



CRP. No.2677 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

CORAM:

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

CRP. No. 2677 of 2019

1.Bhuvaneswari
2. Nataneswari

...Petitioners

Vs.

1.Dharanidaran
2.K.Malarvizhi
3.M.Swaranasudhs

...Respondents.

PRAYER : This Civil Revision Petition is filed under Article 227 of Constitution of India, to strike off the plaint in O.S No. 4958 of 2019, pending on the file of the Hon'ble VI Additional City Civil Court, Chennai.

For Petitioner : Mr.K.Manikandan

For Respondents : Mr.A.M.Krishnamoorthy.



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ORDER

WEB COPY This petition has been filed to strike off the plaint in O.S No. 4958 of 2019, pending on the file of the Hon'ble VI Additional City Civil Court, Chennai.

2. The petitioners herein are the defendants in suit O.S. No. 4958 of 2019 on the file of the VI Additional City Civil Court, Chennai, filed by the first respondents herein/plaintiff for the relief of permanent injunction in respect of suit property as described in the plaint schedule, claiming that they are in lawful possession of the property in which the defendants/revision petitioners herein have no right but they caused interference. After receipt of notice the petitioners/defendant filed this petition to strike off the plaint in O.S No. 4958 of 2019 stating that the respondents herein had already filed a suit in O.S No. 2542 of 2018 in the same court for the relief of permanent injunction but without obtaining leave of this Court the respondents herein filed a suit in O.S No. 4958 of 2019 for the same property as such is clear case of abuse of process of law. Further this petitioner also filed C.S No. 612 of 2018 before this court.

3. The learned counsel for the respondents submitted that the present suit was filed with comprehensive prayer of declaration by including



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various cause of action and the earlier suit filed by them for permanent injunction. Subsequently, in order to protect his right over the property they filed comprehensive suit for which they are entitle. Accordingly he prayed to dismiss this petitioner.

4. By way of reply, the learned counsel for the petitioner submitted that respondent filed the suit contrary to Order II Rule (2) (1) of CPC which mandates that every suit shall include the whole of the claim which the plaintiffs entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of their claim in order to bring the suit within jurisdiction of any Court. Further, Order II Rule 2 (2), stipulates that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of their claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Further, Order II Rule 2(3) provides that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such relief. By relying above provisions, the learned counsel for the petitioner submitted that in the instant case, cause of action for the filing of suit is one and same, party also one and the same without obtaining leave of this Court present suit filed for the relief of declaration as such is deserves to be strike off by invoking Article 227 of Constitution of



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5. Considering the submissions on either side and also on perusal of records, it reveals that in the year of 2018 respondent herein filed a suit in O.S No. 2542 of 2018 for the relief of permanent injunction against the petitioners, for the same property petitioners herein filed a suit in C.S No. 612 of 2018 before this Court for the relief of partition, permanent injunction and other consequential relief against the respondents. Thereafter, the respondents herein filed O.S No. 4958 of 2019 for the relief of declaration for the same property. Admittedly, at earliest point of time the respondents herein not obtained leave of the Court to file a comprehensive suit, as per Order II Rule 2 (1) of CPC which mandates that every suit shall include the whole of claim which the plaintiff entitled to make in respect of the cause of action but the plaintiff may relinquish any portion on their claim in order to bring the suit within the jurisdiction of any Court. Further, Order II Rule 2 (2), stipulates that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of their claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Order II Rule 2(3) provides that a person entitled to more than one relief in respect



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of the same cause of action may sue for all or any of such relief. On bare

reading of the above provisions, the plaintiffs/respondents herein are entitle

to file comprehensive suit for the same cause of action provided that they

have to obtain leave of the Court. But in the instant case, the

plaintiffs/respondents herein not obtained leave of the court and after filing

of the suit by the defendants/petitioners herein in C.S No. 612 of 2018 the

respondents herein filed a suit in O.S No.4958 of 2019 for the same cause of

action and also the previous cause of action is one and the same but the

earlier suit filed only for the relief of permanent injunction subsequent suit

filed for the comprehensive relief of declaration and permanent injunction.

Therefore, both suits filed for the same cause of action. Hence, O.S No.

2542 of 2018 is for lesser relief but the said relief was forming part of the

present suit, however the respondent ought to have obtained leave from the

Court before filing the suit. However, the litigant should not be suffered due

to the mistake committed by his counsel. Furthermore, the plaintiff is

entitled to protect his right and property as guaranteed under Constitution

of India not to be defeated. At the same time, respondent is not entitle to

proceed to any number of case for the same cause of action. Considering

that, plaint in earlier suit O.S No. 2542 of 2018 filed for the relief of



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permanent injunction is ordered to be strike off and the respondent is entitle to proceed with present suit O.S No. 4958 of 2019 for the same cause of action for the relief of declaration and permanent injunction. The Trial Court is directed to dispose the suit within a period of six months from the date of receipt of a copy of this Order.

6. Accordingly, this petition is partly allowed. No cost. Consequentially, connected miscellaneous petition is closed.

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Note: Issue order copy on 11.09.2023.



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