

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.12.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2740 of 2016

1.Dr.R.Jagan

2.R.Tamaraiselvan

: Petitioners

versus

Visalakshi

: Respondent

PRAYER: Revision filed against the order dated 24.3.2016, in I.A.No.85 of 2015 in O.S.No.695 of 2012 on the file of the V Additional District and Sessions Judge, Coimbatore.

For petitioners :: Mr.C.R.Prasannan

For respondent :: Mr.P.Valliappan

ORDER

The unsuccessful petitioners in I.A.No.85 of 2015 in O.S.No.695 of 2012 on the file of V Additional District and Sessions Judge, Coimbatore, are the petitioners in this civil revision petition, challenging order passed by the learned Trial Judge, dismissing the application filed under Order 7 Rule 11 CPC to reject the plaint.

The facts:-

2. The respondent filed a suit in O.S.No.695 of 2012 before the V Additional District Court, Coimbatore, seeking a decree of declaration and consequential injunction. The petitioners filed written statement and contested the suit on multiple grounds, which includes a plea of res

judicata, on account of the decree passed in the earlier suit in O.S.No.3826 of 1996 on the file of I Additional District Munsif Court,, Coimbatore, involving the predecessor in interest of the respondent.

3. The petitioners, long after filing the written statement, filed an application in I.A.No.85 of 2014 to reject the plaint, invoking Order 7 Rule 11 CPC. Before the Trial Court, the petitioners contended that in view of the judgment and decree dated 6 February 2011 in O.S.No.3826 of 1996, the present suit filed by the successor in interest of the plaintiff in the earlier suit is not maintainable.

4. The respondent in her counter affidavit contended that present suit is maintainable notwithstanding the observation made on title by the Trial Court earlier in a suit for injunction.

5. The learned V Additional District and Sessions Judge dismissed the application with an observation that the plaint cannot be axed at the threshold. The said order is under challenge in this civil revision petition.

Rival submissions:-

6. The learned counsel for the petitioners by placing reliance on the observation made by the learned I Additional District Munsif, Coimbatore, in O.S.No.3826 of 1996, contended that even though it was a simple suit

for injunction, the Trial Court considered the issue of title and rendered a finding. The said finding has become final. According to the learned counsel, in view of the finality reached to the issue, the present suit filed for declaration is not maintainable. Though several contentions were taken by the petitioners in support of their plea to reject the plaint, the Trial Court without supplementing reasons, dismissed the application.

7. The learned counsel for the respondent while justifying the order passed by the learned Additional District Judge, contended that the question of res judicata is a question to be answered by the Trial Court on appreciation of evidence. According to the learned counsel, there is no question of rejecting the plaint on the basis of observation made on title in an earlier suit for injunction.

Discussion:-

8. The petitioners wanted the Trial Court to axe the suit in O.S.No.695 of 2012 on account of the earlier judgment and decree in O.S.No.3826 of 1996 on the file of I Additional District Munsif, Coimbatore. The said suit was filed by Tmt. Janaki Ammal, grandmother of the petitioner's husband, for injunction. There was no issue framed with respect to title. Even then the Trial Court made certain observations with regard to title and held that Tmt.Janaki Ammal was only a tenant.

9. The petitioners in the application in I.A.No.85 of 2015 contended that the present suit is barred by principles of res judicata. Though the petitioners have taken several contentions in the memorandum of grounds of civil revision petition, the fact remains that no such contentions were taken in the affidavit filed in support of the interlocutory application in I.A.No.85 of 2015. The petitioners contended that Tmt.Janaki Ammal continued only as a tenant and as such, the present suit for declaration is not maintainable.

10. There was no specific issue framed by the learned I Additional District Munsif in O.S.No.3826 of 1996 with regard to title. When there was no such issue, the parties were not expected to produce materials to enable the Court to adjudicate the issue on merits.

11. While considering an application under Order 7 Rule 11 CPC, the Court has to take into consideration the plaint averments in its entirety. The defence taken by the defendants cannot be looked into to decide as to whether the plaint should be axed at the threshold. In the subject case, the petitioners filed written statement in February 2013. It was only when the suit was ripe for trial, the petitioners filed application in I.A.No.85 fo 2014. It was filed on 29 January 2015. It is true that there is no limitation for filing application under order 7 rule 11 CPC. Even then it should be filed within a

reasonable period. When the suit is ripe for trial, there is no question of considering the application under Order 7 rule 11 CPC to reject the plaint.

12. There are triable issues in the subject suit. The Trial Court has to decide as to whether there were materials produced before the learned I Additional District Munsif, Coimbatore, to give a finding on title. It is trite that in normal course, it would not be proper for the Trial Court in a suit for injunction to give a finding on title. In order to give a factual finding with regard to title, there must be pleadings. The Court must frame an issue and the parties should be permitted to lead evidence to substantiate their respective case.

13. The Trial Court in the present suit in O.S.No.695 of 2012 is obliged to decide as to whether findings recorded in O.S.No.3826 of 1996 would operate as res judicata. Such finding could be given only after trial. There is no question of axing the plaint at the threshold. In view of the background facts, I am of the view that the Trial Court was correct in dismissing the interlocutory application. I do not find any error or illegality in the said order warranting interference by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

K.K.SASIDHARAN, J.

(tar)

14. In the upshot, I dismiss the civil revision petition. No costs.
Consequently, C.M.P.No.14093 of 2016 is also dismissed.

01.12.2016

Index:Yes/no
tar

To
The V Additional District and Sessions Judge, Coimbatore .

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