

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-12-2016

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.3791 of 2016

and

C.M.P.No.19338 of 2016

1. S.Tejraj

2. T.Anitha Bai

.. Petitioners

Vs.

A.Gomathi

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying against the fair and decretal order dated 29.04.2016 in I.A.No.819 of 2015 in O.S.No.268 of 2014 on the file of the District Munsif Court, Thiruvottiyur.

For petitioners : Mr.M.Sunil Kumar

For respondent : M/s.R.Kamalarani (caveator)

ORDER

The defendants in O.S.No.268 of 2014 have filed this revision petition challenging the order dismissing the application filed by them under Order 7 Rule 11 CPC.

2. The case of the revision petitioners/defendants is that the respondent/plaintiff has filed the present suit for permanent injunction suppressing the fact that there was already a decree obtained by the defendants in the earlier suit in O.S.No.188 of 2006 against the vendor of the plaintiff. The

respondent/plaintiff seems to have purchased the property pending the earlier 'lis'. It is the contention of the revision petitioners/defendants that despite knowing the fact that the dispute has already reached finality in the earlier suit, the plaintiff has filed the present suit only to spite the defendants. Hence, the application under Order 7 Rule 11 CPC was filed by the defendants to reject the plaint, as the suit itself is barred under Section 11 of the CPC. It is trite law that while deciding the application under Order 7 Rule 11 CPC, the plaint averments have to be gone into. Though the vendor of the plaintiff was a party to the earlier proceedings and a decree was obtained by the revision petitioners herein against the vendor, the plaintiff was not a party to the earlier suit. Whether the present suit is barred by res-judicata or not, had to be decided only after trial, as the application under Order 7 Rule 11 CPC can be decided only based on the plaint averments and not based on the documents. The learned District Munsif had rightly dismissed the application. This Court also sees no infirmity in the impugned order and the same is confirmed.

3. Accordingly, the revision petition is dismissed. However, considering the limited scope of the prayer made in the plaint, the learned District Munsif, Thiruvottiyur is directed to dispose of the suit in O.S.No.268 of 2014, on or before 30.04.2017. The parties are directed to co-operate for the early disposal of the suit. No costs. Consequently, C.M.P. is closed.

08-12-2016

Copy to

The District Munsif, Thiruvottiyur.

PUSHPA SATHYANARAYANA,J

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