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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P.(PD) No.2222 of 2018 and
C.M.P.No.13990 of 2018

Sabapathy

...Petitioner/Defendant/Petitioner

Vs

Raja

...Respondent/Plaintiff/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Civil Procedure Code praying to set aside the fair and decretal order dated 21.03.2018 in I.A.No.338 of 2016 in O.S.No.18 of 2016 on the file of the learned Additional District Munsif, Tittakudi.

For Petitioner : Mr.T.Sezhian

For Respondent : Mr.Bijai Sundar for
Mr.KSL. Narain

O R D E R

The challenge in the present Civil Revision Petition is against the Order under Order 7 Rule 11 of Civil Procedure Code rejecting the Petitioner's application.

2. The learned counsel for the petitioner submitted that the present suit is an abuse of process of law. According to him, the issue involved in the present suit has been deliberated and a compromise decree was tried between the parties in O.S.No.934 of 1989 dated 09.02.1990 and without disclosing the compromise decree, the present suit, viz., O.S.No.18 of 2016 has been filed for a relief of declaration of the same property.

3. The learned counsel for the petitioner would further submit that in view of the earlier compromise decree, the present suit is hit by the 'Doctrine of Res judicata' and since there is no cause of action, the plaint is liable to be rejected.



4. The learned counsel for the respondent, on the other hand, submitted that the instant suit for declaration has not been filed on the basis of earlier compromise decree and that the ground raised for seeking the relief of declaration is by adverse possession and as such, the non-disclosure of earlier compromise decree may not be a fatal to the relief of claim in the present suit. The learned counsel by relying upon the Judgments of the Hon'ble Apex Court submitted that on the plain reading of the averments in the plaint, it is clear that the suit need not be rejected invoking Order 7 Rule 11 of the Civil Procedure Code.

5. I have given careful consideration to the submission made by the respective counsels.

6. I do not intend to go into the various judgments produced by the learned counsel for the respondent to establish the fact that while disposing of application under Order 7 Rule 11 of the Civil Procedure Code, the Court is bound to look into the averments of the plaint alone. It is a settled proposition of Law and is not disputed by the learned counsel for the petitioner also. Keeping this legal proposition in mind, the plaint averments in O.S.No.18 of 2016 were perused.

7. As pointed out by the learned counsel for the respondent, the statements in the plaint is categorical, in the sense, the respondent herein had pleaded that he had been in possession of the suit properties for over 25 years adverse to the interest of the defendant herein and in view of his long and uninterrupted possession, he seeks for the relief of declaration by adverse possession. In the light of the said statements in the plaint, it cannot be said that the plaintiff is basing his claim either through the compromise decree or trying to justify that the compromise decree is not binding on him. Since the suit is one for declaration on the ground of adverse possession, it cannot be said that the non-disclosure of compromise decree dated 09.02.1990 in the present plaint would amount to suppression of material facts. Since the entire cause of action in the present suit is based on his long uninterrupted possession, as such, the earlier compromise decree would not act as a Res judicata or the suppression of the same will not amount to an abuse of process of Law.

8. In the light of the above observations, the reasonings of the Court below in rejecting the petitioner's application under Order 7 Rule 11 of the Civil Procedure Code does not suffer from any infirmity. It is made clear that all the observations made in the present order is only for the purpose of disposing of the present Civil Revision Petition and that the Court below should not cite or quote the same as a precedent for the purpose



of determining the suit during the course of final hearing.

In the result the Civil Revision stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

ssd

To

The Additional District Munsif,
Tittakudi.

+1cc to Mr.KSL. Narain, Advocate sr.no.71324

+1cc to M/s.R.Meenal, Advocate sr.no.70363

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pvs(co)
nr 09/11/2018