

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.2905 OF 2017

AND

CMP NO.13737 OF 2017

Raja

... Petitioner

Vs.

- 1.Babu
- 2.Dhananjayan
- 3.Kumaresan
- 4.Karuna
- 5.Meganathan
- 6.Murugan
- 7.Mohan
- 8.Geetha
- 9.Rajasekar
- 10.Mohankumar
- 11.Vadivel
- 12.Ranganathan
- 13.Nannan
- 14.Elumalai
- 15.Saravanan
- 16.Masi Udayar
- 17.Jeyaraman
- 18.Purushothaman

... Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 18.04.2017 made in I.A.No.301 of 2016 in O.S.No.24 of 2011 on the file of the Additional District Munsif, Chengam.

For Petitioner : Mr.C.Munusamy

ORDER

This Civil Revision Petition is directed against the dismissal of the petition filed under Order VII Rule 11 of the Civil Procedure Code for rejection of plaint.

2. The petitioner is the second defendant in the suit. The contention of the petitioner is that there were two previous suits on the same cause of action against two different persons. Both the suits were dismissed as settled out of Court. The subject matter of the suit is same. Therefore, the respondents / plaintiffs are not entitled to maintain the present suit on the same cause of action. Since the issues have already been decided, it is hit by *resjudicata*. The Trial Court has elaborately gone into the issues and has found that the plaintiffs in all the three suits are the same. But it was filed against three different defendants on three

different cause of action. Therefore, the Trial Court has found that it is not hit by the principles of *resjudicata* and dismissed the petition for rejection of plaint. Aggrieved over the dismissal order, the petitioner / second defendant in the suit has preferred the above revision.

3. A perusal of the decrees passed in the previous suits would clearly affirm the findings of the Trial Court. Even though the issues revolves around the fraudulent activity of the first defendant, the cause of action arose against the second defendant was on the basis of a sale deed executed in his favour. In all the three suits, the cause of action has arisen on the independent acts done by the first defendant / 18th respondent in the Civil Revision Petition. However, Order VII Rule 11 of the Civil Procedure Code does not contemplate a situation where on the basis of the averments made in written statement shall be taken for rejecting the plaint. The averments made in the plaint alone are germane for considering the issues. The plaint has rightly discloses the cause of action and the averments do not lead to show that the suit was hit by principles of *resjudicata*. In the absence of any reasons contemplated under Order VII Rule 11 of the Civil Procedure Code, the suit cannot be rejected on the

basis of the averments made in the written statement or documents filed by the defendants. Therefore, the order passed by the Trial Court is absolutely correct and does not require any interference and the Civil Revision Petition merits no consideration.

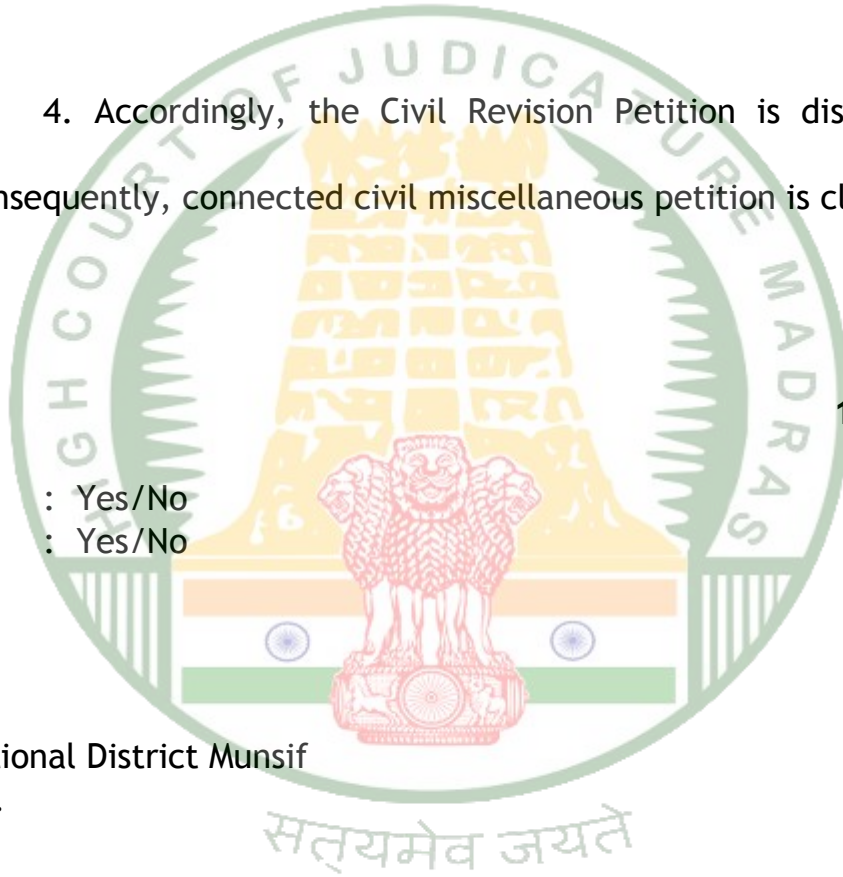
4. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

