

(2014) 01 MAD CK 0218

In the Madras High Court

Case No : Application No. 2531 of 2013 in Civil Suit No. 43 of 2013

N. Suresh, N. Ranjani and S. Chitra Swaminathan APPELLANT

Vs

T. Radhakrishnan, represented by his Power Agent RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 1, Order 2 Rule 2, Order 2 Rule 2(2), Order 2 Rule 2(3), Order 7 Rule 1
Partnership Act, 1932 — Section 69

Citation : (2014) 01 MAD CK 0218

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : V. Bhiman for M/s. Sampath Kumar and Associates, for the Appellant; K.V. Sundarrajan, for the Respondent

Final Decision : Allowed

Judgement

R. Subbiah, J.—This application has been filed under Order VII Rule 11(a) and (d) read with Order 2 Rule 2(3) of C.P.C. for rejection of the plaint. The applicants herein are the defendants and the respondent is the plaintiff in the suit. For the sake of convenience, parties will be referred to as per their rankings in the suit.

2. Before filing the present suit, the plaintiff herein had originally filed a suit in O.S. No. 6393 of 2012 on the file of the XVII Assistant Judge, City Civil Court, Chennai, against the defendants herein for permanent injunction. The prayer made by the plaintiff in O.S. No. 6393 of 2012 is as follows:-

(a) Permanent injunction restraining the defendants, their men, agent, servants and representatives from further illegal, unauthorized construction in the vacant land comprised in S. No. 317/1 (part) bearing Plot No. 80, in approved layout LPDM/DTP No. 16/1973 undivided share measuring an extent of 2400 sq.ft. situated at Velacherry Village, Mambalam-Guindy Taluk, till the disposal of the main suit.

(b) For the cost of the suit.

In the said suit, the plaintiff herein has also filed I.A. No. 15392 of 2012 for temporary injunction, but no order has been passed in the said application so far.

3. In O.S. No. 6393 of 2012 the defendants have taken out an application in I.A. No. 17270 of 2012 for rejection of the plaint on the ground that possession of the suit property had never been with the plaintiff and hence, the suit for bare injunction without the prayer for declaration of title and recovery of possession is not maintainable and that even if the claim of the plaintiff is amended by adding appropriate relief, the City Civil Court will not have the pecuniary jurisdiction to entertain the suit, since the market value of the property in question is Rs. 84 lakhs i.e., Rs. 3,500/- per sq.ft., whereas the maximum limit of relief that could be entertained in the City Civil Court is only upto the value of Rs. 25 lakhs.

4. The plaintiff did not file any counter to the application in I.A. No. 17270 of 2012 filed by the defendants to reject the plaint. The said application was posted on 15.04.2013 for filing the counter by the plaintiff.

5. While situation stood thus, the plaintiff rushed to this Court with the present suit (C.S. No. 43 of 2013) for various reliefs, which have not been sought for by him before the City Civil Court in O.S. No. 6393 of 2012. The reliefs sought for by the plaintiff in the present suit are as follows:-

(a) for declaration to declare that the sale deeds in Doc. Nos. 6566 of 2011, 6567 of 2011 and 6568 of 2011 dated 21.11.2011 respectively in favour of the 1st, 2nd and 3rd defendants on the file of the Sub-Registrar at Velacherry, are null and void and it is not binding on the plaintiff;

(b) declaration declaring that the plaintiff is the absolute owner of the suit property;

(c) to direct the defendants 1 to 3 to deliver the possession of the suit property.

(d) for grant an order of permanent injunction restraining the defendants not to put up further construction in the suit schedule property;

(e) for costs of the suit.

