

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) No.3018 of 2016

and

C.M.P.No.15253 of 2016

Sirajudin

... Petitioner/1st Defendant/
Petitioner

Versus

1. Anjuman e Islamia Jamiya Masjid Sabah,
Pettai, Namakkal by President
K.M.Shiek Naveeth,
Son of Khadar Mohideen.

2. B.Jakir Basha

... Respondents/Plaintiffs/
Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Fair and Decretal order dated 23.08.2016 passed in I.A.No.193 of 2016 in O.S.No.492 of 2014 on the file of Additional District Munsif Court of Namakkal.

For Petitioner : Mr.T.K.Thirumalaisamy

ORDER

The petitioner filed the application before the Additional District Munsif, Namakkal, in I.A.No.193 of 2016, invoking Order VII Rule 11 of Civil Procedure Code. This application was dismissed by the learned trial Judge. The said order is under challenge in this Civil Revision Petition.

2. The learned counsel for the petitioner contended that in view of the Judgment and decree in LPA Nos.160 to 162 of 2001, the present suit is not maintainable. The issue raised in the present suit has already been decided by this Court in the Judgment dated 30.03.2004 in LPA Nos.160 to 162 of 2001. In short, it is the contention of the learned counsel that the present suit is nothing but relitigation.

3. The learned counsel for the first respondent would submit that the suit in O.S.No.492 of 2014 was filed by the first respondent, for declaration and permanent injunction. The first respondent in the said suit disclosed the earlier judgment in LPA Nos. 160 to 162 of 2001. According to the first respondent, they are still in possession of the

property and as such he is entitled to the decree as prayed for in the suit.

4. The petitioners have come up with a contention that in view of the Judgment and decree in LPA Nos.160 to 162 of 2001, the present suit is not maintainable.

5. The documents on record indicates one of the defendants earlier filed application in I.A.No.656 of 2015 to reject the plaint. The said application was dismissed by the trial Court. The order was unsuccessfully challenged in CRP.NO.3241 of 2016, before this Court. Since, the prayer to reject the plaint has already been rejected by the trial Court, and upheld by this Court, in CRP (PD) No.3241 of 2015, the subsequent application by another party is not maintainable for the very same relief.

6. In the upshot, I dismiss this Civil Revision Petition. However, I make it clear that the dismissal of the Civil Revision Petition would not stand in the way of the petitioner from taking up all the defenses available to him. No costs. Consequently, connected Miscellaneous Petition is closed.

15.11.2016

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K.K.SASIDHARAN, J

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To

The Additional District Munsif Court, Namakkal.

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