



C.R.P.(MD).No.1708 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	31.08.2023
Pronounced on	21.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.1708 of 2023
and
C.M.P.(MD) No.8535 of 2023

1.A.Arunachalam

2.A.Seetha

3.R.K.Sivasami

...Petitioners

-Vs-

M/s.Shri Krish Housing and Properties Pvt. Ltd.,
Rep. by its Director,
C.Radhakrishnan,
S/o.Chinnapaiyan,
having office at 72A,
Thandapani Street,
T.Nagar,
Chennai – 600 017

... Respondent

Prayer: The Civil Revision Petition is filed under Article 227 of Constitution of India to call for the records relating to the fair and decreetal order passed by Learned District Munsif Court, Keeranur in New I.A.No.1 of 2022 (Old I.A.No.500 of 2022) in O.S.No.46 of 2022 dated 05.07.2023 and set aside



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the same by allowing the Civil Revision Petition.

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For Petitioners : Mr.K.P.Narayana Kumar
For Respondent : Mr.S.Vashik Ali

ORDER

This Civil Revision petition is preferred against the order passed by the learned District Munsif Court, Keeranur dated 05.07.2023 made in I.A.No.1 of 2022 in O.S.No.46 of 2022.

2. According to the revision petitioners, the respondent has filed the above suit in O.S.No.46 of 2022 for permanent injunction stating that the petitioners/defendants are trying to alienate the suit property without adhering to the contract for sale as per the unregistered sale agreement dated 11.04.2022. It is submitted that the petitioners/defendants were served with Interlocutory Application for interim injunction and the petitioners/defendants also filed their Counter affidavit. Hence, no interim order was granted. While so, on 10.10.2022, the 3rd defendant who is the 3rd petitioner herein filed the written statement, as power holder of petitioners 1 and 2. On that day, the respondent/plaintiff represented I.A.No.500 of



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2022, which was renumbered as I.A.No.1 of 2022. Thereafter, the petition filed for interim injunction was withdrawn by the respondent/plaintiff on 07.03.2023 and I.A.No.1 of 2022 was kept pending. The trial Court, without considering the above facts, allowed I.A.No.1 of 2022 permitting the respondent/plaintiff to file another suit for specific performance of contract. Aggrieved by the same, the present revision petition is preferred.

3. The learned counsel appearing for the revision petitioners would submit that the petitioners denied the execution of sale agreement and specifically contended that even assuming sale agreement was executed, the suit was hit by section 16 (c) and 41 (h) of the Specific Relief Act, 1963 and no permission was obtained under Order II Rule 2 of the Code of Civil Procedure, 1908, at the time of filing of the first suit. The respondent/plaintiff, while filing the earlier suit for injunction, ought to have pleaded proper reason and justification for filing the second suit for specific performance on the same cause of action. However, in the affidavit filed by the respondent/plaintiff, no sufficient reasons were given for filing the petition under Order II Rule 2 of CPC. Therefore, the order passed by the trial Court is unsustainable.



4. The learned counsel would further content that the Order II Rule 2

(1) of CPC provides that a plaintiff has to include the whole of the claim, which they entitled to make in respect of a cause of action. However, it is open to them to relinquish any portion of the claim. Order II Rule 2 of CPC provides for the consequences of relinquishment of part of a claim and also the consequences of omitting a part of the claim. Order II Rule 2 (1) CPC requires every suit to include the whole of the claim to which the plaintiff is entitled to in respect of any particular cause of action. The object behind the enactment of Order II Rule 2 (2) and (3) CPC is not far to seek. The rule engrafts a laudable principle that discourages/prohibits vexing the defendants again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A latter suit for such relief is contemplated only with the leave of the Court, which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons. The trial Court should be convinced with the reason given by the plaintiff to defend the second suit for same cause of action, while permitting the plaintiff to do so.



