



C.R.P.(MD)No.2146 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
07.06.2023	30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**C.R.P.(MD)No.2146 of 2022
and
C.M.P.(MD)No.9925 of 2022**

S.Muniyasamy

... Petitioner

Vs.

N.Subbaiyya

... Respondent

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 16.08.2022, passed in I.A.No.3 of 2021, on the file of the Additional District Munsif Court, Thoothukudi, in O.S.No.138 of 2019, on the file of the Additional District Munsif Court, Thoothukudi.

For Petitioner : Mr.F.X.Eugene

For Respondent : Mr.S.Muthumalairaja

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the fair and decreetal order passed by the Additional District Munsif Court, Thoothukudi, in I.A.No.3 of 2021 in O.S.No.138 of 2019, dated 16.08.2022.



2.By the impugned order dated 16.08.2022, the Additional District Munsif Court, Thoothukudi, has rejected I.A.No.3 of 2021 filed by the petitioner under Order VII Rule 11(a) r/w.151 of C.P.C. with the following observations:

"18.By holding the dictum of the Apex Court, this Court holds that the application for rejection of plaint can be considered and decided only based on the averments made in the plaint and documents relied on by the plaintiff. The averments in the written statement, documents enclosed and averments in the affidavit filed in support of application for rejection of plaint are not relevant to decide the application praying for rejection of plaint. The pleas taken by the defendant in the written statement and application for rejection of plaint on merits would be irrelevant.

19.As it is well settled that the plaint, in its entirety, has to be considered and found out whether the cause of action mentioned is real or illusory. In the case in hand a reading of the plaint shows that the respondent has categorically stated the cause of action that arose for the suit. Hence so on that ground the suit cannot be rejected."

3.The suit has been filed by the respondent for declaratory relief and for permanent injunction. The relief in the suit is read as under:-

"அ) பிராது 2வது தபசில் பொது நடைபாதையானது வாதிக்கும், பிரதிவாதிக்கும் பாத்தியப்பட்ட பொது நடைபாதை என்று விளம்புகை செய்யக் கேட்டும், அதன் தொடர்ச்சியாக பிராது 2-வது தபசில் பொது நடைபாதையில் இந்த வாதியின் அமைதியான அனுபவத்திற்கு பிரதிவாதியோ, அவரது வகையாட்களோ, முகவர்களோ அல்லது பிரதிவாதியால் நியமனம் செய்யப்பட்டவர்களோ எவ்வித இடையூறும் செய்யக் கூடாது என்று ஒரு நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வழங்கி உத்திரவிடக் கோரியும்,

ஆ) பிராது 2-வது தபசில் பொது நடைபாதையின் மேல்புற முகப்பில் பிரதிவாதி அத்துமீறி ஆக்கிரமித்து அமைத்துள்ள கேட்டை அப்புறப்படுத்தும் வகையில் பிரதிவாதிக்கு எதிராக ஒரு செயலுறுத்துக் கட்டளை பிறப்பித்து உத்திரவிடக் கோரியும்,

இ) இந்த வழக்கிற்கான செலவுத்தொகையை வாதிக்கு, பிரதிவாதி செலுத்த உத்தரவிட வேண்டியும்,"



4. In the said suit, the petitioner herein filed I.A.No.3 of 2021 under Order VII Rule 11(a) of C.P.C. on the ground that the suit was barred under law on account of *res judicata*.

5. It is submitted that an earlier suit came to be filed by the petitioner herein in O.S.No.662 of 2004 before the Principal District Munsif Court, Thoothukudi. O.S.No.662 of 2004 was also in respect of the very same property and for an almost identical relief. It is submitted that O.S.No.662 of 2004 was decreed.

6. Aggrieved by the same, the respondent also filed A.S.No.95 of 2009 before the Sub Court, Thoothukudi, and the said appeal was allowed, vide judgment and decree, dated 26.11.2012. Aggrieved by the same, the petitioner preferred S.A. (MD)No.700 of 2013 before this Court and the same was allowed on 11.01.2019. Thus, the second suit in O.S.No.138 of 2019 was barred under Section 11 of C.P.C.

