

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2015

CORAM

THE HONOURABLE MR. JUSTICE **D.HARIPARANTHAMAN**

C.R.P.(PD)No.3515 of 2015 and
M.P.No.1 of 2015

A.Kumarasamy ... Petitioner

vs.

Kaliammal ...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 10.04.2015 in I.A.No.1692 of 2012 in O.S.No.308 of 2009 on the file of District Munsif, Tiruppur.

For Petitioner : Mr.K.Myilsamy

ORDER

The revision petitioner is the defendant in O.S.No.308 of 2009 on the file of District Munsif, Tiruppur and the respondent herein is the plaintiff therein. It is a suit for declaration.

2. While so, the revision petitioner/defendant filed I.A.No.1692 of 2012 in O.S.No.308 of 2009 under Order VII Rule 11 CPC to reject the plaint. The Trial Court, by an order dated 10.04.2015 rejected the said application. Challenging the same, the petitioner has come up with this petition.

3. Heard the learned counsel for the petitioner.

4. The learned counsel for the petitioner has vehemently contended that the respondent/plaintiff had earlier filed a suit in O.S.No.114 of 2003 for bare injunction and the same was dismissed by the Trial Court on 27.10.2006. The appeal preferred in A.S.No.8 of 2007 was also dismissed on 29.08.2007 and thereafter, the respondent preferred second appeal in S.A.No.1510 of 2007 and the same was also dismissed by this Court on 29.07.2009. Hence, the suit in O.S.No.308 of 2009 is barred by the principles of res judicata.

5. I have considered the submissions made by the learned counsel for the petitioner.

6. The contention raised by the petitioner herein was also raised before the Trial Court and the Trial Court after considering the said contention rejected the application. It is useful to extract paragraph 6 of the order dated 10.04.2015 made in I.A.No.1692 of 2012:-

"6. ...It is not disputed that, the earlier suit is filed only for permanent injunction and same was decided on the basis of possession and enjoyment of the suit property and title over the suit property was not decided in the earlier suit. Now respondent/plaintiff has come forward with a suit for declaration and permanent injunction. This court is of view that it is necessary to decide the title

of the suit property for its proper adjudication, which is not a issue to be decided in the earlier suit. Even though subject matter and parties to the earlier suit and present suit are same, considering the nature of relief claimed in the present suit this Court is of opinion that earlier suit will not hit by the principles of resjudicata and present suit is not barred by law. Therefore this Court hold that present suit filed for the relief of declaration and permanent injunction has to be decided only on merits after hearing both side evidences and same cannot be decided in this present petition. From the above fact and circumstances and in the interest of justice this Court is not inclined to allow the petition filed to reject the plaint."

7. I do not find any infirmity in the order passed by the Trial Court. The civil revision petition fails and accordingly, the same stands dismissed. The dismissal of this petition would not preclude the petitioner from raising issues, such as limitation etc., before the trial Court at the time of trial. No costs. Consequently, connected miscellaneous petition is closed.

26.10.2015

Index : Yes/No

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To

The District Munsif, Tiruppur

D.HARIPARANTHAMAN,J.,

svki

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