

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.282 of 2017
and
C.M.P.No.1244 of 2017

Shanmugam

.. Petitioner

Vs.

Muniammal

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 14.07.2016 made in I.A.No.1761 of 2014 in O.S.No.11 of 2011 on the file of the Principal District Munsif Court, Gingee.

For petitioner : Mr.R.Agilesh

ORDER

The sixth defendant in the suit, is the revision petitioner herein challenging the order dismissing the application under Order 7 Rule 11 CPC to reject the plaint. The suit in O.,S.No.117 of 2011 is filed for declaration that the judgment and decree in O.S.No.229 of 2001, is null and

void. There was also another suit in O.S.No.494 of 1992 filed by the revision petitioner. The said O.S.No.494 of 1992 was decreed on 24.12.2003. While the said suit was pending, there is one other suit filed by the revision petitioner in O.S.No.229 of 2001 without making the respondent/plaintiff herein as a party, which was decreed. The present suit in O.S.No.117 of 2011 is filed for declaration that the judgment and decree in O.S.No.229 of 2001 is not binding on the respondent/plaintiff. In the cause of action paragraph of the present plaint, it is specifically stated that the decree in O.S.No.229 of 2001, dated 02.09.2010, obtained in the absence of the present plaintiff, is said to be the cause of action for the present suit. The sixth defendant has filed an application contending that it is only re-litigation, as the plaintiff has not challenged the first suit in O.S.No.494 of 1992, which was decreed. Further, the present suit is only based on the second suit filed by the revision petitioner herein without making the plaintiff herein as a party, which has given rise to the cause of action for filing the present suit. The contention of the learned counsel for the revision petitioner that since the plaintiff herein is not party to the said decree, it may not be binding on the plaintiff and hence, the present suit has to be dismissed, cannot be sustained, as the very cause of action is only based on the said suit in O.S.No.494 of 1992. Therefore, the trial Court has rightly dismissed

the application to reject the plaint, which does not warrant any interference.
The Civil Revision Petition is accordingly dismissed. No costs. C.M.P. is
closed.

07.02.2017

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Copy to

The Principal District Munsif, Gingee.

PUSHPA SATHYANARAYANA, J

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