

(2010) 12 MAD CK 0133

Madras High Court

Case No: C.R.P. (PD) No. 2437 of 2010 and M.P. No. 1 of 2010

Joseph Arokiados, represented
by Power Agent, T. Kasi

APPELLANT

Vs

P. Pradeep

RESPONDENT

Date of Decision: Dec. 15, 2010

Acts Referred:

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

Citation: (2011) 2 CTC 177

Hon'ble Judges: K. Venkataraman, J

Bench: Single Bench

Advocate: B. Vijay, for the Appellant; A.K. Raghavan, for the Respondent

Final Decision: Allowed

Judgement

K. Venkataraman, J.

The present Civil Revision Petition is directed against the order of the learned Additional District and Sessions Judge (Fast Track Court No. 1), Poonamallee dated 17.2.2010 made in I.A. No. 1432/2009 in O.S. No. 124/2009.

2. The Defendant in the said Suit is the Petitioner and the Respondent thereon is the Plaintiff. The said Suit has been filed by the Respondent for declaration of his right over the suit property, for possession and for permanent injunction restraining the other side from interfering with his possession over the suit property. In the said Suit, the Petitioner being the Defendant has filed an Application under Order 7, Rule 11, CPC to reject the Plaint. The said Application came to be dismissed by the learned Trial Judge, which made the Petitioner to approach this Court by filing the present Civil Revision Petitioner.

3. Certain admitted facts are set out hereunder:

The Petitioner has filed Suit in O.S. No. 435 of 2007 on the file of the District Munsif Court at Ambattur for Interim Injunction and the same is pending. The Respondent herein has also filed a Suit in O.S. No. 576 of 2008 on the file of the same Court against the Petitioner herein for permanent injunction in respect of the same suit property and the same is also pending. While so, the Respondent has filed another Suit in O.S. No. 124 of 2009 for declaration, possession and permanent injunction on the file of the Principal District Judge, Thiruvallur. The Petitioner herein, being the Defendant in the said Suit in O.S. No. 124/2009, has filed an Application under Order 7, Rule 11, CPC to reject the Plaint. The reason for said Application was that when the Respondent has filed the Suit in O.S. No. 576 of 2008 for interim injunction, the second Suit that has been filed by the Respondent in O.S. No. 124/2009 is hit by Order 2, Rule 3, CPC Thus, according to the Petitioner, the filing of the latter Suit is not maintainable and the Plaint should have been rejected by the learned Trial Judge.

4. However, the learned Counsel appearing for the Respondent- Mr. A. Venkatesan, submitted that the filing of the second Suit is not hit by Order 2, Rule 3, CPC That apart, he submitted that the filing of the second Suit was necessitated in view of the subsequent cause of action and hence it cannot be said that the filing of the second Suit is hit by Order 2, Rule 3, CPC 5. I have considered the submissions made by the learned Counsel appearing for the Petitioner and by the learned Counsel appearing for the Respondent.

6. The facts narrated above, would disclose that the Respondent has already filed a Suit in O.S. No. 576/2008 against the Petitioner herein before the District Munsif Court, Ambattur for injunction restraining him from interfering with his peaceful possession and enjoyment of the suit property. The suit property is the subject matter in the latter Suit filed by the Respondent in O.S. No. 124 of 2009. The said Suit has been filed by the Respondent for declaration of his title over the suit property, for possession and for permanent injunction. It is contended by the learned Counsel appearing for the Respondent that the subsequent Suit was necessitated in view of a trespass made by the Petitioner. It would be useful to extract Paragraph 10 of the Plaint in the subsequent Suit in O.S. No. 124/2009:

10. The Plaintiff submits that now there is a dispute in title in respect of the suit property. After having the ex-parte injunction the Defendant is trespassed into the suit property and put up a construction in the suit property. The construction put up by the Defendant is illegal one. Hence, the Plaintiff filed this Suit for declaration and recovery of possession.

7. It would be also useful to extract paragraph 11 of the Plaint in O.S. No. 124/2009, which narrates the cause of action:

11. The case of action for the aforesaid Suit arose on 18.8.2007, the Defendant claimed that he is the owner of the suit property belonging to the Plaintiff and

daringly threatened that if the Plaintiff made construction in the suit property the Plaintiff will face dire consequences and immediately the Plaintiff made a Complaint before the Ambattur Police and the Ambattur Police verified and satisfied with the records of the Plaintiff, advised the Defendant not to disturb the Plaintiff's possession and the Defendant in O.S. No. 435 of 2007 on the file of District Munsif Court at Ambattur and having an ex-parte injunction he managed trespassed into the suit property at Orgadam Village, Ambattur Firka and Ambattur Taluk and subsequently.

8. The above extracted portions of the Plaint in the latter Suit would disclose that the necessity to file the latter Suit by the Respondent has arisen because the Petitioner herein, namely the Defendant in the said Suit, had trespassed into the property on 18.8.2007 and hence it has made the Respondent to file a comprehensive Suit for declaration and for other incidental reliefs. I am unable to accept the said contention of the learned Counsel appearing for the Respondent, since the cause of action alleged, namely that the Petitioner, has trespassed into the property even according to the Respondent, was on 18.8.2007 i.e. after filing of the Suit by the Respondent in O.S. No. 576 of 2008 for injunction. The said Suit in O.S. No. 576 of 2008 for injunction. The said Suit in O.S. No. 576 of 2008 was filed on 21.10.2008 i.e. much later to the allegation of trespass of the Petitioner. In such circumstances, instead of filing an Application for amending the plaint under Order 6, Rule 17, Code of Civil Procedure, the Respondent has chosen to file the subsequent Suit. Thus, the later Suit is clearly hit by Order 2, Rule 2(3), CPC At this stage, it would be useful to extract Order 2 of the CPC Code.

Order 2, Rule 2 of CPC 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 person 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 use for all such reliefs, he shall not afterwards sue for any relief so omitted.

Order 2, Rule 2, CPC extracted above, clearly envisages that every Suit shall include the whole of the claim which the Plaintiff is entitled to make in respect of the cause of action. If the Plaintiff omits to sue in respect of a particular cause of action, he shall not afterwards sue in respect of the other portions so omitted or relinquish. If he omits to incorporate a prayer except with the leave of the Court, he shall not file another Suit.

9. When such is the position, it is not known why the Respondent herein has filed the latter Suit in O.S. No. 124 of 2009 for declaration, possession and injunction. The best course would have been only to file an Application under Order 7, Rule 17, CPC for amendment in the earlier Suit filed by him viz. O.S. No. 576/2008. The Court below failed to take into account the said aspect while dismissing the Application preferred by the Petitioner.

10. In view of the above stated position, I am of the considered view that the order made by the Trial Court viz. order in I.A. No. 1432/2009 in O.S. No. 124/2009 dated 17.2.2010 is liable to be set aside and accordingly set aside.

11. In the result, the Civil Revision Petitioner stands allowed. There shall be no order as to costs. Consequently, the connected M.P. No. 1 of 2010 is closed.