



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2015

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

C.R.P. (PD) (MD) No.2140 of 2014

and

M.P. (MD) No.1 of 2014

1.P.Perumal
2.G.Venkatesan
3.G.Duraipandian
4.P.K.Mahendran

: Petitioners/Defendants 1 to 4

Vs.

Hari Govindaiyer Dharma Trust
Chidambaram, represented by its
Managing Trustee
R.K.Kamalakaran

: Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.131 of 2014, pending on the file of Fourth Additional District Court, Madurai.

For Petitioners : Mr.M.Ajmalkhan,
Senior Counsel,
For Mr.M.S.Suresh Kumar
For Respondent : Mr.VR.Shanmuganathan

ORDER

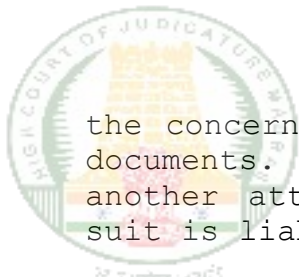
The defendants 1 to 4 in O.S.No.131 of 2014 are the petitioners herein and the prayer is to strike off the plaint on the ground of re-litigation.

FACTS:

2. The respondent earlier filed a suit in O.S.No.610 of 1987, on the file of Subordinate Court, Madurai. The suit was filed for a decree, directing the defendants therein to hand over possession of property. The suit was decreed by the Trial Court. The aggrieved defendants, stated to be the predecessors-in-interest of the petitioners filed first appeals in A.S.Nos.727 of 1999, 699 of 1999 and 31 of 2000. The High Court, by common judgment and decree dated 02 January, 2008, allowed the appeals and dismissed the civil suit in O.S.No.610 of 1987. The related Special Leave Petitions were dismissed by the Hon'ble Supreme Court.

3. The respondent, thereafter, filed the present suit in O.S.No.131 of 2014, for a decree of declaration that the suit property belongs to the Trust and a consequential direction to the petitioners to hand over possession.

4. It is the case of the petitioners that in its common judgment and decree dated 02 January, 2008, this Court has given a categorical finding that the respondent is not entitled to a decree as prayed for and that



the concerned defendants are enjoying the property on the basis of valid documents. According to the petitioners, the present suit is nothing but another attempt to re-open the concluded litigation and as such, this suit is liable to be rejected at the threshold.

SUBMISSIONS IN BRIEF:

5. The learned Senior Counsel for the petitioners, by taking me through the plaint in O.S.No.610 of 1987, and the common judgment and decree dated 02 January, 2008, contended that the issue now raised by the petitioners has already been answered by this Court and as such, the present suit is a clear abuse of process of law. The learned Senior Counsel further contended that the suit should be axed at the threshold and the respondent should not be permitted to proceed further.

6. The learned counsel for the respondent, on the other hand, contended that the earlier suit was filed by the respondent in his personal capacity. The present suit is filed by him in his capacity as the Managing Trustee of a Trust. According to the learned counsel, the relief claimed in the earlier suit has nothing to do with the present claim. He would further contend that the earlier suit was dismissed by this Court only on the ground of maintainability, inasmuch as the father of the respondent was alive and as such, it was not open to the son to file a suit.

THE ISSUE:

7. The core question that arises for consideration is as to whether the plaint should be rejected by invoking the jurisdiction under Article 227 of the Constitution of India without approaching the Trial Court under Order 7 Rule 11 of Code of Civil Procedure.

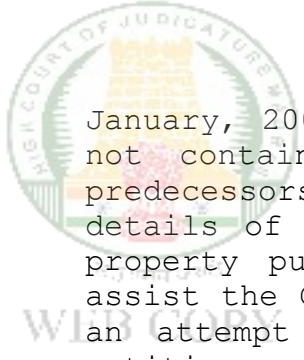
DISCUSSION:

8. The petitioners have come up with a grievance that the suit filed by the respondent in O.S.No.610 of 1987 against their vendors, was dismissed by the High Court, by judgment and decree dated 02 January, 2008 in A.S.Nos.727 of 1999, 699 of 1999 and 31 of 2000.

9. The plaint in O.S.No.610 of 1987 or the decree passed by the Trial Court does not contain the names of the petitioners. The petitioners are stated to be the subsequent purchasers. The petitioners have not given the details of the property purchased by them, so as to enable this Court to compare the schedule of property for the purpose of deciding as to whether the very same property was the subject matter in the earlier litigation.

10. While considering the request to strike off the plaint, the Court is not expected to conduct a fishing enquiry. The plaint should contain materials to arrive at a conclusion that the subsequent litigation is nothing but a re-litigation.

11. The petitioners wanted the plaint to be axed by invoking the jurisdiction under Article 227 of the Constitution of India. The petitioners should plead and prove that the properties involved in the earlier suit and the present suit are one and the same. It is true that the names of the petitioners were shown in the appellate decree dated 02



January, 2008. The memorandum of grounds of Civil Revision Petition does not contain any indication with respect to the association of the predecessors-in-interest of the petitioners in the earlier suit, the details of their purchase of property and the details of the individual property purchased by each of the petitioners. The petitioners should assist the Court to decide the issue as to whether the subsequent suit is an attempt to re-litigate the matter. The materials produced by the petitioners are not sufficient to arrive at a conclusion.

12. The learned Senior Counsel for the petitioners and respondent cited several judgments in support of their respective contentions. Since legal position is not in dispute, I do not consider it necessary to deal with those judgments.

13. The petitioners are having an equally efficacious remedy by filing an application under Order 7 Rule 11 of Code of Civil Procedure before the Trial Court. The petitioners have not made out a case to bypass the statutory remedy available to them. I am, therefore, of the view that the petitioners must approach the Trial Court.

14. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

15. However, I make it clear that the dismissal of this Civil Revision Petition would not stand in the way of filing an application under Order 7 Rule 11 of Code of Civil Procedure before the Trial Court.

Sd/-

The Assistant Registrar(T&P)

/True copy/

Sub-Assistant Registrar

To

The Fourth Additional District Court,
Madurai.

+1cc to Mr.M.S.Suresh Kumar, Advocate SR.No.41550
+1cc to Mr.V.R.Shanmuganathan, Advocate SR.No.42105

sml

Sm:IV:SAR II:11.08.2015:3P/4C

Order made in
C.R.P. (PD) (MD) No.2140 of 2014
and MP. (MD) No.1 of 2014

Dated:-
27.07.2015