

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD)Nos.1190 of 2018 & 411 of 2019

and

CMP.Nos.8200 & 2758 of 2019

Seshadri

... Petitioner in both the
petitions

Vs.

Paramasivam

... Respondent in both the
petitions

PRAYER in CRP(PD) No.1190 of 2018: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order passed by Additional Subordinate Judge, Tindivanam dated 13.10.2017 in I.A.No.170 of 2015 in O.S.No.68 of 2014.

PRAYER in CRP(PD) No.411 of 2019: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order passed by Principal Subordinate Judge, Tindivanam dated 13.04.2018 in I.A.No.322 of 2017 in O.S.No.71 of 2014.

For Petitioner
in both the petition : Mr.K.Moorthy

For Respondent
in both the petitions : Mr.R.Siddharth

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decretal orders passed by Additional Subordinate Judge, Tindivanam dated 13.10.2017 in I.A.No.170 of 2015 in O.S.No.68 of 2014 and Principal Subordinate Judge, Tindivanam dated 13.04.2018 in I.A.No.322 of 2017 in O.S.No.71 of 2014.

2. The revision petitioner is the defendant in both the cases. Aggrieved over the order of dismissal of the petition filed by him under Order VII Rule 11 CPC, the defendant prefers the above revision. According to the petitioner, the respondent suffered decree in respect of the same subject matter at an earlier instance in O.S.No.612 of 1989 dated 07.07.1989. In the above said suit, the revision petitioner prayed for relief of declaration of title and permanent injunction. The respondent entered appearance through counsel and remained absent and therefore, an ex-parte decree was passed on 23.03.1990. After a period of 25 years, the respondent herein filed a fresh suit for the same relief, with respect to the same property in O.S.No.68 of 2014 on the file of Principal Sub-Judge, Tindivanam. The revision petitioner filed a detailed written statement that the respondent/plaintiff suppressed the material fact with regard to previous litigation and that the suit subsequently filed by him hit by principles of *resjudicata*. He also filed a petition under Order VII Rule 11 CPC, for rejection of the plaint. The trial Court, despite finding vide Exs.P1

marked as Ex.P2, has held that question of *resjudicata* is a mixed question of law and facts and it can be decided only during trial and ultimately has dismissed the application.

3. The learned counsel appearing for the petitioner would rely on the judgment of Hon'ble Supreme Court in **(2018) 5 Supreme Court Cases 644, 1998(III) CTC 165, 2005-4-L.W.2016 and 2018 SCC Online P&H 1909** and contend that in a case of this nature, though reports to Order VII Rule 11 CPC were not appropriate, the trial Court should take up the issue pertaining to the maintainability of suit and decide the same as preliminary issue at the first instance and he would also emphasize on the judgment of Justice Krishna Iyer in T.Arivandandam case reported in 1998 (III) CTC 165 which held as hereunder:-

" 8. Apart from the above decisions, the trial Court is also bound to see that the valuable time is not taken away by proceeding the trial in the vexatious litigation, which is clearly abuse of process of Law. In fact, in the decision reported in T.Arivandandam v. T.V.Satyapal and another, 1977(4) S.C.C 467, the Honourable Supreme Court held that it is also duty bound not to take such cases. In para 7 of the Judgment, Their Lordships held that,

"We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstances that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. It may be a

valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy.”

4. The learned counsel would contend that on the above said principle the Court below ought to have struck off the plaint for abuse of process of Law. The trial Court ought not to have allowed the petition in favour of the respondent/plaintiff, as he deliberately suppressed the decree passed in the previous suit.

5. Per contra the learned counsel for the respondent would defend that the order passed by the trial Court on the ground that suppression of material fact cannot be a ground for rejection of plaint as held by this Court reported in 2013-2-L.W. 84 [R.Arumugam Vs. PR.Palanisamy & another], which as held as under:

“ 15. The view of the Hon'ble Supreme Court indicated supra shall be enough to answer the first and third substantial questions of law against the appellant/second defendant. The mere suppression of fact alone shall not be the ground for holding that the plaint lacks pleadings regarding cause of action. When a plaint contains clear pleadings spelling out the cause of action, the question whether such a cause of action is true or not cannot be the scope of enquiry in an application under Order VII Rule 11 CPC. Whether there is any suppression of material facts, can be ascertained only from the pleadings made in the written statement and the evidence to be adduced by the parties. This court holds that suppression of material facts alone shall not entitle a defendant to have the plaint rejected as one lacking in cause of action under Order VII Rule 11 CPC. The first substantial question of law is answered accordingly against the appellant.”

However, the learned counsel for the respondent would fairly submit that the issue of suppression of fact can be decided as a preliminary issue as observed in the judgment of this Court in Arumugam's case, supra.

6. After considering the materials on record, this Court is of the view that it is true that the suppression of material fact is a clear abuse of process of Law and Vexatious, but, however insofar as Order VII Rule 11 CPC is concerned, the contents in the plaint should alone be considered and it should not be based on written statement or the other document produced by the defendant. In view of the same, suppression of material

fact, cannot be a ground for rejection of plaint. However, as held by the

Hon'ble Supreme Court in Soumitra Kumar Sen's case, supra, the issue can be tried as a preliminary issue and decided at the first instance without prolonging the proceeding causing mental agony to the parties concerned. Therefore, this Court is of the considered opinion that the trial Court shall frame a preliminary issue with regard to the maintainability of the suit, in view of the previous decree passed in O.S.No.612 of 1989 dated 23.03.1990 and decide the same.

