



C.R.P.(MD)No.3286 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 15.12.2023

PRONOUNCED ON: 06.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3286 of 2023

and

C.M.P.(MD)No.16939 of 2023

1.Thangamarimuthu
2.Muthumari
3.Chinnamuthumari
4.Poomari
5.Mareeshwari
6.Muthumari
7.Periyarasa
8.Periyasamy

: Petitioners/Petitioners/Defendants

Vs.

1.Subbammal
2.Ramalakshmi
3.Murugalakshmi
4.Ramar
5.Marichamy

: Respondents/Respondents/Plaintiffs

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed in I.A.No.2/2023 in



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O.S.No.2/2023, dated 08.09.2023, by the District Munsif Court,
Sattur, Virudhunagar District.

For Petitioners : Mr.C.M.Arumugam

For Respondents : Mr.M.Kannan

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.2 of 2023 in O.S.No.2 of 2023, on the file of the District Munsif Court, Sattur, dismissing the petition filed under Order 7 Rule 11 C.P.C.

2. The respondents, as plaintiffs have filed the above suit claiming declaration that the sale deed dated 24.09.2020, on the file of the Sub Registrar Office, Sattur executed by the first revision petitioner / first defendant in favour of the revision petitioners 2 to 8 / defendants 2 to 8 as null and void and nonest in the eye of law. Pending suit, the revision petitioners have filed an application in



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I.A.No.2 of 2023 under Order 7 Rule 11 C.P.C., for rejection of
plaint on the ground that in view of the earlier suit in O.S.No.57 of
2021 pending on the file of the District Munsif Court, Sattur, the
present suit in O.S.No.2 of 2023 is barred under Order 2 Rule 2
C.P.C. The respondents / plaintiffs have filed their counter statement
raising serious objections. The learned District Munsif, after
enquiry, has passed the impugned order dismissing the said petition.
Aggrieved by the order of dismissal, the present revision came to be
filed.

3. The main contention of the revision petitioners is that the
suit property was in possession and enjoyment of Subbiah – father
of the defendants 1 to 5, for whom patta was granted in Patta No.
315, that their brother Mareeswaran had died leaving behind the
defendants 6 to 8, that the parents of the defendants 1 to 5 died on
30.04.2008 and 23.01.2016 respectively, that all the legal heirs of
the said Subbiah have executed a sale deed in favour of the first
defendant in respect of their 5/6 shares in the suit property on
24.09.2020 by receiving valuable consideration and that the first
defendant has become the owner of the property and he has been in



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possession and enjoyment of the same, that the first defendant has put up a petty shop in the vacant land and is doing business, that patta was also transferred in his name and the same came to be issued, that the plaintiffs have no right to title or interest in the suit property, that since they had interfered with the first defendant's possession and enjoyment of the suit property, he was constrained to file a suit in O.S.NO.57 of 2021, that the plaintiffs herein have filed their written statement along with the counter claim and the said suit was in part-heard stage, that the plaintiffs have filed the present suit to declare that the sale deed executed by the defendants 2 to 8 in favour of the first defendant is null and void, that the cause of action for claiming the said relief has arisen in the earlier suit in O.S.No.57 of 2021 itself, that the plaintiffs ought to have obtained leave for filing the present suit under Order 2 Rules 2 and 3 C.P.C., that since the present suit came to be filed without getting any permission, the present suit is barred by Order 2 Rule 2 C.P.C., and that therefore, the plaint is liable to be rejected.

4. The defence of the plaintiffs is that the bar under Order 2 Rule 2 C.P.C., cannot be presumed, that the said plea can only be



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decided at the trial, that the northern portion in S.No.1407/2017 is the suit property and the same was owned by the plaintiffs' father Marimuthu, but the patta was wrongly issued in favour of Subbiah, that the said Subbiah has never been in possession and enjoyment of the suit property, that since Subbiah had no right in the suit property, the defendants 2 to 8 have no right to execute a sale deed in favour of the first defendant and that therefore, the plaintiffs were constrained to file the above suit to declare that the said sale deed is null and void, that the defendants by creating documents including the sale deed, have filed the suit in O.S.No.57 of 2021 and that since the defendants 2 to 8 were not parties to the suit in O.S.No.57 of 2021, the plaintiffs have chosen to file the present suit, that no suit can be dismissed without trial on the ground of Order 2 Rule 2 C.P.C., and that therefore, the petition is liable to be dismissed.