6. On appearance, the defendants have filed the present application viz., A. No. 2531 of 2013 for rejection of plaint. According to the defendants, a plain reading of the plaint filed by the plaintiff in O.S. No. 6393 of 2012 before the City Civil Court, Chennai and the plaint in the present Suit viz., C.S. No. 43 of 2013 would show that what has been stated in the plaint in O.S. No. 6393 of 2012 has been once again reiterated verbatim in the plaint filed in the present suit. The plaintiff has not disclosed in the present suit any fresh cause of action or facts, which were not available to him at the time of filing O.S. No. 6393 of 2012 before the City Civil Court. The cause of action stated in both the suits seems to be the same. The plaintiff is, therefore, precluded from seeking any relief in the present suit, which he has omitted to seek in the suit filed before the City Civil Court,

since the plaintiff has not obtained the leave of the Court in the earlier suit for filing subsequent suit as required under Order II Rule 2(3) of Civil Procedure Code. Hence, the present suit is hit by Order II Rule 2(3) of CPC. Thus, the defendants prayed for rejection of the plaint.

7. The plaintiff has filed a counter affidavit to the present application stating that the allegation made by the defendants that the present suit is hit by Order II Rule 2(3) of CPC since the plaintiff has not obtained leave of the Court in the earlier suit before filing the present suit, is not correct. A perusal of the plaint would show that the cause of action for the present suit arose only after filing the earlier suit before the City Civil Court. After getting copies of the documents, the present suit has been filed for declaration and other reliefs. Thus, he prays for the dismissal of the present application.

8. The learned counsel for the defendants submitted that the defendants are the absolute owners of the suit property, having purchased the same from one C.S. Pragasam by way of three sale deeds dated 21.11.2011. While so, the plaintiff herein claiming right over the suit property filed the suit in O.S. No. 6393 of 2012 before the City Civil Court, Chennai, under Order VII Rule 1 of CPC, for bare injunction against the defendants preventing them from putting up construction in the suit property. In the said suit the defendants had taken out an application in I.A. No. 17270 of 2012 for rejection of the plaint stating that since the plaintiff is not in possession of the suit property, the mere suit for bare injunction, in the absence of prayer for declaration of title and recovery of possession, is not maintainable. On receiving the copy of counter, the plaintiff filed the present suit before this Court without obtaining the leave of the Court under Order II Rule 2(3) of CPC, by adding the prayer for declaration.

9. In this regard, the learned counsel for the defendants submitted that when the cause of action for filing the present suit is available to the plaintiff even at the time of filing the earlier suit before the City Civil Court in O.S. No. 6393 of 2012, the plaintiff ought to have prayed for declaration of title in the earlier suit itself. Having failed to ask for the prayer of declaration, now the present suit filed by the plaintiff is not maintainable since he has not obtained the leave of the Court in the earlier Suit under Order II Rule 2(3) of CPC for filing the present suit. The learned counsel for the defendants further submitted that a reading of the plaints filed in both the suits would show that what has been stated in the plaint in O.S. No. 6393 of 2012 has been reiterated verbatim in the present suit (C.S. No. 43 of 2013) and the cause of action stated in both the suits is one and the same. Under such circumstances, the present suit filed by the plaintiff without obtaining the leave under Order II Rule 2(3) of CPC is not maintainable and the plaint is liable to be rejected. In support of his contentions, the learned counsel for the defendants relied upon the judgments reported in N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LRs. and Others, and N. Ravindran Vs. V. Ramachandran, .

10. Per contra, the learned counsel for the plaintiff submitted that only after the

defendants filed their counter in I.A. No. 15392 of 2012 in O.S. No. 6393 of 2012, the plaintiff came to know about the purchase of the property by the defendants and since the said purchase is not valid, thereafter the plaintiff has filed the present suit for the relief as stated above. The learned counsel for the plaintiff submitted that it is incorrect to state that the cause of action for filing the present suit and the suit filed before the City Civil Court are one and the same. The cause of action for filing the present suit arose only after filing the suit in O.S. No. 6393 of 2012 before the City Civil Court.