17.08.2017

Index : Yes/No
Internet : Yes/No
TK

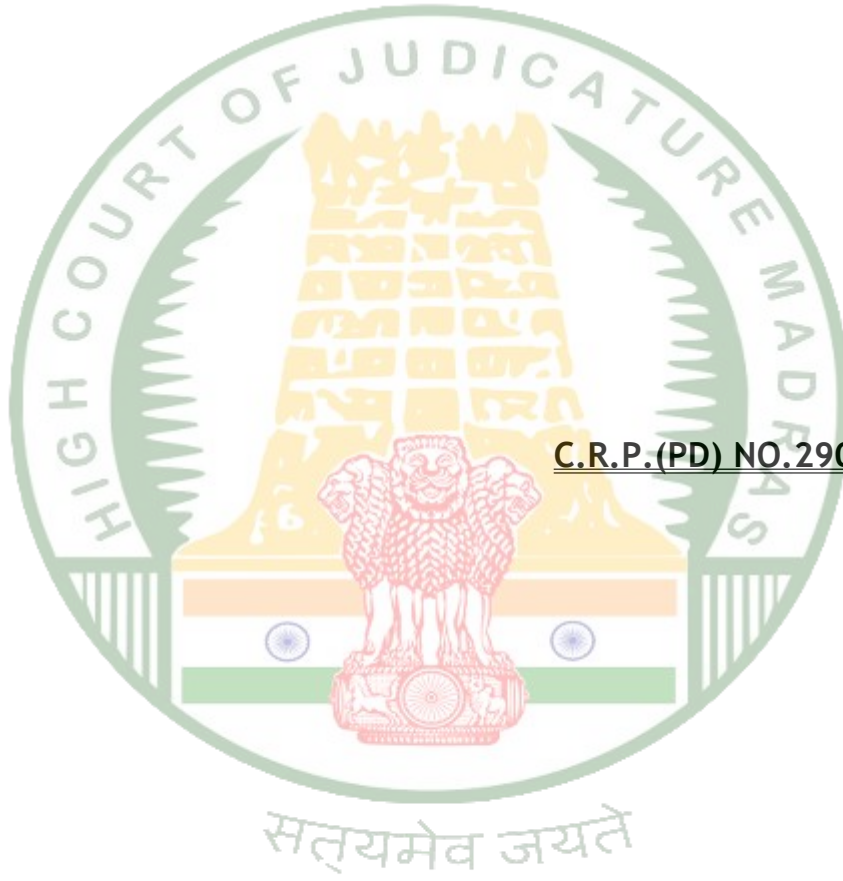
To

The Additional District Munsif
Chengam.



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M.GOVINDARAJ, J.
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