5. The only and main contention of the revision petitioners is that since the suit filed by the first defendant in O.S.No.57 of 2021 and the counter claim made by the present plaintiffs are pending, the present suit is clearly barred under Order 2 Rule 2 C.P.C., and that



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therefore, the plaint is liable to be rejected under Order 7 Rule 11 C.P.C..

6. Before proceeding further, it is necessary to refer Order 2 Rule 2 C.P.C., which is extracted as follows:

“Suit to include the whole claim:

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim – where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs – A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the court,



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to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

7. Considering the above, it is very much clear that though the plaintiff is entitled to several reliefs against the defendant in respect of the same cause of action, he cannot split up the claim so as to omit one part of the claim and sue for the other and that if the cause of action is same, the plaintiff has to place all his claims before the Court in one suit. Order 2 Rule 2 C.P.C., is based on the principle that the defendant should not be vexed twice for the same cause of action. The essential requirement for applicability of Order 2 Rule 2 C.P.C., is the identity of cause of action in the previous suit and the subsequent suit. At this juncture it is necessary to refer the Constitution Bench judgment of the Hon'ble Supreme Court in the case of ***Gurbux Singh v. Bhooralal: AIR 1964 SC 1810***, wherein the Hon'ble Apex Court has held as follows:

“In order that a plea of a bar under Order 2 Rule 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



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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. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. *As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2, Rule 2, Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits."*

8. The defendant who raised a plea that the suit is barred under Order 2 Rule 2 C.P.C., has to establish the precise cause of



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action upon which the previous suit was filed and since the plea raises a technical bar, it has to be established satisfactorily and cannot be presumed merely on the basis of the inferential reasoning. In order to invoke the said plea under Order 2 Rule 2 C.P.C., the defendant has to file the pleadings of the previous suit and compare it with the present pleadings to arrive at a conclusion as to the identity of the cause of action.

9. It is settled law that in a petition filed under Order 7 Rule 11 C.P.C., for rejection of plaint, the Court is duty bound to consider the averments raised in the plaint and the documents annexed therein and no other material including the written statement and the averments raised in the petition for rejection of plaint can be gone into. No doubt, in the case on hand, the revision petitioners have produced the copy of the plaint and the written statement filed in the earlier suit in O.S.No.57 of 2021, but for considering the petition for rejection of plaint, the previous plaint and the statement, now produced by the revision petitioners, cannot be looked into. Considering the above, it is very much clear that the Court cannot



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consider the plea of Order Rule 2 C.P.c., without travelling beyond the averments made in the plaint of the present suit, as per the restriction contemplated under Order 7 Rule 11 C.P.C. As already pointed out, no Court can infer about the bar of Order 2 Rule 2 C.P.C., and the same can only be established in evidence by bringing the pleadings of the earlier suit on record.

10. The Hon'ble Supreme Court in ***Dalip Singh Vs. Mehar Singh Rathee and others*** reported in ***(2004)7 SCC 650*** has specifically held that when an objection regarding the bar to the filing of the suit under Order 2 Rule 2 C.P.C., is taken, it is essential for the Court to know what exactly was the cause of action which was alleged in the previous suit in order that it might be in a position to appreciate whether the cause of action alleged in the second suit is identical with the one that was the subject matter of the previous suit. The Court cannot arrive at a decision with regard to the bar under Order 2 Rule 2 C.P.C., unless the pleadings in the previous suit are looked into.



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11. Considering the above, this Court has no hesitation to hold that in an application filed under Order 7 Rule 11 C.P.C., the plaint cannot be rejected on the bar of Order 2 Rule 2 C.P.C. No doubt, there is an exception where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. In the case on hand also, as already pointed out, the plaintiffs in their plaint have specifically alleged that though they have filed counter claim in the suit filed by the first defendant in O.S.No.57 of 2021, since the first defendant alone was a party to the said suit and the present defendants 2 to 8 are not parties, they were constrained to file the present suit against all the defendants challenging the sale deed alleged to have been executed by the defendants 2 to 8 in favour of the first defendant.

12. Considering the above, the impugned order dismissing the petition filed under Order 7 Rule 11 C.P.C., cannot be found fault with. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.



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13. In the result, the Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

06.03.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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To

1. The District Munsif Court, Sattur,
Virudhunagar District.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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