5. The learned counsel would also submit that the overall reading of plaint in O.S.No. 46 of 2022 narrates about the unregistered sale agreement alleged to have been executed between the plaintiff and the defendants on 11.04.2022 and in the plaint, it has been stated that the suit has been filed to restrain the defendants from alienating and encumbering to third parties. Though in the plaint in 11th paragraph, it is stated that "he reserves the right for filing subsequent suit for specific performance at later stage", it gives an impression that the plaintiff intentionally relinquishes the right to seek the relief of specific performance on the date of filing of the first suit. While so, the trial Court ought not to have given permission to the plaintiff for filing the subsequent suit to harass the defendants. Order II Rule 2 of CPC says that if a plaintiff fails to sue for the whole of the claim, which he is entitled to make in respect of a cause of action in the first suit, then, he is precluded from filing in a second suit in respect of the portion so omitted.

6. He would further submit that Order II Rule 1 of CPC requires every suit to include the whole of the claim to which the plaintiff is entitled to in respect of any particular cause of action. He further contended that this Court substantially held that the cause of action for filing specific performance suit arises even at the time of filing of the previous suit.



Hence, the subsequent suit is barred. Therefore, the finding of the trial Court that mere filing of the suit for injunction within the limitation of filing a specific performance suit will not take away the right of the plaintiff in filing the suit for specific performance, is absolutely erroneous and is liable to be set aside. Therefore, he would further submit that the trial Court failed to discuss about the reasons given by the plaintiff for preferring an application under Order II Rule 2 of CPC and granting liberty to file another suit for the same cause of action. Therefore, the order passed by the trial Court in I.A.No.1 of 2022 is liable to be dismissed. To support his contention, he has relied upon the following decisions:-

- 1. *Bhagawath Devi vs. Aswhin C.Jain* [2009 (9) CTC 617]**
- 2. *Pramod Kumar vs. Zalak Singh* [AIR 2019 SC 2465]**
- 3. *M/s Virgo Industries (Eng.) Pvt. Ltd. vs. Venturetech Solutions Pvt. Ltd.*[2013 (1) SCC 625] .**

7. On the other hand, the learned counsel appearing for the respondent/plaintiff would contend that the plaintiff filed the suit for permanent injunction. Since the petitioners/defendants were trying to alienate the suit property to third party, the suit for permanent injunction was filed and therefore, the respondent/plaintiff filed an application under Order



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II Rule 2, read with Section 151 of CPC for instituting of a separate suit for specific performance to enforce the sale agreement dated 11.04.2022. He would contend that the sale agreement dated 11.04.2022 was filed along with the suit and also submitted that, by granting permission to file a suit for specific performance, no prejudice will be caused to the revision petitioners. He would submit that it is well settled that within the limitation for filing the specific performance suit, if any urgency arises, the suit for injunction can be filed. It will not take away the right of filing a suit for specific performance. He would further contend that the plaintiff need not wait with fear for filing a specific performance suit, if the revision petitioners/defendants attempt to alienate the suit property. Therefore, the trial Court, considering the above facts, rightly allowed the petition filed under Order II Rule 2 read with Section 151 of CPC and granted permission to the plaintiff to file the specific performance suit before appropriate forum. The cause of action further earlier suit arose when the defendant attempted to alienate the suit property. Where as, the cause of action for the second suit arose when the defendant failed to perform his part of contract therefore, it cannot be said that the two suits related to the same cause of action so as to attract Order 2 Rule 2 CPC. Hence, there is no infirmity or perversity in the



date of filing the injunction suit, though he reserves the right for filing subsequent suit for specific performance at later stage.