7. It is submitted that the description of the property in O.S.No.662 of 2004 filed by the petitioner and also in the subsequent suit filed by the respondent in O.S.No.138 of 2019 are one and the same and therefore, it is submitted that the Trial Court has committed a grave error in dismissing the application filed by the petitioner for rejecting the plaint under Order VII Rule 11(a) of C.P.C.



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8. Per contra, the learned counsel for the respondent has drawn the attention of this Court to the report of the Advocate Commissioner and the relief sought in O.S.No.138 of 2019. He also referred to the sketch given by the Advocate Commissioner.

9. The description of the property in O.S.No.662 of 2004 filed by the petitioner, which was decreed on 13.10.2008 and the description of the property in O.S.No.138 of 2019 filed by the respondent herein are as under:-

Description of property in O.S.No.662 of 2004	Description of property in O.S.No.138 of 2019
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1st Schedule Tuticorin Registration District, Tuticorin Keelur Sub-Registration Circle, Tuticorin Town, Municipal Ward No.4, Ponnagaram Street, Town Survey Ward No.4, Town Survey Nos.4995, 4996 and 4997 house properties bounded on the West by – Own pathway and 3rd item of house belonged to Mookkammal. North by – House property belongs to Ramasamy Thevar. East by – Houses belong to Durairaj Pillai and Kamatchi Chettiar. South by – House belongs to Kamatchi Chettiar. Within that boundaries, Plot East-West Northern 41 feet and southern 45 feet North-South, western 59 feet and Eastern 60-1/4 feet to a total of 2563.875 sq.ft. 2nd Schedule Tuticorin Registration District, Tuticorin Keelur Sub Registration Circle, Tuticorin Town Municipal Ward No.4, Ponnagaram Street, T.S.Ward No.4, an extent of 30 ½ feet on North-south and 1 ½ feet on East-west in T.S.No.4997 bounded on the North by – Ramasamy's land South by - 1st schedule property East by - 1st schedule property West by – Mookkammal land	Schedule of property 1) Tuticorin Registration District, Tuticorin Keelur Sub-Registration Circle, Tuticorin Taluk, Tuticorin Town, Municipal Ward No.4, Block No.42, Town Survey No.4997 house property bounded on the East by – House property belongs to Subbiah and his partitioned house property and 2nd item of South-north own pathway South by – East-west common pathway West by – Karuppasamy's house property North by – House property belongs to Mookkammal. Within that boundaries, East-West, Northern side 18 feet and southern side 18 feet South-north, western side 29.25 feet and Eastern side 30.50 feet, a Plot measuring a total extent of 537.75 sq.ft., 1.23 cents, including the house constructed therein. 2) Tuticorin Registration District, Tuticorin Keelur Sub-Registration Circle, Tuticorin Taluk, Tuticorin Town, Municipal Ward No.4, Block No.42, Town Survey No.4997 common pathway bounded on the North by – Subbiah's partitioned house property. South by – A east-west common pathway East by – A road West by - 1st item of property Within that boundaries, East-West Northern side 21 feet and southern side 21 feet South-north 3 feet and Eastern side 3 feet, measuring to a total of 63 sq.ft. own pathway.
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10.I have considered the arguments advanced by the learned counsel for the



petitioner and the learned counsel for the respondent.

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11.The reading of the second schedule of the plaint in O.S.No.662 of 2004 filed by the petitioner, which was decreed on 13.10.2008 and the second schedule to the suit schedule property in O.S.No.138 of 2019 filed by the respondent are in variance as it is evident from the reading of the above Table.

12.Therefore, there is no scope for short-circuiting O.S.No.138 of 2019 instituted by the respondent for a similar relief in respect of a different portion of the land in Town Survey No.4997 as detailed above. Further, Courts are not required to go into the evidence of pleading to conclude that the suit is barred under law.

13.In view of the above, I am inclined to uphold the order passed by the Court in I.A.No.3 of 2021 in O.S.No.138 of 2019.

14.This Civil Revision Petition is dismissed with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

30.06.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes/No



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To

The Additional District Munsif,
Thoothukudi.



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C.SARAVANAN, J.

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Pre-delivery order made
in
C.R.P(MD).No.2146 of 2022

30.06.2023