11. In this regard, the learned counsel for the plaintiff submitted that originally the larger extent of land in Survey No. 317/1, measuring about 21 acres and 26 cents belonged to one G. Ramachandra Iyer, having got the same through a partition deed dated 6.11.1925. He had sold the said property to one A.S.V. Varadhachari Iyer by a Sale Deed dated 5.12.1957. Out of the said 21 acres and 26 cents, 6 acres and 49 cents was acquired by the Government for forming VOR Station. Out of the balance extent of land, the said A.S.V. Varadhachari Iyer had sold 3 acres to one Mr. S. Muthukrishnan by a Sale Deed dated 14.10.1965. Out of the balance 11 acres and 77 cents, the said A.S.V. Varadhachari Iyer formed a Layout and named it as Bhuvaneswari Nagar in the year 1973 and sold the Plot No. 80 to one Mr. Dhandayuthapani by a Sale Deed dated 5.5.1982. The plaintiff and his brother jointly purchased the said Plot No. 80 measuring about 2400 sq.ft. from the said Mr. Dhandayuthapani by a sale deed dated 9.1.1997, bearing Document No. 141 of 1997 on the file of SRO, Velacherry. While so, the said S. Muthukrishnan, who had purchased only 3 acres from the said A.S.V. Varadhachari Iyer, seems to have created a layout covering even the lands retained by A.S.V. Varadhachari Iyer. Having done so, he had started selling the plots, for which he was not the owner. One such Plot No. 173 seems to have been sold to one Mrs. Suganthi Bakyanathan. It is pertinent to note that the said S. Muthukrishnan created the layout even before purchasing of the property from A.S.V. Varadhachari Iyer. He purchased the property on 14.10.1965, whereas the layout approval was done on 30.1.1965. The Plot No. 173 has been sold to Mrs. Suganthi Bakyanathan on 17.10.1965, three days after the purchase of the said 3 acres of land from Mr. A.S.V. Varadhachari Iyer, who in turn sold the property to one Mr. C.S. Pragasam by a sale deed dated 4.2.2002, who in turn sold the Plot No. 173 through 3 Sale deeds dated 21.11.2011 to the defendants. In all the sale deeds of the defendants, it has been very clearly mentioned that the layout comprised of only 3 acres. Even on logical understanding, if each plot is only one ground in 3 acres layout after leaving space for road, one hundred and seventy three and more plots cannot be created. In view of the above fraudulent act of the said Mr. S. Muthukrishnan various suits are pending before the City Civil Court with the similar disputes.

12. It is further submitted by the learned counsel for the plaintiff that the plaintiff was under the impression that by putting up construction, the defendants are encroaching the suit property viz., Plot No. 80, which was purchased by the plaintiff from one Dhandayuthapani. Later the plaintiff came to

know that the defendants" predecessors in title purchased the property from the said S. Muthukrishnan, to whom the said A.S.V. Varadhachari Iyer sold 3 acres of land. The plaintiff's predecessor in title viz., Dhandayuthapani purchased Plot No. 80 from the A.S.V. Varadhachari Iyer. But, the said S. Muthukrishnan developed a layout covering even the lands retained by A.S.V. Varadhachari Iyer fraudulently and one such plot bearing Plot No. 173 was purchased by the defendants" predecessors from the said S. Muthukrishnan. Actually Plot No. 173 falls within the land owned by Mr. A.S.V. Varadhachari Iyer. The said Muthukrishnan has no locus standi to sell the said plot. The plaintiff and the defendants are the bone fide purchasers of their respective plots. But, the defendants" predecessors in title purchased the suit subject property from the person, who did not have the title to the suit subject property. The plaintiff came to know these facts only after filing the counter by the defendants in the application filed by the plaintiff for temporary injunction viz. I.A. No. 15392 of 2012 in O.S. No. 6393 of 2012. Therefore, the cause of action for filing the present suit before this Court arose only subsequent to the filing of the earlier suit before the City Civil Court. Order II Rule 2(3) of CPC would come into play only when both the suits are based on the same cause of action. But, in the instant case, the cause of action for filing the present suit arose only after filing of the earlier suit before the City Civil Court. Under such circumstances, this Court by framing an issue to the effect as to whether Order II Rule 2(3) of CPC would be a bar to the present suit? decide the same during the course of trial. Hence, there is no need to reject the plaint at the threshold stage on the ground the suit is hit by Order II Rule 2(3) of CPC. In support of his contention, the learned counsel for the plaintiff relied upon the judgment reported in Alka Gupta Vs. Narender Kumar Gupta, . Thus, the learned counsel for the plaintiff prays for dismissal of the present application.

