



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

WEB COPY

CRP (MD).No.583 of 2016 and CMP(MD).No.2572 of 2016

Boomadevi : Petitioner

Vs.

Rukumani : Respondent

Prayer: This Civil Revision Petition is filed under Section Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.18 of 2014 in O.S.No.3 of 2013 dated 01.12.2015 on the file of the Additional District Court, Ramanathapuram.

For Petitioner

: Ms. R.T. Arivukumar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.18 of 2014 in O.S.No.3 of 2013, dated 01.12.2015, on the file of the Additional District Court, Ramanathapuram.

2. The revision petitioner is the first defendant in the suit in O.S.No.3 of 2013. The respondent herein filed a suit for declaration and injunction restraining the petitioner from not to alienate the property. The petitioner filed I.A.No.18 of 2014, for rejection of the plaint in O.S.No.3 of 2013, under Order 7 Rule 11(d) of CPC.

3. According to the petitioner, she filed a suit in O.S.No.162 of 2009 for permanent injunction and the said suit was decreed ex parte. Now, the respondent has filed suit in O.S.No.3 of 2013, with regard to very same subject matter. The suit filed by the respondent was hit by res-judicata and the suit is not maintainable and is barred as per Section 11 of CPC. The respondent filed counter affidavit and opposed the same. According to the respondent, at the time of filing of the suit, the suit property belonged to the petitioner's husband. Subsequently, the petitioner's husband settled the property on the respondent, who is the sister and she became absolute owner and she is enjoying the property. She filed suit for declaration and injunction restraining the petitioner from alienating the property. The suit filed by the petitioner in O.S.No.162 of 2009 is only for bare injunction. The suit filed by the respondent is for declaration and injunction and it is based on the different <https://hcservicescourts.gov.in/hcservices1>. The learned Judge considering all the facts and the materials available on record dismissed the application. Against that present Civil Revision Petition is filed.



4. The learned counsel for the petitioner contended that the learned Judge erred in holding that the principle of res-judicata is not a ground for rejecting the suit under Order 7 Rule 11 of CPC. The learned Judge failed to see the subject matter of earlier suit and present suit is one and the same and therefore, the plaint in the present suit is liable to be rejected.

5. I have heard the learned counsel appearing appearing for the petitioner and perused the materials available on record.

6. From the materials available on record it is seen that the petitioner filed suit for permanent injunction. The respondent did not contest the suit and ex parte decree was passed. The respondent has filed the present suit in respect of the very same property. But, she is claiming the different relief. The respondent is claiming declaration of title and injunction restraining the petitioner not to alienate the property. Therefore, the issue involved in the earlier suit and issue involved in the present suit are different and the present suit is based on different cause of action. In the circumstances, the suit filed by the respondent is not hit by principle of Res-judicata.

7. The learned Judge considered all the materials on record in proper perspective and has given valid and cogent reasons for dismissing the Interlocutory Application. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

8. In the result, the Civil revision petition is dismissed confirming the impugned order dated 01.12.2015 made in O.S.No.3 of 2013, on the file of the Additional District Court, Ramanathapuram. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The Additional District Judge, Ramanathapuram.
+1cc to Mr.R.T.Arivukumar, Advocate Sr.No.14840
trp
AA/SKS-RR/29.03.2016/2p-3c

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