



CRP. No.1147 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2024

CORAM:

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

CRP. No. 1147 of 2023
and CMP No. 7992 of 2023

- 1 D.Selvaraj
- 2 P.Sekar
- 3 P.Karpagam

...Petitioners

Vs.

- 1 N.Vanaja

...Respondent.

PRAYER : This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 18-11-2022 made in IA No.01 /2019 in OS No.205/2018 on the file of III Addl.District Judge Thiruvallur at Poonamallee by allowing the present CRP

For Petitioner : Mr.Ra.Senthur Murugan
For respondent : Mr.N.Sivaprakash



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ORDER

This petition has been filed to set aside the fair and decreetal order dated 18-11-2022 made in IA No.01 of 2019 in OS No.205 of 2018 on the file of III Additional District Judge Thiruvallur at Poonamallee.

2. Heard both sides.

3. The petitioner herein is the defendant in suit O.S No. 205 of 2018 filed by the respondent herein/plaintiff on the file of the III Additional District Judge Thiruvallur, Poonamallee, to pay the plaintiff a sum of Rs.36 lakhs towards the damages for the use and occupation of the plaint schedule property for the period of three years prior to the institution of suit from 2015 to 2018. After receipt of the notice, the defendant filed application in I.A No. 1 of 2019 praying to reject the plaint under Order 7 Rule 11 CPC by stating that the plaintiff had filed the suit in O.S No. 92 of 2007 for the relief of declaration and recovery of possession but in that suit he omitted to claim the damages nor he sought any leave under Order 2 Rule 2 CPC and also there is no separate cause of action to claim the present relief. Hence, he prayed to reject the plaint. The plaintiff contested the said application stating that present suit filed for the relief of damages and the cause of action for



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the present suit is totally differs from the earlier suit. After decreeing the earlier suit, the plaintiff claiming damages for the use and occupation of the suit property and also directing the petitioners/defendants to pay damages for the use and occupation of the suit property to the plaintiff for restriction period from 2015 to 2018 as such is maintainable and also there is a new cause of action to claim the damages after obtaining the decree. Considering the both side submissions the Trial Court held dismissed the said application. Challenging the said findings, the defendants filed this revision petition.

4. Heard both sides.

5.The learned counsel for the petitioners/defendants submit that, the earlier suit in O.S No. 92 of 2007 was filed for the relief of declaration and recovery of possession and said the suit was decreed. Thereafter, filed the present suit claiming damages for the use of occupation after decree obtained in that earlier suit. The objection of the defendants/petitioners is that already the plaintiff/respondent had filed a suit in O.S No. 92 of 2007 but not obtained any leave in that suit. Therefore, the present suit is hit by order 2 Rule 2 of CPC since both the suit are arising out of same cause of action. But On considering the plaint averments, it reveals that for a period



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of 2015 to 2019, for use and occupation, damages were claimed by the plaintiff. Admittedly, the earlier suit was filed in the year 2007 for the relief of declaration and recovery of possession, however the cause of action for the present suit is that they have mentioned about the date of registered document of the year 1983. Furthermore, as on date, appeal against the said decree is pending but the prayer in the suit reveals that till handing over the vacant possession they claiming damages but on the date of filing of the present suit both parties filed appeal which is pending in A.S No. 729 and 150 of 2019. As rightly pointed out by the defendants counsel there was no leave obtained by the plaintiff by invoking order 2 rule 2 of CPC in earlier suit O.S No. 92 of 2007 for comprehensive relief wherein the plaintiff claiming relief of declaration and recovery of possession. If at all plaintiff is entitled for damages he should have claimed in the earlier suit itself. Therefore, during the pendency of the present appeal, by filing the present suit claiming relief of damages for the use and occupation as such is not maintainable nor obtained any leave by invoking Order 2 Rule 2 of CPC therefore, the Trial Court erroneously held that the suit as such is maintainable. Further, the cause of action for both the suit are one and same and there is no new cause of action aroused between the parties. Since



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appeal is still pending, the reason assigned by the Trial Court is not acceptable one needs interference. Accordingly, this petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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