



C.R.P.(MD)No.2182 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 18.07.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.2182 of 2018

and

C.M.P.(MD)No.9724 of 2018

Sangeetha

... Petitioner / Petitioner / Plaintiff

Vs.

1.Panneerselvam @ Muthukrishnan

2.Chinnaiah

3.Shanmugham ... Respondents / Respondents /Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order, dated 23.07.2018, passed in I.A.No.984 of 2017, in O.S.No.26 of 2011, pending on the file of the Additional District Munsif Court, Dindigul.

For Petitioner : Mr.S.Anand Chandrasekar
for M/s. Sarvabhauman Associates

For Respondents : Mr.H.Lakshmi Shankar for R2 & R3

: No appearance for R1



C.R.P.(MD)No.2182 of 2018

ORDER

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The instant Civil Revision Petition has been filed, against the order, dated 23.07.2018, passed in I.A.No.984 of 2017, in O.S.No.26 of 2011, pending on the file of the Additional District Munsif Court, Dindigul.

2. The revision petitioner is the petitioner / plaintiff and the respondents herein are the respondents / defendants before the trial Court. The revision petitioner filed a suit for the relief of permanent injunction on the ground that she purchased the property, by virtue of sale deed, dated 20.11.2009 and 14.12.2009 from one Magudeeswaran and Dhandapani, who are the sons of, Late. Palanisamy Mooppanar through his first wife Muthammal. According to the petitioner, their vendors have handed over the possession of the property to them and in pursuance thereof, she has been in actual physical possession and enjoyment of the suit property.

3. During the pendency of the suit, the petitioner / plaintiff has filed an application under Sections 10 and 151 of the Civil Procedure Code to stay the suit in O.s.No.26 of 2011 on the ground that her predecessors in title has filed a suit in O.S.No.1721 of 1988 in respect of the very same suit



C.R.P.(MD)No.2182 of 2018

property seeking for the relief of declaration and permanent injunction and that in the said suit, her predecessors in title was granted only the relief of declaration and in respect of injunction, the suit was dismissed. The learned petitioner counsel would further submit that against the order of rejection of the relief of injunction, an appeal suit was filed by them in A.S.No.490 of 2004. In which, the First Appellate Court, on 17.07.2008, has reversed the findings of the trial Court and granted permanent injunction in favour of the petitioner's predecessors in title. The learned petitioner counsel would further submit that, after the order of the first Appellate Court, the respondents / defendants, who are also the defendants in the earlier suit, have filed a Second Appeal in S.A.(MD)No.119 of 2011, and the same is still pending before this Court. Therefore, the petitioner would submit that in respect of the relief of declaration, which was granted by the Court in the previous suit, the same has reached its finality, and only in respect of the relief of injunction now the Second Appeal is pending.

4. The learned counsel for the petitioner would submit that since the petitioner had derived possession through her predecessor in title, whose second appeal in S.A.(MD)No.119 of 2011 is pending and that the



C.R.P.(MD)No.2182 of 2018

issue involved in the second appeal is directly and substantially similar to issue of the petitioner's newly instituted suit in O.S.No.26 of 2011. Therefore, contended that the instant suit in O.S.No.26 of 2011 is to be stayed.

5. The said application was stoutly objected by the learned counsel for the respondents on the ground that the issue involved in S.A. (MD)No.119 of 2011 is not directly and substantially, in issue in the instant suit in O.S.No. 26 of 2011, therefore, he would submit that the very application itself is not maintainable.

6. After considering the submission made on either sides, the learned trial Judge, has come to a conclusion that the title is not an issue and only possession is an issue, and that it is for the plaintiff to prove the possession independently, so as to get an order of permanent injunction in the suit. Therefore, contended that the issue involved in S.A.(MD)No.119 of 2011 is no way direct or similar to the issue, of the subsequently instituted suit. Therefore, ultimately dismissed the application.



C.R.P.(MD)No.2182 of 2018

WEB COPY

7. Aggrieved with the order of the learned trial Judge, the petitioner /plaintiff is before the trial Court has come up with the instant revision petition.

8. The learned counsel for the revision petitioner would emphatically submit that, since the revision petitioner / plaintiff derived possession only from her predecessors in title and where the issue of possession is still sub-judiced before this Court, at the Second Appeal stage any decision in the instant suit may lead to conflicting decision.

9. Per contra, the learned counsel for the respondents 2 and 3 would vehemently submit that the revision petitioner cannot be construed as a *lis pendens* purchaser, and that the Second Appeal was filed within the period of limitation and that the relief of injunction is the relief in personam, hence prayed to dismiss the application.

10. I have given my anxious consideration to the either side submission.



C.R.P.(MD)No.2182 of 2018

WEB COPY

11. The very submission of the learned counsel for the respondents 2 and 3 is that, the relief of permanent injunction granted to the predecessors in title of the petitioner would only a judgment in personam the petitioner can't take advantage of the injunction of their predecessor in title. Similarly the learned counsel for the respondents 2 and 3 would submit that to have injunction, this petitioner has to prove her possession and cause of action independently. The said argument is very much appealing to this Court. It is settled law that whenever a plaintiff come forward with a suit for permanent injunction, it is the duty for the plaintiff to prove the actual possession, before the Court, while getting an order of injunction. It is also relevant to mention here that the decisions of the Second Appeal have no impact in respect of the possession and cause of action of the plaintiff, since the Second Appeal is only considering the possession in respect of the plaintiff's predecessors in title and not that of the plaintiff. As such, apparently the decree in S.A.(MD)No.119 of 2011 cannot be the *res judicata* to the latter suit.



C.R.P.(MD)No.2182 of 2018

WEB COPY

12. At this juncture, it is useful to refer the judgment of the Hon'ble Supreme Court reported in 2013-4-SCC-333 (Aspi Jal V. Khushroo Rustom Dadyburjor). Wherein the Hon'ble Supreme Court has held that if the plaintiff can get the same relief in the subsequent suit, if the earlier suit has been dismissed, then the subsequent suit is not fit to be stayed. Put it differently, if the final decision in the previously instituted suit is not res judicata to the subsequently instituted suit, then Section 10 C.P.C will have no application. The relevant portion of the judgment is as follows-

*“ 11. In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether “the matter in issue is also directly and substantially in issue in previously instituted suits”. The key words in Section 10 are “the matter in issue is directly and substantially in issue in the previously instituted suit”. **The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer***



C.R.P.(MD)No.2182 of 2018

is in affirmative, the subsequent suit is not fit to be stayed.

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However, we hasten to add then when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.”

(Emphasis supplied by this Court)

Even in our case as discussed herein above, the petitioner will have her relief of injunction subject to prove of her possession and cause of action, notwithstanding, the final result of Second Appeal.

13. Therefore, the findings of the learned trial Judge that matter in issue of the instant suit is not directly and substantially in issue in the previously instituted suit and now pending at second appeal stage is perfectly in order, and there is no manifest or apparent error in the order of the learned trial Judge.

14. Hence, this Court is not inclined to interfere with the order of the Court below. Hence, the instant Civil Revision Petition stands **dismissed**. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Ls

18.07.2023



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C.R.P.(MD)No.2182 of 2018

To

1.The Additional District Munsif Court,
Dindigul.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.2182 of 2018

C.KUMARAPPAN.,J.

Ls

C.R.P(MD)No.2182 of 2018

18.07.2023