



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.11.2017
Delivered on : 19.12.2017

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD)No.94 of 2014
and
M.P(MD)No.1 of 2014

1.Navaneethakrishnan
2.Veluchamy
3.Mariappan
4.Manikandan

... Petitioners

vs.

1.Venurajan
2.Parhtipan

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order passed in I.A.No.527 of 2011 in O.S.No.48 of 2010 on the file of the Additional District Munsif, Sankarankovil, dated 29.08.2013.

For Petitioners : Mr.S.Kadarkarai
For Respondents : Mr.R.Subramanian

O R D E R

The Civil Revision Petition has been filed against the order passed by the learned Additional District Munsif, Sankarankovil in I.A.No.527 of 2011 in O.S.No.48 of 2010 dated 29.08.2013.

2.The petitioners are the defendants in O.S.No.48 of 2010 on the file of Additional District Munsif, Sankarankovil and the respondents are the plaintiffs. The respondents have filed the suit for declaration that the suit property belongs to them and injunction restraining the petitioners from interfering with the peaceful possession and enjoyment of the same. During the pendency of the suit, the petitioners have filed an application in I.A.No.527 of 2011 under Order VII Rule 11 of C.P.C., r/w. Order II, Rule 2 Section 151 of C.P.C., praying to reject the plaint stating that the second respondent's mother Kuppathayammal had already filed a suit in O.S.No.341 of 1997 on the file of District Munsif Court, Sankarankovil along with the first and second respondent and the suit was decreed and the final decree was also passed on 21.03.2005. But the trial Court without considering the



same, dismissed the said application. Aggrieved against the same, the petitioners have filed the present Civil Revision Petition.

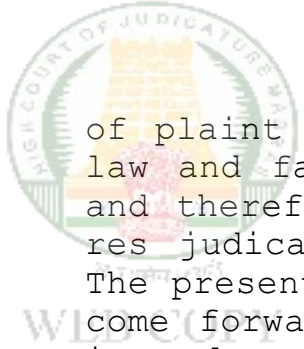
3.The learned counsel for the petitioners would submit that the suit property mentioned in O.S.No.341 of 1997 and O.S.No.48 of 2010 is one and the same and the cause of action for both the suits are also one and the same. He would further submit that the respondents herein suppressed the earlier suit filed by them in the present suit. Hence, the suit in O.S.No.48 of 2010 itself is not maintainable and the petition in I.A.No.527 of 2011 filed by the petitioners is liable to be dismissed.

4.The learned counsel appearing for the respondents would submit that the suit property and the cause of action for both the suits in O.S.Nos.341 of 1997 and 48 of 2010 are not one and the same and only to drag on the proceedings, the petitioners have filed the I.A.No.527 of 2011. He would further submit that the plea of *res judicata* and bare of suit under Order 2 and Rule 2 of C.P.C. is a mixed question of law and fact and without adducing evidence, it cannot be proved.

5.Heard the learned counsel for the petitioners as well as the learned counsel for the respondents

6.Perusal of the record shows that the suit in O.S.No.48/2010 has been field for the relief of declaration declaring that the suit property belongs to the respondents herein and also for a consequential injunction. The petitioners herein filed the written statement and opposed the suit on various grounds. One of the grounds raised in paragraph 8 of the written statement was that the present suit property in UDR Survey No.182/1, Manalur Village, forms part in O.S.No.341 of 1997 and therefore, prayed that the matter is hit by *res judicata* and under Order 2 Rule 2 CPC, reply to the written statement has been filed by denying the contention that the present suit property is not the subject matter in O.S.No.341/97. The Trial Court also framed issues with regard to the *res judicata* and posted the suit in the list for trial in the month of December 2010. When the matter was posted for trial, the petitioner filed I.A.No.527 /11 under Order 7 Rule 11 read with Order 2 Rule 11 and Section 151 CPC praying to reject the plaint. The learned Judge dismissed the above application through the findings at paragraph 9 of the order against which this revision petition has been filed.

7.The revision petitioners have raised the plea of *res judicata* as well as bar of suit under Order 2 Rule 2 CPC. The relief sought for in O.S.No.341/97 is a petition for injunction and the relief sought in O.S.No.48/10 is for declaration and injunction relating to the suit schedule property in survey NO.182/1 to an extent of 0.20.00 hectares in Manalur Village. In my considered opinion, the question of *res judicata* and rejection



of plaint filed under Order 2 Rule 2 CPC is a mixed question of law and fact and without adducing evidence, it cannot be proved and therefore, the learned Judge has rightly framed the issue of res judicata and posted the matter for trial in the year 2010. The present petitioners have prolonged the issue upto 2017 and had come forward with the present application in I.A.No.527/11 which is only to protract the proceedings and therefore, the order passed by the learned Judge does not warrant interference.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1.The Additional District Munsif,
Sankarankovil.

2.Do thro The Chief Judicial Magistrate,
Tirunelveli District.

+1cc to Mr.S.KADARKKARAI,Advocate,SR.93505

+1cc to Mr.R.J.KARTHICK,Advocate,SR.93974

C.R.P(PD) (MD)No.94 of 2014
19.12.2017

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KK/SV MMS/SAR 1/11.01.2018/ 3P- 5C/