13. Heard submissions made on either side and perused the materials available on record.

14. The present application has been filed by the defendants for rejection of the plaint on the ground that the cause of action for filing the present suit as well as the cause of action for filing the earlier suit by the plaintiff in O.S. No. 6393 of 2012 before the City Civil Court, Chennai, are one and the same. According to the defendant, when the cause of action being the same for both the suits, the plaintiff ought to have obtained leave under Order II Rule 2(3) of CPC. Since the plaintiff has filed the present suit without obtaining leave under Order II Rule 2(3) of CPC, the present suit is liable to be rejected under Order VII Rule 11 of CPC.

15. But, whereas, according to the plaintiff, the cause of action for filing the present suit arose only after filing the earlier suit in O.S. No. 6393 of 2012 before the City Civil Court, Chennai. Hence, it is not necessary to obtain leave under Order II Rule 2(3) of CPC. Only when the subsequent suit is filed based on the cause of action of the earlier suit, leave under Order II Rule 2(3) of CPC has to

be obtained in the earlier suit for filing subsequent suit. Further, the learned counsel for the plaintiff by relying upon the judgment reported in Alka Gupta Vs. Narender Kumar Gupta, submitted that the suit cannot be rejected merely on the ground that the plaintiff has failed to obtain permission under Order II Rule 2(3) of CPC. Even if the defendant pleads the bar under Order II Rule 2(3) of CPC in the application filed by him for rejection of the plaint, the plaintiff should have an opportunity to explain that the second suit is based on different cause of action. Therefore, by framing an issue whether Order II Rule 2(3) of CPC would be a bar to the present suit, the said issue can be decided during the course of trial. Thus, the learned counsel for the plaintiff opposed the prayer of the defendants to reject the plaint on the ground that no permission was sought for under Order II Rule 2(3) of CPC before filing the present suit.

16. Before dealing with the question as to whether the plaint is liable to be rejected on the ground that no permission was sought for under Order II Rule 2(3) of CPC before filing the present suit?, I am of the opinion that it would be appropriate to see whether the cause of action for filing the earlier suit and the present suit are one and the same or as contended by the learned counsel for the plaintiff, the cause of action for filing the present suit arose only after filing of the earlier suit?

17. It is the case of the plaintiff that the suit property viz., Plot No. 80 in Survey No. 317/1, in the approved Layout LPDM/DTP No. 16/1973 measuring an extent of 2400 sq.ft. situated at Velacherry Village, Mambalam-Guindy Taluk, was purchased jointly by the plaintiff and his brother Chandrasekar on 09.01.1997. Originally the said property forms part and parcel of total extent of land belonged to one (late) Ganapathi Iyer and after his demise, his sons namely G. Ramachandra Iyer, G. Krishnaswami Iyer and G. Venkatrama Iyer had partitioned the whole land of 63 acres 78 cents in Velacherry Village bearing Survey No. 317/1 part, by way of partition deed, which was registered as Doc. No. 1261 of 1925, dated 06.11.1925. Through the said partition, Ramachandra Iyer gained his share of 21 acres and 26 cents in Velacherry Village, bearing Survey No. 317/1 part. Subsequently, the said Ramachandra Iyer sold his entire land to one A.S.V. Varadachari Iyer vide registered sale deed dated 05.12.1957 registered as Doc. No. 3307 of 1957 at Sub-Registrar Office, Saidapet. After purchasing the land, the said A.S.V. Varadachari Iyer was in possession and enjoyment of the land measuring 21 acres and 26 cents. Out of total extent of 21 acres and 26 cents, land measuring to an extent of 6 acres and 49 cents was acquired by the Government for V.O.R. Station in the year 1959. Thereafter, from the remaining extent of land, the said A.S.V. Varadachari Iyer had sold the land measuring to an extent of 3 acres to one Mr. S. Muthukrishnan by sale deed dated 14.11.1965 registered as Doc. No. 4076 of 1965 at Sub-Registrar Office, Saidapet. In the remaining 11 acres 77 cents, the said A.S.V. Varadachari had formed a layout bearing No. LPD/DTP No. 16/1973 and had convey Plot No. 80 measuring an extent of 2400 sq.ft. to one M. Dhandayuthapani, vide Document No. 1845 of 1982, dated 05.05.1982. Thereafter, on 09.01.1997 the said Plot No. 80 was

