

(2009) 02 MAD CK 0138

In the Madras High Court

Case No : C.R.P. (PD) No. 3633 of 2007 and M.P. No. 2 of 2007

M.R. Senthil Kumar, M. Ramakrishnan and M. Mani APPELLANT

Vs

K. Nirmala, K. Ramesh, K. Suresh and K. Sasi Kumar RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (2009) 02 MAD CK 0138

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : No appearance, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—Inveighing the order dated 08.09.2006, passed by the learned XVI Asst. Judge, City Civil Court at Chennai in I.A. No. 13244 of 2006 in O.S. No. 6292 of 2004, this civil revision petition is focussed.

2. Both sides called absent.

3. A "resume" of facts which are absolutely necessary and germane for the disposal of this revision petition would run thus:

(i) The respondents/plaintiffs filed the suit O.S. No. 6292 of 2004 seeking the following reliefs:

a) to declare that the defendants 7 to 9 are the trespassers in 181/2, T.H. Road, Kaviarasu Kannadasan Nagar, Chennai 600 118, to an extent of 13,545 sq.ft. in front of plaintiffs property situated in S. No. 180/1C, 1B, T.H. Road, Kaviarasu Kannadasan Nagar, Chennai 600 118;

b) for a mandatory injunction directing the defendants 1 to 6 to demolish the unauthorised house and 2 sheds constructed in Corporation land by the defendants 7 to 9 in S. No. 181/2, T.H. Road, Kaviarasu Kannadasan Nagar, Chennai 600 118 to an extent of 80 X 40 sq.ft., and keep it as road for the entry

of the plaintiffs to reach their patta land;

c) for a permanent injunction restraining the 7th, 8th and 9th defendants, their men, agents, servants, representatives from any manner interfering the plaintiffs peaceful possession and enjoyment of the S. No. 181/2, T.H. Road, Kaviarasu Kannadasan Nagar, Chennai 118 to an extent of 13,545 sq.ft in front of the plaintiffs property situated in S. No. 180/1C 1B, T.H. Road, Kaviarasu Kannadasan Nagar, Chennai 600 118 as Road to reach their patta land;

d) directing the 7th, 8th and 9th defendants to pay the cost of the suit to the plaintiffs;

e) granting such further or other relief or reliefs as this Hon''ble Court may deem fit and proper in the circumstances of the case.

(ii) Whereupon, the defendants after entering appearance filed I.A. No. 13244 of 2006 seeking the following relief:

To reject the plaint filed by the plaintiffs in O.S. No. 6292 of 2004 as not maintainable.

But the lower court dismissed the I.A. Being aggrieved by and dissatisfied with the order of the lower Court, this revision has been filed on various grounds.

4. A bare perusal of the order of the lower Court would exemplify and demonstrate that the lower Court correctly focussed its attention on the prayers in both the suits, namely the prayers in O.S. No. 6292 of 2004 and O.S. No. 2336 of 2004 and held that both the suits are different and as such, the subsequent O.S. No. 6292 of 2004 is not to be stayed or to be dismissed or rejected as prayed by the defendants.

5. Indubitably and undisputedly, the earlier O.S. No. 2336 of 2004 is for bare injunction and not for any other relief. However the subsequent suit as set out supra is for comprehensive reliefs. As such, the subsequent suit which is for comprehensive reliefs cannot be held to be one not tenable in view of Order 2 Rule 2 of CPC. The scope of Order 2 Rule 2 CPC is entirely different, if a litigant deliberately and consciously refrain from suing the defendants by praying for certain reliefs, then in such a case, the subsequent suit would not be maintainable. But here, my above discussion supra would clearly indicate that, that was not the factual position. The lower Court correctly applied the law to the set of facts available in this case and hence no interference is warranted in this revision petition. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.