



C.R.P(PD)No.10 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23.02.2024

Coram:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD)No.10 of 2021

and

C.M.P.No.92 of 2021

1.Mr.Ugamraj Mootha(died)

2.Mrs.Amrat Kumari

3.Mrs.Sharmila Shah

(Sole petitioner died. Petitioners 2 and 3
are brought on record as LRS of the
deceased sole petitioner viz., Ugamraj
Mootha vide Court order dated 17.10.2023
made in C.M.P.No.10771 of 2021
in C.R.P.No.10 of 2021 by JSNPJ)

.. Petitioners

/versus/

1.Mr.Anand Mootha

2.Mr.Rajendra Mootha

3.Mr.Ratnesh Mootha

4.M/s Usha International Limited
Rep.by its Senior Manager,
No.4/59A, Mount Poonamallee Road,
Manapakkam, Chennai 600 089.

.. Respondents



C.R.P(PD)No.10 of 2021

Prayer: This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure praying to call for the records and set aside the order dated 6th March, 2020, passed in I.A.No.1212 of 2017 in O.S.No.267 of 2017 on the file of the Learned District Munsif-cum-Judicial Magistrate, Sriperumbudur.

For Petitioners :Mr.T.Mohan, Senior Counsel
for Mr.Chenthoori Pugazendhi
For Respondents :Mrs.A.L.Ganthimathi,
Senior Counsel for
M/s AR.Karthik Lakshmanan
for R1 to R3

M/s S.Sachin Priya Daniel for R4

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ORDER

This Civil Revision Petition is filed challenging the order passed by the trial Court dismissing the application filed by the petitioner/first defendant seeking to reject the plaint.

2. The respondents 1 to 3 herein filed a suit in O.S.No.267 of 2017 on the file of the District Munsif-cum-Judicial Magistrate, Sriperumbudur,, seeking permanent injunction restraining the petitioner and 4th respondent from interfering or obstructing the plaintiffs right of user in



C.R.P(PD)No.10 of 2021

respect of the suit 'B' schedule property, by having access through the entrance gate situated in the suit 'C' schedule property.

3. The respondents 1 to 3/plaintiffs also sought for permanent injunction directing the petitioner herein to demolish the illegal construction erected in the suit property and restoring the same to its original position.

4. The respondents 1 to 3 filed a suit in O.S.No.292 of 2016 in respect of the very same property seeking declaration of their right of access over the common passage described in the suit 'D' schedule to the said plaint and also for permanent injunction restraining the petitioner and other respondents from in any manner preventing or obstructing the plaintiffs right of using common passage.

5. The petitioner/first defendant, in the subsequent suit in O.S.No267 of 2017 filed by the respondents 1 to 3, filed an application seeking rejection of the plaint on the following grounds:



C.R.P(PD)No.10 of 2021

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6. It is the case of the petitioner that the relief prayed for in the plaint is substantially on the same cause of action pleaded in the earlier plaint and there was no new cause of action for the second suit. Further, the petitioners also contended that the second suit filed by the respondents 1 to 3 is barred under Section 10 of the Civil Procedure Code, as the issue involved in both the suits are one and the same. The trial Court found that the second suit filed by the respondents 1 to 3 is based on the subsequent cause of action and Section 10 of the Civil Procedure Code cannot be invoked to grant the prayer sought for by the petitioner and dismissed the application. Aggrieved by the same, the petitioners are before this Court by way of filing this Civil Revision Petition.

7. The learned Senior Counsel appearing for the petitioners submitted that the reading of the plaint does not disclose any new cause of action and hence, the second suit filed by the respondents 1 to 3, based on the earlier cause of action is liable to be rejected, as it fails to disclose any new cause of action. The learned Senior Counsel appearing for the petitioners further submitted that the reading of the plaint in both the suits



C.R.P(PD)No.10 of 2021

would suggest that the issue involved in both the suits are one and the same.

Therefore, under Section 10 of Civil Procedure Code, the second suit filed by the respondents 1 to 3 is liable to be rejected.

8. The earlier suit was filed by respondents 1 to 3 seeking declaration of their right over the common passage and for permanent injunction restraining the petitioner from obstructing their right of usage. The second suit is filed mainly on the ground that pending the first suit certain buildings were raised in the common area and hence, the respondents 1 to 3 sought for mandatory injunction to remove the obstructive buildings put up by the petitioner subsequently. Therefore, the cause of action for filing the second suit is the construction of the building in the common area by the petitioner. Therefore, the cause of action for the second suit is subsequent and distinct one and the submission made by the learned Senior Counsel appearing for the petitioners that the reading of the plaint does not disclose any new cause of action, is not acceptable by this Court.



C.R.P(PD)No.10 of 2021

WEB COPY

9. As far as the contention raised by the learned Senior Counsel appearing for the petitioners that the issues involved in both the suits are one and the same and hence, the plaint is liable to be rejected under Section 10 of the Civil Procedure Code, is concerned, it is settled law, the petition for rejection of the plaint has to be considered only based on the averments found in the plaint. At the time of considering such application, the Court cannot refer to the plaint in the earlier suit and also written statement of the defendants. Unless the pleadings of both the parties namely, plaint and the written statement are perused, the Court cannot come to the conclusion what are all the issues arising for consideration in both the suits.

10. Under such circumstances, at this stage, the Court cannot come to the conclusion that the issue involved in both the suits are one and the same by referring to the plaint and written statement in other suit. Further, by invoking Section 10 of C.P.C., it is always open to the petitioners to seek stay of the subsequent suit, if so advised. However, it is not a ground to reject the plaint. Hence, the order passed by the trial Court dismissing the application for rejection of the plaint on the ground that Section 10 of the Civil Procedure Code cannot be invoked is correct and it requires no



C.R.P(PD)No.10 of 2021

interference. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

23.02.2024

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Index:yes/no

Speaking order/non speaking order

Neutral Citation:yes/no

To

The District Munsif-cum Judicial Magistrate,
Sriperumbudur.



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C.R.P(PD)No.10 of 2021

S.SOUNTHAR,J

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23.02.2024