jointly purchased by the plaintiff and his brother Chandrasekar from the power agent of the said Dhandayuthapani viz., one Rajalingam, vide sale deed dated 09.01.1997 registered as Doc. No. 141 of 1997. After purchasing the said Plot, the plaintiff and his brother have executed a General Power of Attorney in favour of one S.S. Balakrishnan to maintain the said property. The plaintiff was in native place for his mother's treatment. In the meanwhile, the defendants and their henchmen encroached the suit property. When the plaintiffs' power agent visited the suit property on 07.08.2012, he found that more than ten persons were constructing building in the suit property. Hence, a complaint was lodged by the power agent of the plaintiff on 08.08.2012 and the Police Officials has also registered a case as against the defendants. After lodging the complaint, the defendants stopped the construction work. But, thereafter, when the plaintiff visited the suit property, the plaintiff found that the defendants are continuing the construction of the building in the suit property. Hence, the plaintiff has filed the suit in O.S. No. 6393 of 2012 before the City Civil Court, Chennai, for injunction restraining the defendants from proceeding with the unauthorized construction in the suit property. In the said suit, the plaintiff has also filed an Interlocutory Application in I.A. No. 15392 of 2012 for interim relief. On appearance, the defendants had filed a counter in the said application.

18. Apart from filing the counter to the application in A. No. 15392 of 2012, the defendants have also filed an application in I.A. No. 17270 of 2012 in O.S. No. 6393 of 2012 for rejection of the plaint. It is the case of the defendants in the said application that the defendants are the absolute owners of the suit property having purchased the same from one C.S. Pragasam by way of three sale deed dated 21.11.2011 and the plaintiff is not in possession of the suit property and hence, mere suit for bare injunction, in the absence of prayer for declaration of title and recovery of possession, is not maintainable. Further, it is the case of the defendants that the value of the suit property is Rs. 80 lakhs and as such the City Civil Court has no pecuniary jurisdiction to try the suit.

19. Thereafter, the plaintiff rushed to this Court with the present suit with a prayer for declaration declaring the three said deed of the defendants dated 21.11.2011 as null and void and to declare the plaintiff as the absolute owner of the suit property and to direct the defendants to deliver the possession of the suit property and also for permanent injunction restraining the defendants from putting up further construction in the suit schedule property.

20. Now, it is the submission of the learned counsel for the plaintiff that the plaintiff came to know about the purchase of the suit property by the defendants vide three sale deeds dated 21.11.2011, only after filing the counter by the defendants in the interlocutory application in I.A. No. 15392 of 2012. Therefore, the cause of action for filing the present suit arose only subsequent to the filing of the earlier suit. Thus, according to the plaintiff, the question of obtaining leave to file the subsequent suit under Order II rule 2(3) of CPC does not arise in this case. But, I am not inclined to accept this submission of the learned counsel for