7. In the result, a direction is issued to the Principal Sub-Judge, Tindivanam to frame a preliminary issue as indicated above and decide the suit within a period of one month from the date of receipt of a copy of this order.

8. These Civil Revision Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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04.06.2019

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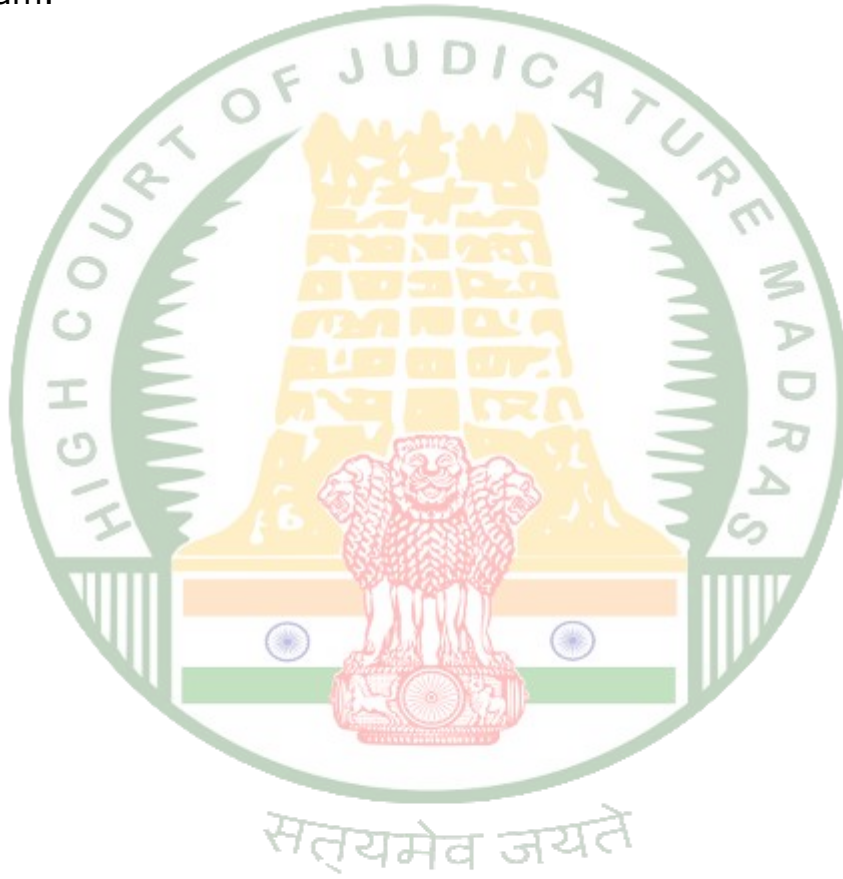
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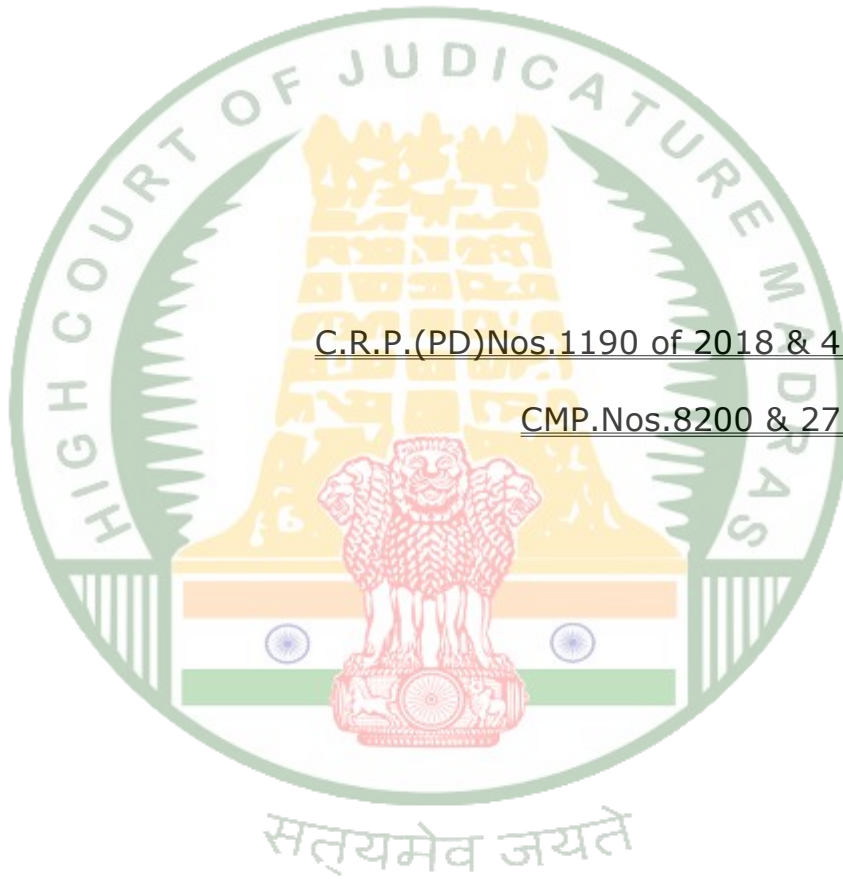
1. The Additional Subordinate Judge,
Tindivanam.
2. The Principal Subordinate Judge,
Tindivanam.



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