11. The Hon'ble Supreme Court in ***Vergo Industries (Eng.) Private Limited Vs. Venturetech Solutions Private Limited [2013 (1) SCC 625]***

held as follows:

“9. Order 2 Rule 1 requires every suit to include the whole of the claim to which the plaintiff is entitled in respect of any particular cause of action. However, the plaintiff has an option to relinquish any part of his claim if he chooses to do so. Order 2 Rule 2 contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, Order 2 Rule 2 of CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. Leave of the Court is contemplated by Order 2 Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave of the Court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order 2 Rule 2 (2) and (3) of the CPC that the aforesaid two sub-rules of Order 2 Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situations where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit proved that at the time of omission to claim the particular relief he had obtained leave of the Court in the first suit”



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10. *The object behind enactment of Order II Rule 2 (2) and (3) of the CPC is not far to seek. The Rule engrafts a laudable principle that discourages/prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the Court which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons. The situations where the bar under Order II Rule 2 (2) and (3) will be attracted have been enumerated in a long line of decisions spread over a century now. Though each of the aforesaid decisions contain a clear and precise narration of the principles of law arrived at after a detailed analysis, the principles laid down in the judgment of the Constitution Bench of this Court in Gurbux Singh v. Bhooralal[2] may be usefully recalled below:*

"In order that a plea of a bar under O. 2. r. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar. The above principles have been reiterated in several later judgments of this Court. Reference by way of illustration may be made to the judgments Deva Ram



& Anr. v. Ishwar Chand & Anr.[3] and M/s. Bengal Waterproof Ltd.

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13. A reading of the complaints filed in C.S. Nos. 831 and 833 of 2005 show clear averments to the effect that after execution of the agreements of sale dated 27.7.2005 the plaintiff received a letter dated 1.8.2005 from the defendant conveying the information that the Central Excise Department was contemplating issuance of a notice restraining alienation of the property. The advance amounts paid by the plaintiff to the defendant by cheques were also returned. According to the plaintiff it was surprised by the aforesaid stand of the defendant who had earlier represented that it had clear and marketable title to the property. In paragraph 5 of the complaint, it is stated that the encumbrance certificate dated 22.8.2005 made available to the plaintiff did not inspire confidence of the plaintiff as the same contained an entry dated 1.10.2004. The plaintiff, therefore, seriously doubted the claim made by the defendant regarding the proceedings initiated by the Central Excise Department. In the aforesaid paragraph of the complaint it was averred by the plaintiff that the defendant is "finding an excuse to cancel the sale agreement and sell the property to some other third party. In the aforesaid paragraph of the complaint, it was further stated that "in this background, the plaintiff submits that the defendant is attempting to frustrate the agreement entered into between the parties."

14. The averments made by the plaintiff in C.S. Nos. 831 and 833 of 2005, particularly the pleadings extracted above, leave no room for doubt that on the dates when C.S. Nos. 831 and 833 of 2005 were instituted, namely, 28.8.2005 and 9.9.2005, the plaintiff itself had claimed that facts and events have occurred which entitled it to contend that the defendant had no intention to honour the agreements dated 27.7.2005. In the aforesaid situation it was open for the plaintiff to incorporate the relief of specific performance alongwith the relief of permanent injunction that formed the subject matter of



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above two suits. The foundation for the relief of permanent injunction claimed in the two suits furnished a complete cause of action to the plaintiff in C.S. Nos. 831 and 833 to also sue for the relief of specific performance. Yet, the said relief was omitted and no leave in this regard was obtained or granted by the Court.

"Cause of Action" has been defined as meaning simply a factual situation existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular action the part of the defendant which gives the plaintiff his cause of complaint, or the subject- matter of grievance founding the action, not merely the technical cause of action."

16. The learned Single Judge of the High Court had considered, and very rightly, to be bound to follow an earlier Division Bench order in the case of *R.Vimalchand and M.Ratanchand v. Ramalingam, T.Srinivasalu & T. Venkatesaperumal* (supra) holding that the provisions of Order II Rule 2 of the CPC would be applicable only when the first suit is disposed of. As in the present case the second set of suits were filed during the pendency of the earlier suits, it was held, on the ratio of the aforesaid decision of the Division Bench of the High Court, that the provisions of Order II, Rule 2(3) will not be attracted. Judicial discipline required the learned Single Judge of the High Court to come to the aforesaid conclusion. However, we are unable to agree with the same in view of the object behind the enactment of the provisions of Order II Rule 2 of the CPC as already discussed by us, namely, that Order II Rule 2 of the CPC seeks to avoid multiplicity of litigations on same cause of action. If that is the true object of the law, on which we do not entertain any doubt, the same would not stand



