is unnecessary. Therefore, the defendant has filed the application under Order 7 Rule 11 of CPC to reject the plaint.

5. The respondent/plaintiff has filed a counter affidavit in I.A.No.5 of 2020 admitting that earlier the said Periyasami has filed the suit in O.S.No.675 of 1982 for bare injunction again the defendant/revision petitioner. As against the decree passed in O.S.No. 675 of 1982, A.S. No.83 of 1985 has been filed and it was dismissed. As against the same, her vendor/ Periyasami has filed the Second Appeal in S.A.No.1592 of 1988 before this Court and it was partly allowed. In the judgement and decree passed by this Court in S.A.No.1592 of



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1988, it was specifically held that the plaintiff's vendor, viz., the said Periyasami is having a right over 11 feet pathway. Thereafter, the said Periyasami has executed the sale deed in favour of the plaintiff on 11.03.2005. In the sale deed, it was specifically stated that the right of pathway in the land measuring 11 feet has been conveyed to the plaintiff herein. Even otherwise, 10 years after the sale deed dated 11.03.2005 has been executed in favour of the respondent/plaintiff, the defendant herein attempted to interfere with her possession, therefore, the present suit has been filed by the plaintiff. The cause of action arise for institution of the present suit has nothing to do with the earlier suit filed by her vendor/Periyasami in O.S.No.675 of 1982 which culminated in the judgement and decree dated 11.06.2002 passed in S.A.No.1592 of 1988. The cause of action arise in the present suit is different and distinct and it require an adjudication in the present suit. Therefore, it was submitted that the instant suit will not be hit by principals of *res-judicata* and she prayed for dismissal of the present suit.

6. The trial Court upon considering the oral and documentary evidence, refused to reject the plaint by concluding that the cause of action arises for consideration in the present suit has to be adjudicated only at the time of trial and the suit is not hit by the principals of *res-judicata*. The cause of action said



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to have arisen for filing the present suit is different. The issues involved in the present suit have to be gone into only at the time of trial. Therefore, the Court below concluded that this is not a fit case for rejecting the plaint at the threshold and dismissed the application. Aggrieved by the same, the present Civil Revision Petition has been filed.

7. The learned counsel appearing for the civil revision petitioner has vehemently contented that the judgement and decree passed by this Court in S.A. No. 1592 of 1988 will have a barring for adjudicating the present suit. When already the substantial issues arise in the suit has been adjudicated upon and it has reached finality, it cannot be re-adjudicated by the respondent by filing the instant suit. The relief sought for in the earlier suit in O.S.No.675 of 1982 by the vendor of the respondent is akin to the relief sought for in the present suit. Therefore, there is no cause of action arisen for filing the present suit. If the revision petitioner/defendant is made to litigate the present suit, it will prejudice him. In such circumstances, the trial Court ought to have rejected the plaint and prayed for allowing this Civil Revision Petition.

8. On the above contention, this Court heard the learned counsel for the respondent, who justified the order passed by the trial Court and prayed for dismissal of the present Civil Revision Petition.



9. This Court heard the learned counsel for both sides and perused the materials placed on record including the judgement and decree passed by this Court in S.A.No.1592 of 1988.

10. It is no doubt true that the vendor of the respondent herein has partially succeeded in getting a judgment and decree in the Second Appeal before this Court and it is not disputed both by the petitioner as well as the respondent herein. At the same time, it has to be pointed out that the Civil Revision Petitioner herein is the second respondent in S.A.No.1592 of 1988. This Court partly allowed the second appeal. As against the portion of the judgment and decree passed by this Court in the Second Appeal, the Revision Petitioner herein has not preferred any further appeal and the judgment and decree passed in S.A.No.1592 of 1988 has attained finality. Further, as per the judgment and decree passed in S.A.No.1592 of 1988, the vendor of the respondent herein has got as un-assailable right in respect of 11 feet cart track which is the subject matter of the present suit in O.S.No.254 of 2020.

11. According to the plaintiff/respondent herein, she has been utilizing the present cart track for carrying out the agricultural produce for her ingress and egress to reach the adjacent land. When the revision petitioner herein has



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attempted to interfere with such right of the plaintiff she has filed the present suit for bare injunction. Therefore, it is abundantly clear that the cause of action for the present suit and the cause of action arose for the vendor of the respondent to file the suit in O.S.No.675 of 1982 are entirely different. In such view of the matter, whether the plaintiff is entitled to a decree for permanent injunction has to be gone into only at the time of trial and it cannot be said that there is no cause of action at all for instituting the present suit. The trial court is therefore, wholly justified in dismissing the application filed by the revision petitioner herein under Order 7 Rule 11 of CPC. There is no merit in the present Civil Revision Petition and it is liable only to be dismissed.

12. Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

02.02.2023

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Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No



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To

1. The District Munsif Court, Komarapalayam.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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V.BHAVANI SUBBAROYAN,J.

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