the plaintiff for the reason that even prior to the filing of the suit by the plaintiff in O.S. No. 6393 of 2012 before the City Civil Court, the defendants had purchased the subject property, which is under dispute, by way of three sale deeds dated 21.11.2011. Therefore, the cause of action for filing a suit with a prayer to declare the said three sale deed dated 21.11.2011 as null and void was available to the plaintiff on the date of filing the earlier suit itself. But, according to the plaintiff, he got the knowledge about the sale deeds executed in favour of the defendants, only when the defendants filed a counter affidavit in the interlocutory application in I.A. No. 15392 of 2012. In my considered opinion, gaining knowledge subsequently will not give rise to a fresh cause of action for filing the present suit for declaration, particularly when the present suit has been filed with the same set of facts. In fact, the cause of action mentioned in the present suit and the earlier suit are one and the same, except the fact that the petitioner got the knowledge about the sale deeds executed in favour of the defendants, subsequent to the filing of the earlier suit. Hence, I am of the opinion that the plaintiff ought to have obtained leave in the earlier suit for filing the subsequent suit as required under Order II Rule 2(3) of Civil Procedure Code.

21. The next fold of submission made by the learned counsel for the plaintiff is that the non-obtaining of leave under Order II Rule 2(3) of CPC will not serve as a ground to reject the plaint. In support of this contention, the learned counsel for the plaintiff relied upon the judgment reported in Alka Gupta Vs. Narender Kumar Gupta, , wherein it has been held as follows:-

Unless the defendant pleads the bar under Order 2 Rule 2 of the Code and an issue is framed focusing the parties on that bar to the suit, obviously the Court can not examine or reject a suit on that ground. The pleadings in the earlier suit should be exhibited or marked by consent or at least admitted by both parties. The plaintiff should have an opportunity to explain or demonstrate that the second suit was based on a different cause of action. In this case, the respondent did not contend that the suit was barred by Order 2 Rule 2 of the Code. No issue was framed as to whether the suit was barred by Order 2 Rule 2 of the Code. But the High Court (both the trial bench and appellate bench) have erroneously assumed that a plea of res judicata would include a plea of bar under Order 2 Rule 2 of the Code. Res judicata relates to the plaintiff's duty to put forth all the grounds of attack in support of his claim, whereas Order 2 Rule 2 of the Code requires the plaintiff to claim all reliefs flowing from the same cause of action in a single suit. The two pleas are different and one will not include the other. The dismissal of the suit by the High Court under Order 2 Rule 2 of the Code, in the absence of any plea by the defendant and in the absence of an issue in that behalf, is unsustainable.

But, on perusal of the factual aspects of that case, I find that the appellant therein entered into an agreement to sell an undivided half share of a immovable property and 50% share of the Institution established in the said property. The total sale consideration was fixed as Rs. 21,50,000/- and the appellant therein

received a sum Rs. 7,50,000/- as advance. In pursuance of the said agreement, the appellant therein executed a sale deed in respect of the immovable property for Rs. 20,00,000/- and the respondent therein promised to pay the balance of Rs. 12 lakhs in regard to the other rights and interest agreed to be sold under the agreement. Since the said balance sale consideration of Rs. 12 lakhs was not paid by the respondent therein, the appellant therein filed a suit in O.S. No. 16/2006 in the District Court, Delhi, for recovery of Rs. 12 lakhs stating that the respondent had paid only Rs. 9.5 lakhs towards agreed price. The said suit was decreed in favour of the appellant therein. Thereafter, the appellant therein filed another suit in C.S.(O.S.) No. 302/2007 in the Delhi High Court against the respondent therein for rendition of accounts for the period from 05.4.2000 to 31.07.2004 in regard to the partnership firm constituted under deed of partnership deed dated 05.04.2000. The appellant therein had also sought for a decree against the respondent therein for her share of profits in the said partnership institution. The said second suit was resisted by the respondent therein, raising three preliminary grounds of objections in regard to the maintainability of the suit: (a) that the suit was barred by res judicata; (b) that the suit was barred u/s 69 of the Partnership Act, 1932, as it related to an unregistered partnership; and (c) that the suit was liable to be dismissed for material suppression of facts and approaching the Court with unclean hands. In the said suit, a preliminary issue was framed by the learned Single Judge of the Delhi High Court to the effect that-

