

(2013) 09 MAD CK 0261

In the Madras High Court

Case No : C.M.A. No. 1526 of 2006 and C.M.P. No. 6795 and 9195 of 2006

M/s. Kongunadu Arts and Science College

APPELLANT

Vs

M/s. Gnanambigai Mills Ltd.

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 1 CTC 43 : (2013) 8 MLJ 454

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Advocate : S. Haridoss, for Mr. Puran Khemka, for the Appellant; S. Mukund, for the Respondent

Final Decision : Disposed Off

Judgement

S. Vimala, J.—The plaintiff filed two suits, one in O.S. No. 699 of 2003 and another suit in O.S. No. 940 of 2003 in respect of the same property. The defendant in O.S. No. 940 of 2003, i.e., in the subsequent suit, filed a petition in I.A. No. 1165 of 2003 under Order 7 Rule 11 read with Order 11 Rule 2 and 151 of C.P.C. to reject the plaint. That petition was allowed on 26.3.2004. Challenging the order rejecting the plaint, the plaintiff in O.S. No. 940 of 2003 filed the appeal in A.S. No. 130 of 2005. A.S. No. 130 of 2005 was allowed remanding O.S. No. 940 of 2003 for joint trial along with O.S. No. 699 of 2003. This Civil Miscellaneous Appeal has been filed challenging the order passed in A.S. No. 130 of 2005. Admittedly, there are two suits which are between the same parties and in respect of the same property. It is the contention of the defendants that the cause of action in both the suits is the same and therefore, the second suit is not maintainable. But, it is the contention of the plaintiff that the cause of action in both the suits are different and therefore, the second suit is maintainable. According to the plaintiff in O.S. No. 699 of 2003, the first suit was filed for bare injunction and the second suit was filed for mandatory injunction. In other words, the contention is that, at the time when the first suit was filed for bare injunction, there was no construction at all and therefore, the relief in the nature

of preventive injunction was asked for. At the time when O.S. No. 940 of 2003 was filed, there was construction and the plaintiff was seeking mandatory injunction directing the removal of construction. Therefore, it is contended that the cause of action in both the suits are different.

2. Per contra, it is the contention of the learned counsel for the defendants that the suit in O.S. No. 940 of 2003 is barred by the principles of res-judicata and specifically under Order 2 rule 2 CPC. It is appropriate to consider Order 2 Rule 2 C.P.C.

2.1. ORDER 2. 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, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

2.2. Rule 2(1) in Order 2 enables the plaintiff to relinquish any portion of the claim, so as to bring the same within the jurisdiction of the Court and Rule 2(2) of Order 2 contemplates that if the plaintiff has omitted to sue in respect of, or intentionally relinquishes, any portion of his claim, he would be precluded from suing in respect of the portion so omitted or relinquished. Rule 3 of Order 2, provides that if, in case, the plaintiff omits to pray for any relief, with the leave of the Court he may sue on a subsequent occasion for such reliefs.

2.3. When the plaintiff's subsequent suit is not barred by Order 2, Rule 2 of C.P.C. has been explained in the decision reported in Sidramappa Vs. Rajashetty and Others, , wherein it is held that where the cause of action on the basis of which the previous suit was brought does not form the foundation of the subsequent suit and in the earlier suit the plaintiff could not have claimed the relief which he sought in the subsequent suit, the plaintiff's subsequent suit is not barred by Order 2, Rule 2 of C.P.C. therefore it is necessary to see whether the foundation otherwise called the cause of action for both the suits are different or the same.

2.4. What is cause of action is the next issue to be decided. The recent decision of the Hon''ble Supreme Court reported in Virgo Industries (Eng.) P. Ltd. Vs. Venturetech Solutions P. Ltd., answers this, extracting from Halsburys Laws of England.

Cause of Action has been defined as meaning simply a factual situation existence

of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. Cause of action has also been taken to mean that particular action the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action.

3. Admittedly the foundation for the claim in both the suits is one and the same. In one suit, the defendant is sought to be restrained from putting up construction and in another suit the defendant is sought to be directed to remove the construction. Both the reliefs have been asked for on the same foundation that the plaintiff is the owner of the property and the defendant is trying to trespass/ has trespassed without any right. When the first suit for injunction is pending and if the defendant has put up construction, it is open to the plaintiff to seek further direction in the same suit as the cause of action is the same. Therefore, the second suit is clearly barred.

4. The learned counsel for the plaintiff expressed the apprehension that there maybe technical issues being raised, if the plaint is not amended. This apprehension is unnecessary, as the trial court, is bound to take note of the subsequent events and to mould the relief so that multiplicity of proceedings can be avoided.

4.1. This proposition is amply supported by the decision reported in Subhash Manchanda Vs. Maya Devi, .

There is plethora of judicial authorities in support of the view that the court is certainly entitled, rather duty bound in order to put an end to protracted litigation, to take note of subsequent events, and mould relief accordingly. Mr. Aggarwal's contention that this proposition that the court is within its jurisdiction to take note of subsequent events for the purpose of granting relief cannot apply to cases under rent legislation, is wholly untenable. There are judgments of the Supreme Court where in cases under the Rent Control Acts of various States this principle, entitling the court to take into consideration subsequent events has been recognised without any reservation.

In the case of M/s. Variety Emporium Vs. V.R.M. Mlohd. Ibrahim Naina, which was a case under the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, it was held in unmistakable term that:

In appropriate cases, the Court must have regard to events as they present themselves at the time when it is hearing the proceedings before it and mould the relief in the light of those events.

5. Therefore, while disposing of the suit in O.S. No. 699 of 2003, the trial court shall take note of the subsequent events that are presented before it and also to mould the relief subject to the requirements and in accordance with law. With

this direction, the Civil Miscellaneous Appeal is allowed. The judgment and decree dated 7.11.2005 passed in A.S. No. 130 of 2005 on the file of the Principal Subordinate Judge, Coimbatore allowing the appeal thereby setting aside the fair and decretal order dated 26.3.2004, rejecting the plaint passed in I.A. No. 1165 of 2003 in O.S. No. 940 of 2003, restoring and remanding O.S. No. 940 of 2003 for joint trial along with O.S. No. 699 of 2003 for fresh disposal is hereby set aside. The order passed by the District Munsif, rejecting the plaint in O.S. No. 940 of 2003 is confirmed. The Court while disposing of the suit in O.S. No. 699 of 2003 shall take note of the subsequent events and mould the relief.

5.1. It is represented that the suit is posted on 30.10.2013. Plea is made for early disposal of the suit. Having regard to the pendency of the suit for one decade, the trial court is directed to dispose of the suit in O.S. No. 699 of 2003, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected M.Ps. are closed.