

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 5.4.2016.

CORAM

THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

Civil Revision Petition (PD) No.597 of 2016
and
C.M.P.No.3185 of 2016

1. Ramasamy
2. Parameswari
Petitioners

vs.

1. Ganesan
2. Senthilkumar
Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 9.12.2015 made in I.A.No.612 of 2002 in O.S.No.39 of 2012 passed by the Principal District Munsif, Namakkal.

For petitioners : Mr.R.Subramanian

For Respondents : Mr.N.Manokaran

ORDER

Heard the arguments advanced on both sides.

2. This revision has been filed against the order dismissing an application filed under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint.

3. The petitioners in the revision are the defendants in the suit in

O.S.No.39 of 2012 filed on the file of the Principal District Munsif, Namakkal for declaration that a particular settlement deed executed in favour of the vendors of the revision petitioners/defendants is null and void. The revision petitioners filed an application under Order VII Rule 11 to reject the plaint contending that they had already filed a suit for bare injunction in which issues regarding validity of the settlement deed were framed and decided finally and that hence, the present suit is barred by res judicata.

4. So far as the bar of res judicata is concerned, that too when the issue regarding the validity of a document was raised and decided in a previous suit for bare injunction, the same has to be raised as an issue in the subsequent suit so that the court can, on evidence, arrive at a conclusion whether the very same issue arose in the previous suit directly and substantially, in which event alone, the bar of res judicata will get attracted. It is also an admitted fact that an appeal preferred against the decree passed in the previous suit is pending. As such, the appeal shall be construed to be a continuation of the suit.

5. Moreover, the bar of res judicata does not fall under any of the clauses of Order VII Rule 11 of the Code of Civil Procedure dealing with the res judicata of plaint. If any decision is to be made based on

the plea to be made by the defendant and based upon the evidence to be adduced, either in the form of oral evidence or documentary evidence, then, it shall not be a ground for rejection of the plaint under Order VII Rule 11.

6. The same view has been expressed by the Honourable Supreme Court in VAISH AGGARWAL PANCHAYAT v.INDER KUMAR AND OTHERS (2015 (6) CTC 555) wherein it has been held thus:-

"The crux of the matter is whether, in the obtaining factual matrix, the High Court should have applied the Principle of res judicata. The cause of action for filing the suit is different. The grounds urged in the Suit, as we find, are also quite different. Even if the Plaint is read keeping in mind the cleverness and deftness in drafting, yet it is not prima facie discernible from the Plaint that it lacks any cause of action or is barred by any law. On a perusal of the Plaint alone it cannot be said that the Suit is barred by the Principle of res judicata."

7. Hence, this court comes to the conclusion that the order

passed by the Trial Court dismissing the application for rejection of the
plaint filed by the revision petitioners before the Trial Court cannot be
found fault with. There is no merit in the revision and the same
deserves dismissal. Accordingly, the civil revision petition is
dismissed. No costs. The connected miscellaneous petition is also
dismissed.

5.4.2016.

Index: Yes.
Internet: Yes.
ssk.

To

Principal District Munsif, Namakkal.

P.R.SHIVAKUMAR, J.

Ssk.

C.R.P.(PD) No.597 of 2016

5.4.2016.