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CRP No.4253 of 2018
and
C.M.P.No.23319 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.4253 of 2018
and
C.M.P.No.23319 of 2018

Palani Maistry

... Petitioner

Versus

1.C.Ekambara Chettiar
2.P.Sivanesa Chettiar
3.P.Sankar Chettiar

...Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India,
praying to set aside the fair and decretal order dated 31.07.2017, made in
I.A.No.366 of 2016 in O.S.No.61 of 2015, on the file of District Munsif
Court, Arakkonam.

For Petitioner : Mr.P.Krishnan

For Respondents : Mr.P.K.Harinath Basu
for Mr.R.Karthikeyan



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ORDER

The petitioner / defendant has filed this revision petition to set aside the fair and decretal order dated 31.07.2017, made in I.A.No.366 of 2016 in O.S.No.61 of 2015, on the file of District Munsif Court, Arakkonam.

2. Heard, Mr. P.Krishnan, learned counsel for the petitioner and Mr. P.K. Harinath Basu appearing for Mr. R.Karthikeyan, learned Counsel for the respondents and perused the materials available on record.

3. The plaintiffs have filed a suit in O.S.No. 61 of 2015, against which the defendant has filed an application in I.A.No.366 of 2016, to reject the plaint stating that, suppressing the earlier suit in O.S.No.183 of 2014 for the same relief, on the file of Sub-Court, Arrakkonam, which was filed by the present plaintiffs, for declaration of the suit temple property and the present suit is also filed on the same set of facts, as there is no cause of action to file fresh suit, and by abuse of the process of law, and hence he prayed to reject the plaint.

4. The respondents / plaintiffs raised objection, stating that there is a

<https://www.mhc.tn.gov.in/> cause of action to file the present suit, in fact in the earlier suit they have filed



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an application to withdraw the suit, with liberty to file a fresh suit, which was allowed by the Sub-Judge, Arrakkonam immediately and again the defendant caused interference. Hence, the present suit is filed and mere non disclosure of the earlier suit would not amount to suppression of the fact and there is fresh cause of action and the same can be proved by the plaintiffs at the time of trial. Hence, he prayed to dismiss the petition as devoid of merits.

5. Considering both side submissions, the learned trial Judge finally concluded that the present petitioner is not a party in the earlier suit in O.S.No.183 of 2014 on the file of Sub-Judge, Arrakkonam and the said suit withdrawn by the plaintiffs, with liberty to file a fresh suit and the same was allowed by the learned Sub-Judge. Though CRP was filed by the that defendant in the suit, but no stay was in force. Furthermore, this petitioner caused interference in the suit property, and hence, the plaintiffs have preferred the present suit. Based on the independent cause of action, when the petitioner attempted to interference with the peaceful possession of the property on 03.05.2005 with an intention to put up construction. Hence, the cause of action for filing the present suit arose and the suit was filed and, these facts can be proved only at the time of trial and cannot be decided by mere allegations and accordingly prayed that, the petition may be dismissed.



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6. The learned counsel for the revision petitioner argues that the earlier suit in O.S.No.183 of 2014 was filed in respect of the same suit property, against one Sai and Durai Sathish, but they filed I.A.No.45 of 2015 for withdrawal of the suit with liberty to file fresh suit, though it was allowed, against which the defendant has preferred CRP.No.2920/2015 before this Court, which was pending and without disclosing those facts, the present suit is filed by abusing the process of law. But the learned trial Judge without taken note of the facts and dismissed the application totally as erroneous one and it is liable to be set aside.

7. Admittedly, the facts reveal that in the earlier suit in O.S. 183 of 2014, the defendants are one Sai and Durai sathish, but in the present suit, the revision petitioner is a defendant in both suits, and the defendants are the different parties and not a same parties. It is an admitted fact that, earlier suit was withdrawn by the plaintiff in I.A.No.45 of 2015, though CRP was pending but no order of stay is in force.

8. As stated above, the parties are defendants, and as per the allegation in the plaint, the cause of action to file the present suit arose in the month of May 2015, when this petitioner attempted to cause interference by



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trespassing into the suit property and to put up construction, for which he is entitled to file a suit. So, even suppression of the earlier suit and non-disclosure of the earlier suit would not amount to the suppression of the facts, as petitioner is not a party to the earlier proceedings. Furthermore, the allegation required detailed evidence and the same was rightly appreciated by the learned trial Judge, which needs no interference by this Court.

9. In the light of the above observations, this Civil Revision Petition is dismissed as devoid of merits and the findings rendered by the learned trial Judge are confirmed. Consequently, connected miscellaneous petition is closed. No costs.

30.08.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No

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To

1.The District Judge,
District Munsif Court, Arakkonam.

2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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