

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1 of 2014
& M.P.No.1 of 2014

V.Kamala

... Petitioner

Vs.

1.S.M.A.Basheer Ahmed
2.K.A.Rasheeda Beevi
3.M.Rahima Beevi
4.S.M.A.Nazerulla
5.S.M.A.Siddique

.. Respondents

All of them are represented by
Power Agent Mr.S.Muruganatham

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 05.08.2013 made in I.A.No.641 of 2013 in O.S.No.254 of 2013 on the file of the Additional District Munsif Court, Alandur.

For Petitioner : Mrs.Hema Sampath,
Senior Counsel for Mrs.R.Meenal
For Respondents : Mr. C.T.Mohan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 05.08.2013 made in I.A.No.641 of 2013 in O.S.No.254 of 2013 on the file of the Additional District Munsif Court, Alandur.

2. The petitioner is the first defendant and respondents are the plaintiffs in O.S.No.254 of 2013 on the file of the Additional District Munsif Court, Alandur. The respondents filed suit against the petitioner and her son for permanent injunction restraining the petitioner and her son from encroaching the suit schedule property and thereby disturbing the respondents' peaceful possession and enjoyment of the suit schedule property. The petitioner filed I.A.No.641 of 2013 under Order VII Rule 11 of C.P.C. for rejection of plaint on the ground that the suit is hit by the principles of resjudicata.

3. According to the petitioner, with regard to suit property, the petitioner filed O.S.No.39 of 1999 against the father of the respondents for injunction. The said suit was decreed. Challenging the same, father of the respondents filed A.S.No.63 of 2009 on the file of the Subordinate Court, Tambaram and the same was

dismissed. Against the same, father of the respondents filed S.A.No.2002 of 2011 on the file of this Court and the same was dismissed. The father of the respondents did not file any S.L.P. and judgment and decree passed in O.S.No.39 of 1999 have become final. In the circumstances, the present suit filed by the respondents is hit by the principles of resjudicata and the suit is barred by law.

4. The respondents filed counter affidavit and denied all the averments made in the affidavit filed in support of the said application. According to the respondents, earlier suit filed by the petitioner in O.S.No.39 of 1999 relates to the property situated in L.I.C. nagar measuring 3040 sq.ft. comprised in S.No.39/1-B and 40 of Pallikaranai village, Tambaram Taluk, Kanchipuram District. The suit property in the present suit is different property and is situated in S.No.372/1A 1G in Sunnambu Kolathur village, now Madipakkam II, Sholinganallur Taluk. The vendor of the petitioner illegally included S.No.372/1A 1G, Sunnambu Kolathur village and formed lay out. The petitioner tried to trespass into the suit property belonging to the respondents and on the date of trespass, new cause of action has arisen and therefore, the suit filed by the respondents is maintainable.

5. Before the learned Judge, both the petitioner and

respondents did not let in any oral evidence. The petitioner marked five documents as Exs.P1 to P5. The respondents marked twelve documents as Exs.R1 to R12.

6. The learned Judge considering the averments made in the plaint, affidavit, counter affidavit and documents filed by the parties, dismissed the application.

7. Against the said order of dismissal dated 05.08.2013 made in I.A.No.641 of 2013, the present Civil Revision Petition is filed by the petitioner.

8. Heard both sides and perused the materials available on record.

9. The learned Senior Counsel appearing for the petitioner referred to paragraphs 7 to 9 of the judgment of this Court dated 30.09.2011 made in S.A.No.1002 of 2011. A reading of the portion of the said judgment reveals that the petitioner filed earlier suit in respect of the property in Plot No.214, L.I.C. nagar in S.No.39/1-B and 40, Pallikaranai village, Tambaram Taluk, Kancheepuram District. Paragraphs 7 to 9 in the said judgment are extracted

hereunder:

"7. The contention of the appellant is that he is having property in S.No.372/1A which was later sub-divided as S.No.372/1A and 1B and in those properties, the plaintiff is claiming right by virtue of the decree passed in the suit.