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*fully subserved by holding that the provisions of Order II Rule 2 of the CPC will apply only if the first suit is disposed of and not in a situation where the second suit has been filed during the pendency of the first suit. Rather, Order II, Rule 2 of the CPC will apply to both the aforesaid situations. Though direct judicial pronouncements on the issue are somewhat scarce, we find that a similar view had been taken in a decision of the High Court at Allahabad in *Murti v. Bhola Ram*[7] and by the Bombay High Court in *Krishnaji v. Raghunath*[8].*

17. In the light of the above discussions we are of the view that the present appeals deserve to be allowed. Accordingly we allow the same and set aside the judgment and order dated 6.10.2009 passed by the High Court of Madras in C.R.P.PD. Nos. 3758 and 3759 of 2007. Consequently, we strike off the plaint in O.S, Nos. 202 and 203 of 2007 on the file of District Judge, Thiruvallur."

12. Similarly, in the case of ***S.P.Padmavathi vs. The State of Tamil Nadu [2009 (2) CTC 617]***, this Court substantially held that the cause of action for filing specific performance suit already arises even at the time of filing of the previous suit. Hence, the subsequent suit is barred. Therefore, the findings of the trial Court that mere filing of suit for injunction within the limitation of specific performance suit will not take away the right of filing the specific performance suit is absolutely erroneous. Order I and Order II (1) (2) CPC are the substantial rules and 3 is exception. For



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obtaining the benefit of exception, due notice should be given to defendants at the earliest stage and the same should be disposed of in the first instance.

13. In the present case, a perusal of records would disclose that, the defendants were served with the affidavit and petition under Order II Rule 2 CPC only on 19.10.2022, after filing of the written statement by the petitioners/defendants. Moreover, the suit for injunction was dismissed as withdrawn on 07.03.2022. Thereafter, the respondent/plaintiff filed an application under Order II Rule 2 of CPC seeking permission to file the second suit for specific performance by overcoming the mandatory provisions of Section 16 (c) of the Specific Performance Act. No specific reason is attributed by the plaintiff in the above petition for filing the said petition under Order II Rule 2 of CPC. Therefore, the trial Court ought not to have granted liberty to the plaintiff to file another suit for the same cause of action, especially when the pleadings in both suits are one and the same. The failure on the part of the respondent/plaintiff to claim a larger relief at the time of filing the earlier suit and to obtain leave for filing a fresh suit, would attract the provisions of Order II Rule 2 of CPC and therefore, the claim for specific performance in the latter suit is barred, since there was



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cause of action to claim the relief of specific performance even at the time of filing the earlier suit. The respondent/plaintiff ought to have claimed both the reliefs in the first suit itself and hence, the subsequent suit is not maintainable.

14. As rightly pointed out by the learned counsel for the revision petitioners, the entire facts, as narrated above, would clearly prove that the provisions of Order II Rule 2 of CPC gets attracted and therefore, the subsequent suit is barred by Order II Rule 2 of CPC. The trial Court has failed to advert to the facts in proper perspective and wrongly held that mere filing of the suit for injunction within the limitation of the specific performance suit will not take away the right of filing a specific performance suit is incorrect, without realizing that even at the time of filing the earlier suit, there was a cause of action for the respondent/plaintiff to claim the relief of specific performance. Therefore, this Court is inclined to interfere with the order of the trial Court and accordingly, the order dated 05.07.2023 in I.A.No.1 of 2022 is set aside

15. In the result, the civil revision petition is allowed. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking Order : Yes/No

To

The District Munsif Court, Keeranur



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K.GOVINDARAJAN THILAKAVADI,J.

mac

Order made in

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and

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