

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD).No.2829 of 2013

and

M.P.No.1 of 2013

Nagarajan

...

Petitioner

Vs.

Arjunan

...

Respondent

Prayer :- The Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and decretal order dated 11.06.2013 passed in I.A.No.1362 of 2010 in O.S.No.106 of 2008 on the file of the Principal District Munsif Court, Villupuram.

For Petitioner : Mr.T.Dhanyakumar

For Respondent : Mr.K.Maheshwaran

ORDER

The instant revision has been filed challenging the order dated 11.06.2013 passed in I.A.No.1362 of 2010 in O.S.No.106 of 2008 on the file of the Principal District Munsif Court, Villupuram.

Brief facts leading to the filing of the revision:

2.The petitioner is the first defendant in the suit O.S.No.106 of 2018. The respondent is the plaintiff, who filed the suit for declaration, possession and mesne profits in respect of the suit schedule properties.

The petitioner has also filed his written statement in the suit O.S.No.106 of 2008 filed by the respondent. After the issues were framed and trial commenced, the petitioner filed I.A.No.1362 of 2010 in O.S.No.106 of 2008 under Order 7 Rule 11 CPC to reject the plaint filed by the respondent in O.S.No.106 of 2008.

3.A counter was also filed by the respondent before the trial Court in I.A.No.1362 of 2010. The trial Court by its order dated 11.06.2013 in I.A.No.1362 of 2010 in O.S.No.106 of 2008 dismissed the application filed by the petitioner under Order 7 Rule 11 CPC. Aggrieved by the dismissal of I.A.No.1362 of 2010 in O.S.No.106 of 2008, the instant revision has been filed.

4.Heard Mr.T.Dhanyakumar, learned counsel appearing for the petitioner and Mr.K.Maheshwaran, learned counsel appearing for the respondent.

5.According to the learned counsel appearing for the petitioner, the trial Court failed to take into consideration the order passed by this Court in an earlier CRP.No.2220 of 2011 filed by the petitioner, wherein, a specific direction was given to the trial Court that an opportunity shall be given to the petitioner to establish his case by considering the documents relied upon by him to disprove the claim of the respondent. According to

the petitioner, the subject matter of the suit O.S.No.106 of 2008, in which I.A.No.1362 of 2010 was filed by the same respondent, was also the subject matter of another suit viz., O.S.No.720 of 1995. Since the earlier suit filed by the very same respondent against the petitioner came to be dismissed, is hit by **res judicata** and the present suit O.S.No.106 of 2008 is barred by law. Hence, according to the learned counsel for the petitioner an application under Order 7 Rule 11 CPC seeking rejection of plaint was filed but according to him, the trial Court has erroneously dismissed the application on the ground that the properties involved in both the suits are different.

6.Per contra, the learned counsel appearing for the respondent would submit that an application under Order 7 Rule 11 CPC was filed by the petitioner after commencement of trial and it is the second application filed by him for rejection of plaint. Earlier, the petitioner filed an application for rejection of plaint, which was dismissed by the trial Court. Aggrieved by the dismissal, the petitioner filed a revision before this Court in CRP No.2220 of 2011, wherein, this Court by its order dated 26.08.2011 disposed of the civil revision, wherein, this Court has set aside the order and the matter was remitted to the Courts below to decide the matter afresh. After the matter was remitted to the trial Court by order of this Court dated 26.08.2011 in CRP No.2220 of 2011, the trial Court heard I.A.No.1362 of 2010 in O.S.No.106 of 2008 afresh and by its

order dated 11.06.2013 has dismissed I.A.No.1362 of 2010 on the ground that the subject matter of the properties involved in the suit O.S.No.720 of 1995 and the instant suit O.S.No.106 of 2008 are different. Being different, the learned counsel appearing for the respondent submitted that it will not amount to **res judicate** and therefore, the trial Court has rightly rejected the application filed by the petitioner under Order 7 Rule 11 CPC.

DISCUSSION:

