

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD) NO.697 OF 2017
AND CMP NO.3486 OF 2017

R.Jayachandran (Late)

1.J.Sasikala

2.J.Dinesh

3.J.Monoj

(3rd petitioner is mental retreaded
rep. by mother and natural guardian
J.Sasikala, 1st petitioner herein)

... Petitioners

Vs.

1.R.Vittabai

2.Ragu

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 20.12.2016 made in I.A.No.12899 of 2016 in O.S.No.8608 of 2011 on the file of XV Assistant City Civil Court, Chennai.

For Petitioners : Mr.M.Elumalai
For Respondents : Mr.V.Ramamurthy

ORDER

The present Civil Revision Petition is filed against the order dismissing the petition filed under Order VII Rule 11 (d) of the Civil Procedure Code.

2. The original petitioner was a defendant before the Trial Court. He has filed a petition under Order VII Rule 11 of the Civil Procedure Code for rejection of plaint. During the pendency of the proceedings, the original petitioner died and his legal representatives were brought on record.

3. The contention of the petitioners is that the first respondent / plaintiff has filed a suit in O.S.No.1952 of 2008 against the original petitioner / defendant and the same was dismissed on 20.10.2010. Thereafter, another suit was filed in O.S.No.6082 of 2011 for the same cause of action and for the same relief, which was sought in O.S.No.1952 of 2008. Again, she has filed a suit in O.S.No.8608 of 2011 for the same relief. Therefore, the suit is barred by *res judicata* and the plaint filed in O.S.No.8608 of 2011 has to be rejected.

4. Per contra, the respondent herein has contended that the first suit in O.S.No.1952 of 2008 was filed for an injunction when the original petitioner / defendant tried to dispossess her from the suit property. The suit in O.S.No.6082 of 2011 was filed for partition and O.S.No.8608 of 2011 was filed for an injunction against the original

petitioner / defendant from demolishing and putting up construction in the suit property through a third party builder. Therefore, all the three suits were filed on three different causes of action and for three different reliefs. Hence, the question of *res judicata* will not arise.

5. Furthermore, it is seen from the records that against the order passed in O.S.No.1952 of 2008 dated 20.10.2010, an appeal was filed in A.S.No.157 of 2015 and the same is still pending.

6. In such circumstances, the Trial Court has come to the conclusion that the issue of *res judicata* involves disputed questions of fact as well as law and the same can be proved only after oral and documentary evidence. In view of the different reliefs, on different causes of action, the Trial Court has directed the original petitioner / defendant to prove the same by way of trial. Considering the facts and circumstances of the case, this Court finds that there is no infirmity in the order passed by the Trial Court.

7. It is well settled that the matter or issue which is directly and substantially between the same parties has been heard

and finally decided in a previous suit, will be considered as hit by resjudicata. Appeal is considered to be continuation of proceedings and in the instant case, it is pending. Till date, no decision on merits has been taken in any of the matters to bind the parties. The previous suit between the same parties was decided on different issue on a different cause of action and that will not be considered as *res judicata* and it cannot be held to be a bar for trying another suit for another cause of action. The petition filed under Order VII Rule 11 of the Civil Procedure Code does not fulfill the requirements contemplated therein. Therefore, the order passed by the Trial Court is in order and does not require any interference.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
TK

To

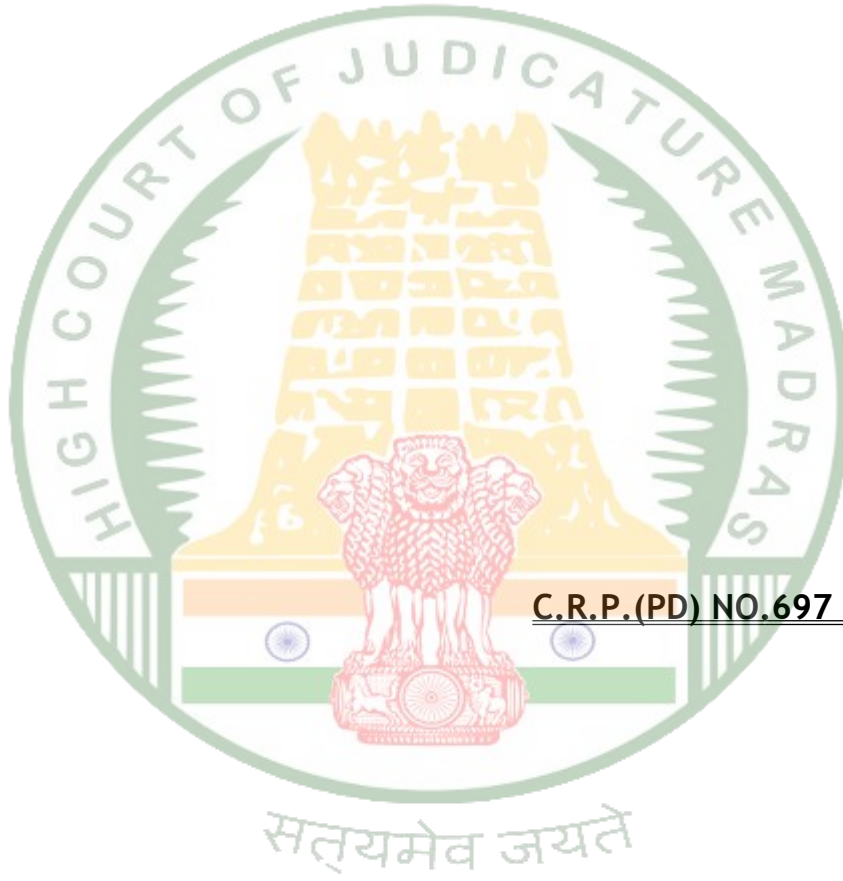
The XV Assistant City Civil Court
Chennai.

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M.GOVINDARAJ, J.

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