



C.R.P.No.3458 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3458 of 2023
and C.M.P.No.21482 of 2023

1.Ayad Bee
2.Zakira Basha
3.Johny Basha
4.Parveen Bhanu
5.Malika Begum
6.Kaleel Ahmed
7.Fazluddin @ Syed Failuddin
8.Hajir Unissa
9.Imran Ahmed
10.Irfan Ahmed
11.Afshan

... Petitioners

-Vs-

1.V.J.Chandra Gupta
2.V.J.Ramanujlu
3.V.J.Chinne Krishna

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order in I.A.No.2 of 2022 in O.S.No.8600 of 2019 on the file of the VI Additional City Civil Court, Chennai dated 11.08.2023.

For Petitioners : Mr.G.Surya Narayanan
For Respondents : Mr.S.L.Sudarsanam

ORDER

This civil revision petition arises against the order of the learned VI Additional City Civil Court dated 11.08.2023 in I.A.No.2 of 2022 in O.S.No.8600 of 2019.



C.R.P.No.3458 of 2023

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2. O.S.No.8600 of 2019 is a suit to declare that the plaintiffs 1 to 3 are the owners of the suit schedule mentioned property and for recovery of possession from the defendants 1 to 9. It also seeks for a declaration that the release deed executed by the defendants 7 and 8 in favour of the 9th defendant dated 21.04.2010 is null and void. The plaint also seeks for mesne profit of Rs.1,20,000/- from March 2014 to October 2015 and for damages.

3. The case of the plaintiffs is that the property belonging to their family was acquired by way of a partition deed dated 24.06.2009. They would further plead that in order to create a cloud over the title of the property, the defendants created two release deeds dated 17.03.2010 and 21.04.2010. On the basis of these release deeds, the defendants attempted to mutate the revenue records of the property and stake a claim against the same as if they are owners thereof. The case of the plaintiffs is that the defendants being tenants of the property, had defaulted in payment of rents. Hence, they had terminated the tenancy by way of an advocate notice dated 19.12.2014 and presented the suit for the aforesaid reliefs.

4. On summons being served, the defendants 1 to 9 filed a detailed written statement. According to them, the property belong to their ancestors and they are the owners of the property. They would plead that one of their ancestors had executed an oral "Hiba" in their favour and pursuant thereto, the defendants



C.R.P.No.3458 of 2023

became the owners of the property. Subsequently, they would state that since the defendants 7 and 8 were co-owners, they executed a release deed in favour of the 9th defendant and hence they are in possession of the property on the strength of those deeds.

5. They would further plead that there is no relationship of landlord and tenant between the plaintiffs and the defendants. They would state that the mother of the plaintiff had filed O.S.No.7639 of 1983 for mandatory injunction and permanent injunction which was dismissed for default. They would also state that the plaintiffs' mother filed another suit in O.S.No.3857 of 1984 against Electricity Board and eight others and that also came to be dismissed for default. Hence, they would state that the possession of the defendants is open, hostile and continuous and the plaintiffs are not entitled to recover possession.

6. After the written statement was filed, the matter was listed for framing of issues. The parties were directed to go for trial. It is agreed by both sides that the trial has commenced and P.W.1 is in the witness box and is to be cross examined by the defendants. At that stage, more or less a replica of the written statement was filed saying that the plaint ought to be rejected as there is no cause of action for the suit. After receipt of a counter from the plaintiffs, the learned trial Judge, by order dated 11.08.2023 dismissed the petition. Aggrieved by the same, the present civil revision petition.



C.R.P.No.3458 of 2023

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7. Narrating the circumstances as set forth above, Mr.G.Surya Narayanan, learned counsel for the defendants / civil revision petitioners would plead that, as the mother of the plaintiffs along with the plaintiffs had already filed two previous suits and the same having been dismissed for default, the present suit is barred by virtue of Order IX Rule 9 proviso of the Code of Civil Procedure. Expanding on the above plea, he would state that since the plaintiffs have already filed two previous suits, they had exhausted their cause and hence there is no cause of action for the present suit.

