

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (PD)No.3499 of 2016 &
C.M.P.No.17800 of 2016

Balasubramaniam (died)

1. Mrs.P.Sivabakkiam
2. Mr.B.Sampathkumar
3. Mr.B.Mohanraj
4. Mr.Abdul Aziz
5. Mr.Subramaniam
6. Mrs.Jameesha
7. Mr.Ismail

.. Petitioners

Vs.

1. Mr.Haji Mohammed Raffiqu
2. Mrs.Rosalin Pushpa Rani
3. Mr.Saleem
4. Mr.Mohammed Nazar
5. Mrs.Farida Banu
6. Mr.Shakabudeen
7. Mr.Sakarai Bava
8. Mr.Syed Abudakeer
9. Mr.Asif Ikbai
10. Mr.Mahebob Khan
11. Mr.Mohammed Rafiq
12. Mr.Abudheer
13. Mr.Ahmed Kabir
14. Mr.Akbar
15. Mr.Sakketha Begum
16. Mr.Jahir Hussain
17. Mr.Dharmaraj

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 18.11.2015 made in I.A.No.909 of 2014 in O.S.No.1320 of 2013 on the file of the Principal Subordinate Court, Coimbatore.

For Petitioners : Mr.S.Mukunth
for Sarvabhauman Associates

For Respondents : Mr.R.Nandakumar - R1

ORDER

This revision has been filed as against the Order passed in application filed under Order VII Rule 11 Code Civil Procedure.

2. Brief Facts leading to filing this revision is as follows :

The respondents have filed a suit for specific performance as against the revision petitioner. P.W.1 was examined during trial. At this stage an application has been taken out by the revision petitioner to reject the suit on the ground that the suit is barred under Order II Rule 2 Code of Civil Procedure. Since the respondent has already filed a suit for bare injunction, the second suit based on the same agreement is not maintainable. The learned trial Court found that the contention of the defendant that the suit is barred under Order II Rule 2 Code of Civil Procedure is a mixed question of law and it cannot be gone into at this stage and dismissed the application and as against which the present revision has been filed.

3. Heard the learned counsel for the revision petitioners and the learned counsel for the first respondent.

4. Admittedly, the trial has been commenced in the suit and P.W.1 has been examined and Ex.P.1 to Ex.P.3 have been marked. At this stage an application under Order VII Rule 11 Code of Civil Procedure to reject the plaint has been filed. It is well settled that the suit can be rejected if it is barred by any other law. The issue involved in this revision is whether Order II Rule 2 of Code of Civil Procedure is a bar to subsequent suit and it is a matter of evidence and it can be decided only at the time of trial. The allegations indicate that the previous suit has been filed only for injunction not to alienate the property to protect his right. Hence, I am of the view that the suit cannot be rejected at this stage merely on the ground that the previous suit has been filed for injunction restraining alienation of the suit property and the revision petitioner is at liberty to take his defence at the time of trial and argument in the main suit and it is premature at this stage to reject the plaint.

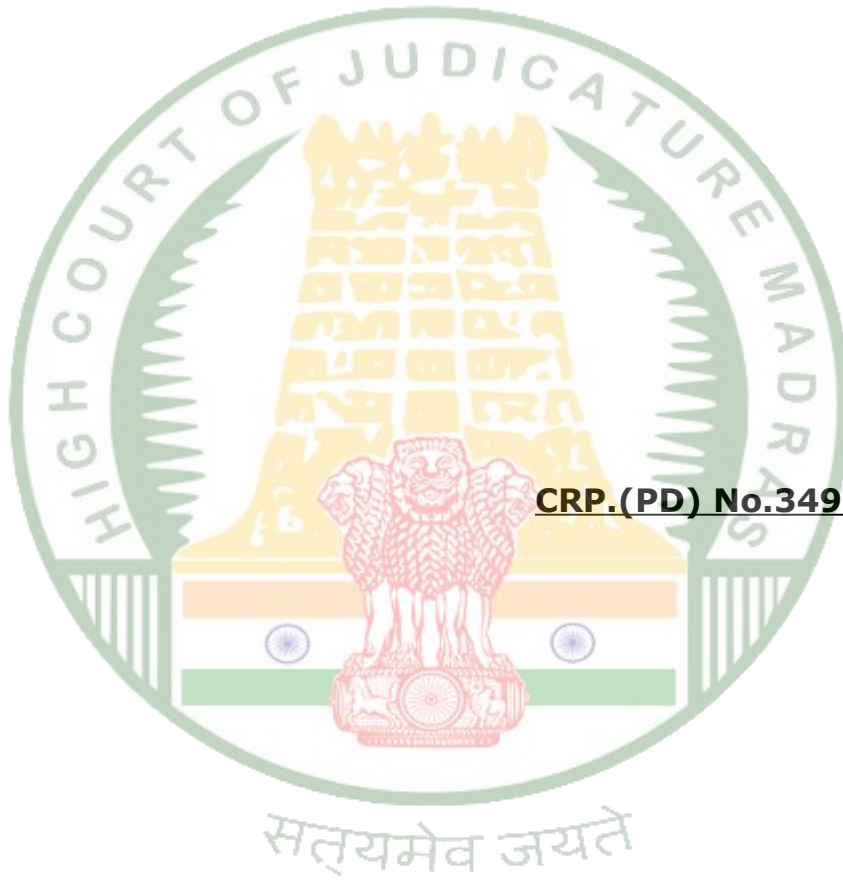
5. Accordingly, this revision is dismissed. However, the trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this Order. Consequently, the connected miscellaneous petition is closed. No cost.

02.11.2018

vrc

N.SATHISH KUMAR, J.

vrc



CRP.(PD) No.3499 of 2016

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