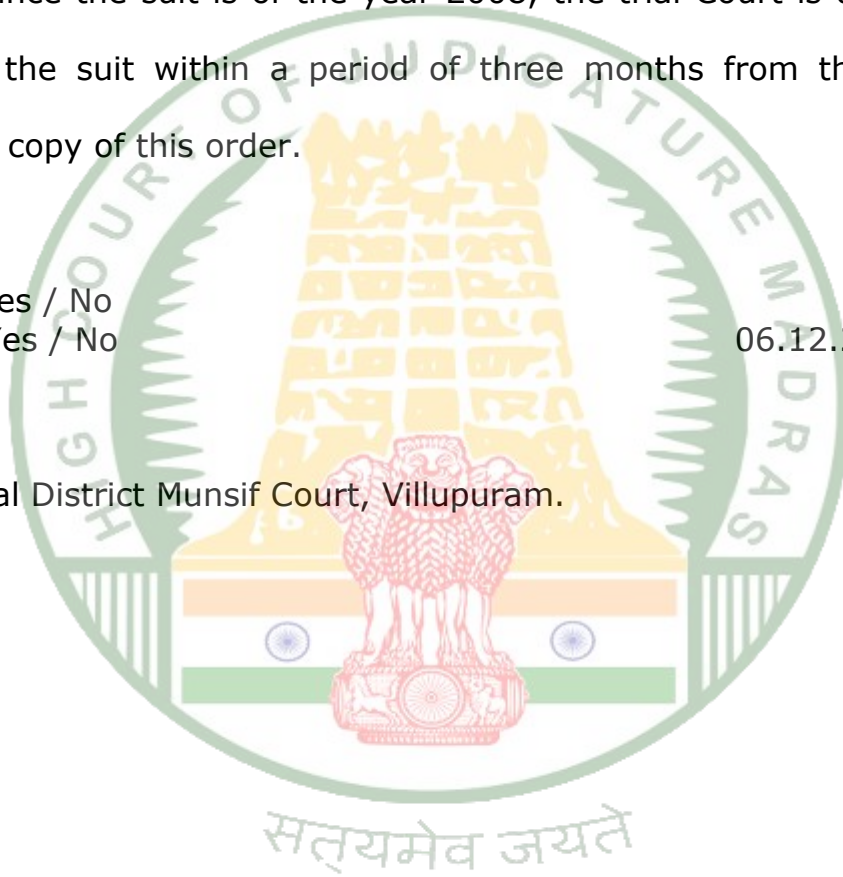
7.The suit O.S.No.106 of 2008 is filed by the respondent in the year 2008. Admittedly, the application for rejection of plaint was filed only after commencement of trial. Admittedly, written statement has also been filed by the petitioner in the suit. The trial Court, while dismissing I.A.No.1362 of 2010, has given a categorical finding that subject matter of the properties involved in the earlier suit O.S.No.720 of 1995 and the instant suit O.S.No.106 of 2008 are totally different. When there are disputed questions of fact and law, the question of rejection of plaint under Order VII Rule 11 CPC will not arise the issue of **res judicata** can be decided only after the parties to dispute let in both oral and documentary evidence and only after consideration of the same, the Court can come to the conclusion as to whether there is **res judicata** or not. The trial Court, in the considered view of this Court, has rightly rejected the application filed by the petitioner in I.A.No.1362 of 2010 seeking for rejection of plaint.

In the result, there is no merit in the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed. However, since the suit is of the year 2008, the trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

Index : Yes / No
Internet : Yes / No
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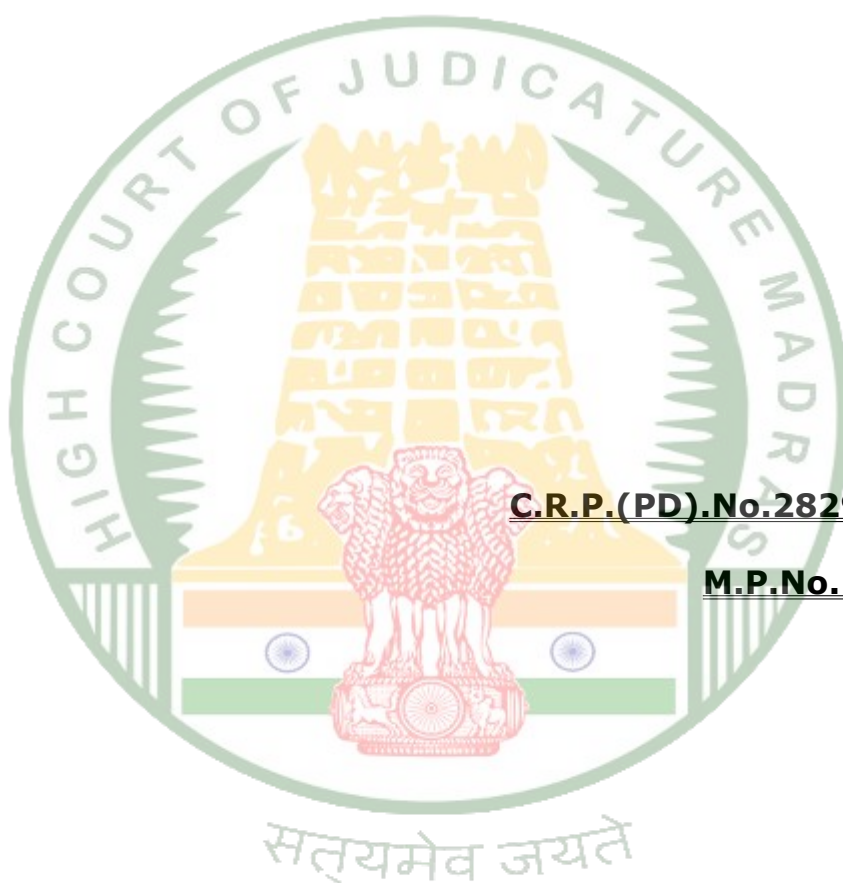
To
The Principal District Munsif Court, Villupuram.



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