8. Per contra, Mr.S.L.Sudarsanam would invite my attention to the plaint and would point out that both the suits had been compromised between the plaintiff and the defendants therein. In specific, he would draw my attention to Para 8 of the plaint, wherein it is stated that the defendants had convinced the mother of the plaintiffs not to proceed further with the suit by paying enhanced rent and as she was a widow and the plaintiffs were minor children, she agreed to the same and consequently they continued to be in possession of the property. He would plead that the cause of action for the present suit is different and therefore seeks for confirmation of the order.

9. I have carefully considered the submissions of Mr.G.Surya Narayanan and Mr.S.L.Sudarsanam.



C.R.P.No.3458 of 2023

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10. Before I commence the judgment on merits, I have to recollect that I am dealing with an application for rejection of plaint. While dealing with an application for rejection of plaint, the test is, I have to take the averments made in the plaint to be true and on that basis proceed further and see whether the suit is barred or not. I am not concerned with the defence that will be raised by the defendants nor am I concerned by the document that is filed by them. Perhaps, the defendants might have a stellar defence capable enough to defeat the suit of the plaintiffs and it may be that the suit filed by the plaintiffs might also end in dismissal. But, these are all beyond the scope of Order VII Rule 11. In a plea of demurrer, the averments have to be taken at their face value and thereafter I have to conclude whether the suit is barred or not.

11. Looking at the case on hand with these principles in mind, the specific case of the plaintiffs is that the mother of the plaintiffs had compromised the matter with the defendants and had reached an out of court settlement enhancing the rent from Rs.4,500/- to Rs.6000/-. Therefore, the plaintiffs are not guilty of suppression of the presentation of the two previous suits, but on the contrary, would plead that there had been an out of the court settlement between the parties. If that statement is taken to be true, the issue of Order IX Rule 9 would not stand for a moment's scrutiny.



12. Apart from that, when a suit is dismissed in terms of Order IX Rule 8 of the Civil Procedure Code, Order IX Rule 9 bars the plaintiff from bringing forth a suit **on the same cause of action.** The cause of action for the 1983 and 1984 suits cannot be the same cause of action as for the suit filed in the year 2019 for the simple reason that those two suits were for the relief of mandatory injunction against the electricity board not to effect electricity connection to the predecessors in possession of the defendants.

13. However, the cause of action for the present case is on account of the release deed that has been created by the defendants 7 and 8 in favour of the 9th defendant, which cast a cloud over the title of the plaintiffs. In fact, if the cause of action are different, the question of application of Order II Rule 2 or Order IX Rule 9 would not arise. For Order IX Rule 9 to arise, the cause of action for both suits must be one and the same. The trial Court can decide on the cause of action only at the time of trial when pleadings of all the previous suits are filed before it. It requires evidence. If it requires evidence, obviously it will not come within the scope of Order VII Rule 11 of C.P.C.

14. I shudder to think that one should reject a the suit for declaration of title on the ground that a suit for mandatory injunction had been previously presented and it has been dismissed for default. The cause of action for this suit is subsequent to the cause of action for the previous suits and therefore, I do not see



C.R.P.No.3458 of 2023

the bar at all. In my view, a reading of the plaint discloses a cause of action and it is not barred in terms of Order IX Rule 9 of C.P.C. It is always open to the defendants to seek the trial Court to frame separate issue on this aspect as they have raised this issue in their written statement and, I am certain if such an issue is raised, the learned trial Judge will answer it in the course of the trial. I am not convinced that the plaint is barred. The Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.07.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The VI Additional City Civil Court
Chennai.



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C.R.P.No.3458 of 2023

V. LAKSHMINARAYANAN, J.
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C.R.P. No.3458 of 2023

22.07.2024