whether the suit is barred by the principle of res judicata as issue raised in the suit has been directly and substantially been adjudicated between the plaintiff and the defendant in Suit No. 16.2006 titled as Alka Gupta Vs. Narender Kumar Gupta vide an order dated 25.11.2006 by a competent Court? But, the said suit was dismissed summarily vide an order dated 13.03.2009 by the learned Single Judge, on various grounds. One among the grounds for dismissal of the said suit was that the suit was barred by Order 2 Rule 2 of CPC. On appeal, the dismissal of the suit was confirmed by the Division Bench of the Delhi High Court. On further appeal, the Hon''ble Supreme Court has held that the suit cannot be dismissed as barred under Order 2 Rule 2 of CPC in the absence of plea by the defendant to that effect and in the absence of framing an issue thereon.

22. The factual aspects of that case would show that the defendant therein did not raise any plea with regard to the bar under Order 2 Rule 2 of CPC. In the absence of such plea, the High Court as well as the Division Bench of the Delhi High Court dismissed the suit by assigning a reason that the subsequent suit is hit by Order II Rule 2 of Civil Procedure Code. Only in that background, the Hon''ble Supreme Court has held in that case that the suit cannot be dismissed as barred under Order 2 Rule 2 of CPC, in the absence of plea by the defendant to that effect.

23. But, in the instant case, on appearance, the defendants have taken out an application to reject the plaint stating that no leave was obtained by the plaintiff

under Order II Rule 2(3) of CPC and the cause of action for the earlier suit and the present suit are one and the same. Therefore, the above said judgment relied upon by the learned counsel for the plaintiff, which was delivered on different factual aspects, cannot be made applicable to the present facts of the case.

24. In fact, the judgment reported in *Virgo Industries (Eng.) P. Ltd. Vs. Venturetech Solutions P. Ltd.*, , gives a fitting answer for the issue involved in this case. The relevant passage from the said judgment is as follows:-

Order II Rule 1 requires every suit to include the whole of the claim to which the plaintiff is entitled in respect of any particular cause of action. However, the plaintiff has an option to relinquish any part of his claim if he chooses to do so. Order II Rule 2 contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, Order II Rule 2 of CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order II Rule 2(2) does not contemplate omission or relinquishment of any portion of the plaintiffs claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the Court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave of the Court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order II Rule 2(2) and (3) of the CPC that the aforesaid two sub-rules of Order II Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situations where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit proved that at the time of omission to claim the particular relief he had obtained leave of the Court in the first suit.

The dictum laid down in the above said judgment would show that when the plaintiff omits or relinquishes one of the reliefs, which he is entitled to make, the plaintiff can file subsequent suit seeking the relief omitted in the earlier suit, only after obtaining leave of the Court under Order II Rule 2(3) of CPC. In the instant case, both the suits have been filed on the same set of facts with identical cause of action, but no leave was obtained under Order II Rule 2(3) of CPC, in the earlier suit to file a subsequent suit, which is mandatory.

The earlier suit was filed by the plaintiff before the City Civil Court, Chennai, only for bare injunction on the allegation that the defendants are proceeding with the unauthorized construction in the suit property, which belongs to the plaintiff. Whereas, according to the defendants, they are the owners of the suit property having purchased the same for the valuable consideration under three sale deed

dated 21.11.2011. The case rests on the plaintiff's title over the suit property and for possession. Under such circumstances, the plaintiff ought to have prayed for declaration of title and recovery of possession in the earlier suit itself. When he omitted to claim for the said relief in the earlier suit, before filing the subsequent suit with a prayer for declaration, he ought to have obtained leave of the Court as observed above. But, in the instant case, no such leave was sought for by the plaintiff. Hence, I am of the opinion, the suit is liable to be rejected for non-obtaining leave under Order II Rule 2(3) of CPC.

In the result, the application is allowed and the plaint is rejected.