

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.2487 OF 2017
AND CMP NO.11793 OF 2017

1.Raghavan
2.Sudamani

... Petitioners

Vs.

1.Sri Anjaneya Alaya Trust
Rep. by Mr.A.Subramanya
No.1/1, Agraharam East Street,
Singanallur, Coimbatore - 641 005.

2.A.Subramanya
3.S.A.Sethumadhavan
4.S.A.Gurujana
5.S.S.Mohan
6.S.Ramachandra
7.A.R.Srinivasan
8.S.S.Ravi
9.S.V.Gururaj

... Respondents

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 06.02.2017 passed in I.A.No.707/2012 in O.S.No.637/2008 on the file of the II Additional Subordinate Court, Coimbatore.

For Petitioners : Mr.R.Ramachandran

ORDER

This Civil Revision Petition is directed against the dismissal of the interlocutory application filed under Order VII Rule 11 of the Civil Procedure Code, dated 06.02.2017.

2. The petitioners are the defendants in the suit. Respondent nos.1 to 9 are the plaintiffs. The plaintiffs have filed the above suit for delivery of possession of the suit property to the first plaintiff Trust and for mesne profits. In the plaint, it is stated that in O.S.No.3 of 1987, the First Additional District Judge, Coimbatore, passed a decree on 05.05.1988 setting aside the indiscriminate alienation and also passed decree for framing of a Scheme for running of the proper administration of the first plaintiff Trust. Against which, an appeal was filed in A.S.No.1071 of 1988. This Court, by its order dated 29.06.2004 disposed of the appeal with a direction to the plaintiffs in O.S.No.3 of 1987, to furnish list of Trustees before the Trial Court. Accordingly, respondent nos.2 to 9 / plaintiff nos.2 to 9 were appointed as Trustees of the first respondent - Trust.

3. The Trial Court as well as this Court has set aside the alienations made by the erstwhile trustee, on the basis of alleged sale agreement dated 02.04.1993. However, it is contended that the Trial

Court in O.S.No.3 of 1987 has set aside all the alienations and the High Court has granted injunction restraining the erstwhile trustee from alienating the properties on 30.04.1991. The same was confirmed by an order of this Court dated 25.06.2004. After the orders of this Court, the revision petitioners have filed a suit for bare injunction against the respondents. Therefore, the first respondent Trust passed a resolution dated 31.05.2008 against the petitioners and has decided to file a suit for delivery of possession and damages for the illegal occupation.

4. The contention of the petitioners is that there is no cause of action in filing the suit and if at all the respondents / plaintiffs seek possession, they should file an execution petition in O.S.No.3 of 1987. Since E.P.No.47 of 2010 is already pending, the present suit for the same relief cannot be maintained.

5. Per contra, the respondents filed a counter affidavit stating that the present suit was filed against the claim of the petitioners that they are in possession pursuant to the sale agreement entered into by them with one late Krishna Rao son of late S.A.S.Rao, defendant in O.S.No.3 of 1987. The Execution Petition filed pursuant to the decree in O.S.No.3 of 1987 and the present suit are based on different cause of

action and therefore, the respondents would contend that the plaint cannot be rejected.

6. Considering the factual aspects of the matter, the Trial Court has come to the conclusion that the petitioners have not proved by any documents that there is no cause of action to main the suit and the suit is hit by *resjudicata*.

7. Admittedly, the petitioners were not parties to the previous suit. It is well established by the plaintiffs that the cause of action has arisen pursuant to the sale agreement entered into between strangers. For rejection of plaint, the averments made therein is germane to arrive at a conclusion. As long as the plaint averments reveals cause of action, the suit is maintainable. The issue res-judicata is again a mixed question of law and facts. Therefore, viewing from any angle, the present suit does not fall within the ambit of Order VII Rule 11 of the Civil Procedure Code.

8. The Trial Court has rightly found that the petitioners have not set out sufficient reasons for rejecting the plaint and the issues raised by them are triable issues. Therefore, the dismissal of the interlocutory

application filed under Order VII Rule 11 of the Civil Procedure Code does not suffer from any illegality and accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

11.12.2017

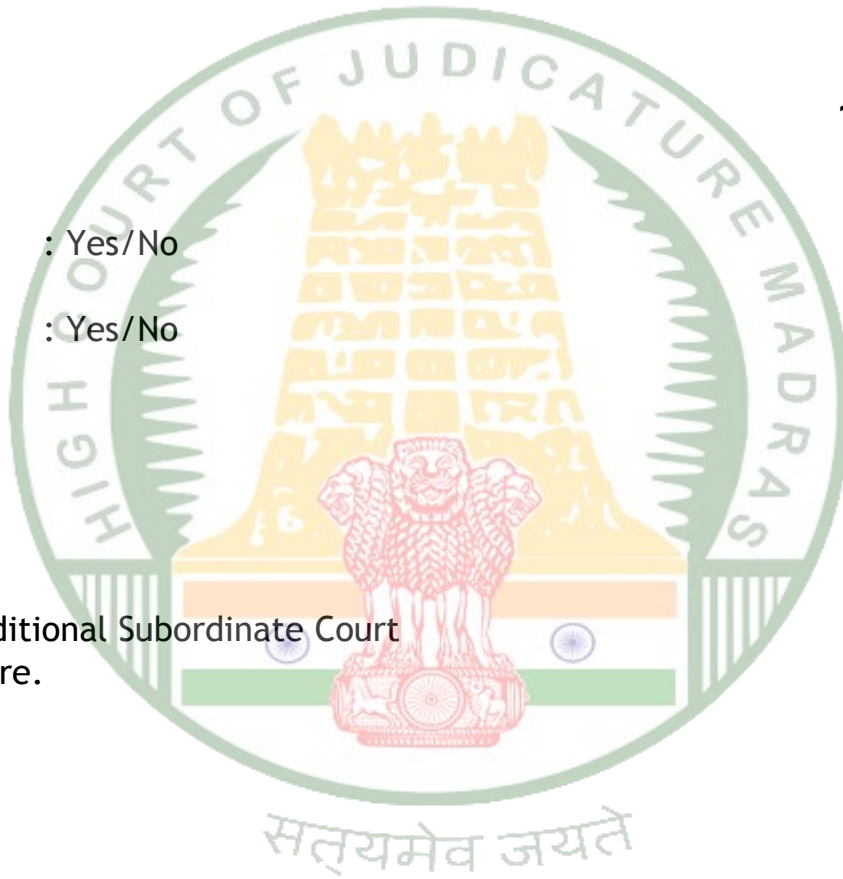
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To

The II Additional Subordinate Court
Coimbatore.



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M.GOVINDARAJ, J.

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