



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:03.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.(MD).No.191 of 2018

and

C.M.P.(MD).No.11328 of 2018

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The Pastorate Chairman,
Vembaar Pastorate,
C.S.I. St.Thomas Church Complex,
Vembar Village-628 906,
Vilathikulam Taluk,
Thoothukudi District.

...Appellant / 4th Respondent / 4th
Plaintiff

Vs.

1.R.Ayyamperumal Nadar
2.Balasundaram
3.R.Suresh

...Respondents 1 to 3 / Petitioners /
Defendants 1, 2, 7

4.The Bishop,
Tuticorin-Nazareth Diocese, Thoothukudi.

5.Churches of South India Trust,
Association (CSITA), Chennai,
Represented by the Treasurer,
Authorized Representative,
Thoothukudi-Nazareth Diocese,
Thoothukudi.

6.CSI-Tuticorin-Nazareth Diocese,
Represented by the Treasurer,
Thoothukudi.

...Respondents 4 to 6 / Respondents 1 to 3 /
Plaintiffs 1 to 3

(No relief sought against the respondents Nos.4 to 6. Hence, notice
to the respondents 4 to 6 may be dispensed with)

PRAYER: Appeal filed under Section 96 C.P.C. to set aside the
order dated 01.02.2018 in I.A.No.97 of 2015 in O.S.No.25 of 2014, on
the file of the II Additional District Court, Thoothukudi.

For Appellant : Mr.G.Prabhu Rajadurai

For R2 & R3 : Mr.S.Kadarkarai

JUDGMENT

<https://hcservices.ecourts.gov.in/hcservices/>

By consent of both parties, the appeal itself is taken up
for final hearing.



2. The proceedings in this appeal demonstrate a very casual manner in which orders of this Court are treated by the Sub-ordinate Courts. The defendants in the written statement pleaded that the present suit is barred by *res judicata* in view of the proceedings in O.S.No.55 of 1988. The defendants also filed an application in I.A.No.97 of 2015, seeking rejection of the plaint on the ground that it is barred by *res judicata*. The said application was dismissed by the trial Court by an order dated 10.02.2016, as against which, a Civil Revision Petition in C.R.P.(MD).No.1485 of 2016 was filed by the respondents 2 and 3 herein. Upon hearing the learned counsel, this Court passed the following order:-

"The Civil Revision Petition has been filed against the fair and decreetal order dated 10.02.2016 in I.A.No.97 of 2015 in O.S.No.25 of 2014 on the file of the II Additional District Court, Tuticorin.

2. The learned counsel appearing for the respondents 3 and 4 would submit that for taking the plea as a preliminary issue, both the parties are directed to produce all the necessary documents and file a written statement.

3. It is stated by the learned counsel for the petitioners that the written statement already filed and the issue has already been framed, but the question of *res judicata* has to be decided as a preliminary issue.

4. Both the learned counsel for the petitioners as well as the learned counsel for the respondents have no objection for deciding the question of *res judicata* as a preliminary issue.

5. Considering the above said submission, the II Additional District Judge, Tuticorin is directed to decide the question of *res judicata* as a preliminary issue in I.A.No.97 of 2015 in O.S.No.25 of 2014 within a period of three months from the date of receipt of a copy of this order.

6. The Civil Revision Petition is disposed of with the above direction. No costs."

3. A reading of the above order of this Court would clearly show that the trial Court viz., the learned II Additional District Judge, Thoothukudi, was directed to consider the issue relating to *res judicata* as a preliminary issue after affording an opportunity to the parties to let in evidence. This Court has already directed that the issue of *res judicata* should be considered as a preliminary



issue and decided within a period of three months from the date of receipt of a copy of this order. Thereafter, till 1st February, 2018, nothing seems to have been done. No oral evidence was let in. All of a sudden, the learned II Additional District Judge, Thoothukudi, had taken up I.A.No.97 of 2015, which was already disposed of by the trial Court, held that the suit is barred by *res judicata* and allowed the petition in I.A.No.97 of 2015.

4. Admittedly, no oral evidence was let in by both the parties. The documents filed along with the plaint were marked as Exhibits.R1 to R9. Though the plaintiffs had filed only 7 documents along with the plaint, 9 documents have been marked as Ex.R.1 to Ex.R.9 on the side of the plaintiffs, who figured as respondents in I.A.No.97 of 2015. It appears that nearly 25 documents were filed along with the petition in I.A.No.97 of 2015. But from the order of the learned II Additional District Judge, Thoothukudi, impugned in this appeal, it is seen that only 18 documents have been marked. Though 25 documents were filed by the defendants along with I.A.No.97 of 2015 and 18 documents were marked as Exs.P.1 to P.18 and some of the documents that were not produced along with the petition in I.A.No.97 of 2015 were also marked on the side of the defendants. It is not known as to how these documents were received by the Court without oral evidence. The direction of this Court was to decide the issue relating to *res judicata* as a preliminary issue in O.S.No.25 of 2014 and the matter was not remanded by this Court for fresh disposal. Therefore, the learned II Additional District Judge, Thoothukudi, was not right in re-opening I.A.No.97 of 2015 and deciding it all over again afresh after permitting the parties to let in evidence.

5. The order passed by the learned II Additional District Judge, Thoothukudi, impugned in this appeal is set aside on this short ground. The suit in O.S.No.25 of 2014 is restored to file. Now, the written statement has been filed. The learned II Additional District Judge, Thoothukudi, is directed to frame a preliminary issue as contemplated under Order 14 Rule 2 of the Code of the Civil Procedure regarding *res judicata* and decide the same in accordance with law, after permitting the parties to let in evidence and mark the documents in the suit. It is made clear that the learned II Additional District Judge, Thoothukudi, shall scrupulously follow the procedure for determining additional issues as set out under Order 14 Rule 2 of the Code of Civil Procedure and render the findings on the preliminary issue after giving an opportunity to both the parties to let in evidence. It is made clear that the evidence to be let in should be restricted only to the issue regarding *res judicata*.

6. In view of the fore-going discussion, the appeal will stand allowed. The order of the learned II Additional District Judge, Thoothukudi, made in I.A.No.97 of 2015, dated 01.02.2018, is set aside and the suit in O.S.No.25 of 2014 will stand restored and remitted to the file of the trial Court to be disposed of in



accordance with the directions herein above. Any violation or breach of the directions will be viewed seriously. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

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7.The learned II Additional District Judge, Thoothukudi, shall complete the process within a period of two months from the date of receipt of a copy of this order and report such disposal to this Court.

8.Registry is directed to despatch a copy of this order to the learned II Additional District Judge, Thoothukudi, by 07.12.2018.

Sd/

Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar(CS-III)

To

The II Additional District Court, Thoothukudi.

Copy to:

The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1cc to Mr.G.PRABHU RAJADURAI, Advocate, SR.No.98519

+1cc to Mr.S.KADARKARAI, Advocate, SR.No.98378

A.S.(MD).No.191 of 2018
03.12.2018

TSG

KK/SKN/SAR-3/05.12.2018/4P-6C