8. The contention of the learned counsel for the appellant cannot be sustained. Admittedly, the suit property is in S.No.39/1B and 40 situate in Pallikaranai Village, Tambaram Taluk. As per Ex.B1, the sale deed in favour of the defendant is in respect of property in S.No.372/1, which was later sub-divided as S.No.372/1A and 1B situate in Kolathur Village now Madipakkam II. Therefore, both the properties are in different survey numbers and different villages. Further, as per the boundary recitals in Ex.B1, the eastern boundary of the property purchased in LIC Nagar and as per the plaint allegations, the suit property is in LIC Nagar. Therefore, it cannot be contended by the appellant that the respondent is claiming any right in the property purchased by the appellant on the basis of Ex.B1. Even according to the appellant, there is road in between the suit property and the appellant's property and therefore, having regard to the fact that the survey number of the suit

property is different from that of the survey number of the property claimed by the appellant and both are in different village, it cannot be contended that the plaintiff is claiming right over the property belonging to the appellant.

9. Further, the lower Appellate Court has rightly held that the decree passed in the earlier suit between the third parties are not binding and the decree passed in the earlier suit was not marked and in the absence of the description of property which was the subject matter of the earlier suit, it cannot be stated that the decree passed in the other suit is binding on the parties. Further, there is no necessity for the plaintiff/respondent to pray for declaration whenever her right is questioned by the other side. Admittedly, the respondent plaintiff based her right on the sale deed, Ex.A1 and merely because a doubt was raised regarding her title, it is not necessary for the respondent/plaintiff to file a suit for declaration and in a suit for injunction, also the Court can incidentally give a finding regarding title. As a matter of fact, in the judgment in ANATHULA v. P.BUCHI REDDY (DEAD) BY LRS. AND OTHERS (2008 (4) SCC 594), the Honourable Supreme Court laid down the guidelines and also held that in a suit for injunction the Court need not go into the issue of title in detail. In this case, the plaintiff

produced the sale deed in her favour and also prior title deeds and marked them as Exs.A1, A4 and A5. Therefore, on the basis of the documents filed, the Courts are competent to give an incidental finding regarding the title in a suit for injunction.”

10. From the above judgment, it is seen that the petitioner has filed O.S.No.39 of 1999 for injunction against the father of the respondents in respect of the property in S.No.39/1-B in L.I.C. nagar. The father of the respondents claimed title over the property in S.No.372/1A and 1G situate in Sunnambu Kolathur village, now Madipakkam II, Sholinganallur Taluk. Considering Ex.B1 sale deed filed by the father of the respondents, this Court in S.A.No.1002 of 2011 held that the properties claimed by the petitioner and father of the respondents are different properties and dismissed the second appeal. In the present suit, the respondents are not claiming any injunction against the petitioner for the property in S.No.39/1-B in L.I.C. Nagar. The respondents are claiming injunction in respect of the property in S.No.372/1A and 1G situate in Sunnambu Kolathur village.

11. In view of the above facts, the contention of the learned Senior Counsel for the petitioner that the present suit is hit by the

principles of resjudicata is without merits. The respondents have filed suit for injunction restraining the petitioner from interfering with their possession. It is for the respondents to prove their possession by letting in oral evidence and filing documents. In the circumstances, the learned Judge has considered all the above facts and dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 05.08.2013.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

