

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.77 of 2016
and C.M.P.No.388 of 2016

S.Devarajan .. Petitioner/1st Defendant

Vs.

1.Arulmigu Atcheeswararswamy Thirukoil
Achirupakkam, Rep. by Executive Officer
Achirupakkam Village and Post
Madurantakam Taluk 603 313. .. 1st Respondent/Plaintiff

2.R.Chandru .. 2nd Respondent/2nd Defendant

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.06.2015 made in I.A.No.418 of 2014 in O.S.No.113 of 2014 on the file of the Sub-Court, Madurantakam.

For Petitioner : Mr.S.Ramesh

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 29.06.2015 made in I.A.No.418 of 2014 in O.S.No.113 of 2014 on the file of the Sub-Court, Madurantakam.

2.The first respondent herein as a plaintiff filed a suit in O.S.No.113 of 2014 for recovery of B schedule property and permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the A schedule property. The first defendant/revision petitioner herein has filed an application in I.A.No.418 of 2014 under Order 7 Rule 11 of C.P.C. for rejection of plaint stating that the plaintiff has already filed a suit in O.S.No.206 of 1990 against the first defendant and others, which was dismissed for default on 22.09.1998. Thereafter, the plaintiff has not taken any steps. Now the present suit is filed for the same relief. Therefore, he prayed for rejection of plaint on the ground of resjudicata, estoppel non joinder of necessary parties and pecuniary jurisdiction. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the first defendant.

3.Even though the learned counsel for the revision petitioner/1st defendant raised so many defence in this petition, at the time of argument, he submits that the suit is hit by Order 9 Rule 9 C.P.C., because once the first respondent herein has filed the

suit for same relief in previous suit in O.S.No.206 of 1990, which was dismissed for default, he has not filed any application to restore the same. Again the plaintiff has filed the present suit for the same relief, which is hit by Order 9 rule 9 C.P.C. Therefore, he prayed for allowing the revision.

4.At the time of admission, argument of the learned counsel for the revision petitioner is heard in length.

5.It is well settled dictum of the Honourable Apex Court that while deciding an application under Order 7 Rule 11 C.P.C., averments in the plaint and documents alone can be looked into.

6.On perusal of typed set of papers and plaint, it reveals that filing of earlier suit has not been mentioned. But in the affidavit filed by the first defendant in support of the application, it was stated that the earlier suit in O.S.No.206 of 1990 has been filed against the first defendant and others for declaration of title, recovery of possession and mesne profits thereof. The present suit in O.S.No.113 of 2014 is filed for recovery of B schedule property and for permanent injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment of A

schedule property.

7. In the counter filed by the first respondent/plaintiff, it was stated that only through the present application, he came to know that the earlier suit was dismissed for default on 22.09.1998 and he has also admitted the filing of O.S.No.206 of 1990. Further, it was stated that since the earlier suit was dismissed for default, no question of resjudicata and estoppel arise.

8. As already stated that while deciding an application under Order 7 Rule 11 C.P.C., averments in the plaint alone can be looked into. Neither the defence nor the defendant's document can be looked into. It is to be noted that the suit has been filed by the temple through its Executive Officer. Under such circumstances, whether the present suit barred by Order 9 Rule 9 C.P.C. has to be decided only at the time of trial after letting oral and documentary evidence and cannot decide at this stage. The trial Court has considered the above aspect in proper perspective manner and came to the correct conclusion, therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The civil revision petition deserves to be dismissed and it is hereby dismissed.

9. In the result, the Civil Revision Petition stands dismissed. It is left open to the revision petitioner to raise all his defence at the time of trial. No costs. Consequently, connected Miscellaneous Petition is closed.

18.01.2016

Index: Yes/No

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To

The Sub-Court, Madurantakam.

R.MALA,J.

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