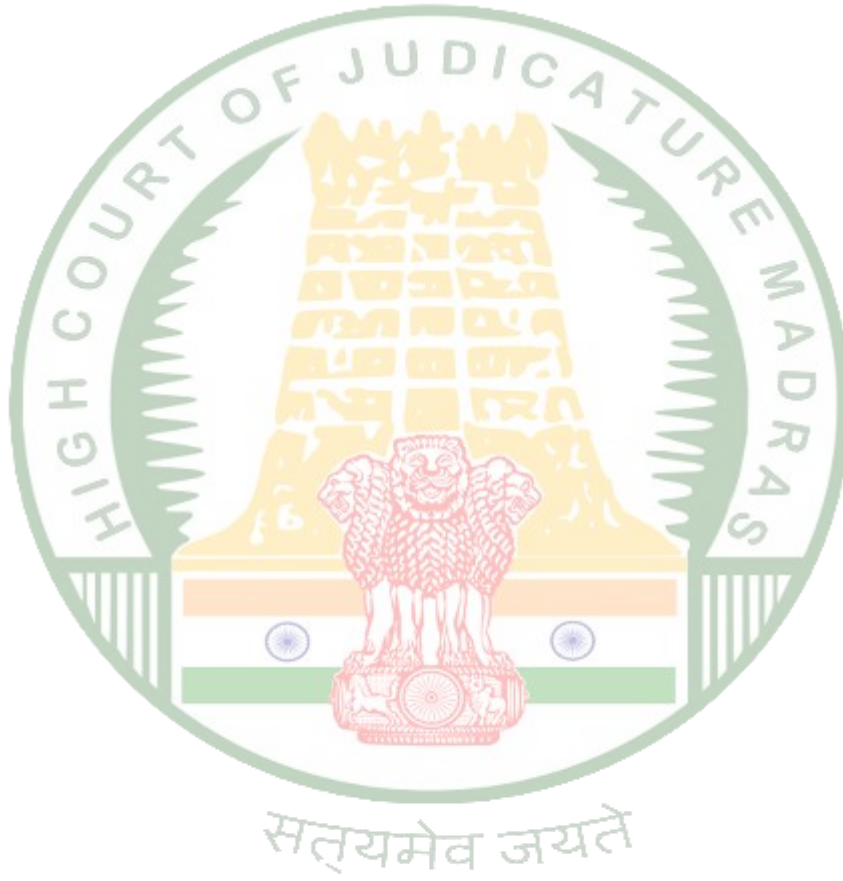
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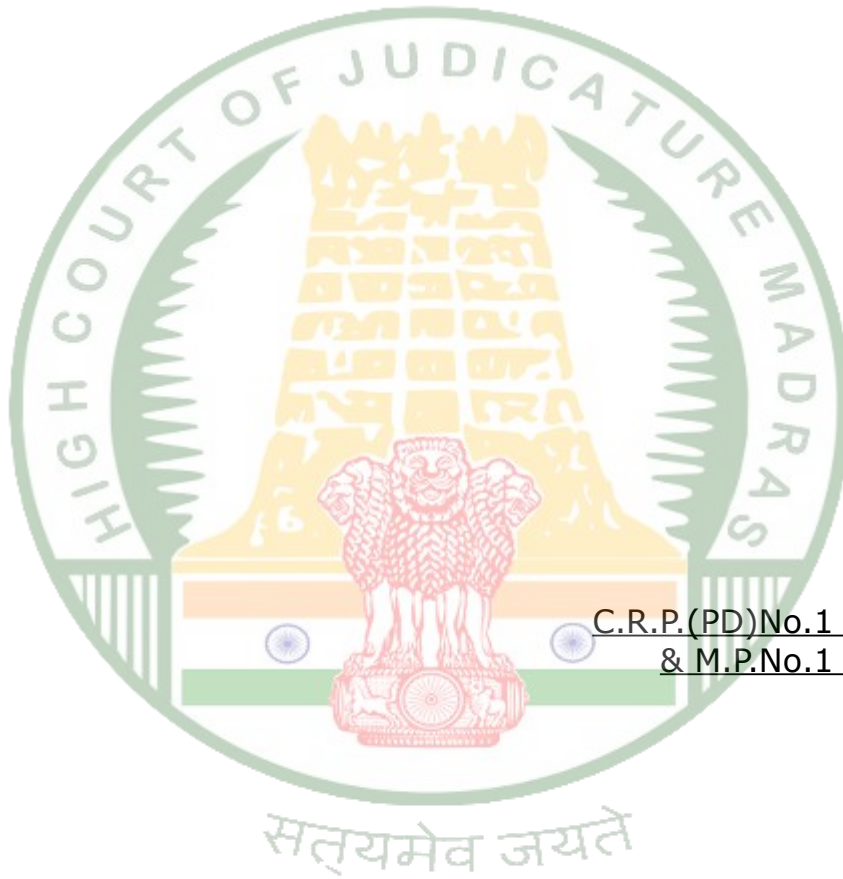
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V.M.VELUMANI, J.

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