

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2019

CORAM

THE HONOURABLE MR. **JUSTICE C.SARAVANAN**

**C.R.P(PD).No.584 of 2014**

and

**M.P.No.1 of 2014**

1. Elumalai
2. Ranganathan
3. Natarajan
4. Narayanan

... Petitioners

Vs

Vediayappan

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 29.11.2013 in I.A.No.192 of 2013 of 2011 in O.S.No.936 of 2011 on the file of the District Munsif, Chengam, Tiruvannamalai.

For Petitioners : Mr.A.K.Rajaraman  
for R.Sathishkumar

For Respondent : Mr.C.Munusamy

**ORDER**

The petitioner has filed the present civil revision petition against the fair and decretal order dated 29.11.2013 in I.A.No.192 of 2013 of 2011 in O.S.No.936 of 2011 on the file of the District Munsif, Chengam, Tiruvannamalai. The learned District Munsif cum Judicial Magistrate, Chengam has dismissed the application filed by the petitioner under Order VII Rule 11 CPC with the observation that Order VII Rule 11 CPC does not deal with res-judicata and that the plaint can be rejected only there is no cause of action in the plaint.

2. The brief facts of the case relevant for disposal of the present Civil Revision Petition are as follows:-

(i) The petitioners' father Perama Gounder had earlier filed T.O.S.No.567 of 1987 for a permanent injunction and a declaration in respect of a suit schedule property against the respondent herein.

(ii) In the aforesaid suit, the respondent was set exparte.

(iii) After the respondent was set exparte in the year 2000, the respondent filed I.A.No.523 of 2005 which was dismissed on 20.07.2006. The respondent therefore filed C.R.P.Sr.No.92227 of 2011 which was dismissed on 07.02.2012.

(iv) The respondent therefore filed O.S.No.39 of 2000 for the very same relief against the petitioners, herein who are the heirs of

Perama Gounder who was the plaintiff in T.O.S.No.567 of 1987.

(v) O.S.No.39 of 2000 was withdrawn by the respondent pursuant to the affidavit filed on 14.10.2005.

(vi) It appears thereafter, the respondent has therefore put up a construction on the suit schedule property. Anticipating steps to remove the respondent from the property, respondent herein /plaintiff filed O.S.No.936 of 2011 seeking relief of permanent injunction against the petitioners.

3. Under these circumstances, the petitioners filed an application vide I.A.No.192 of 2013 in O.S.No.932 of 2011 to reject the plaint under Order VII Rule 11 of CPC.

4. The learned counsel for the petitioners submitted that the suit is barred under Order VII Rule 11 CPC on account of res-judicata.

5. The learned counsel further submits that the suit would be impliedly barred under Section 9 of CPC on a conjoint reading of Order VII Rule 11 (d) 3 of CPC.

6. The learned counsel also submitted that the suit would also be

barred in terms of Order XXIII Rule 1 of CPC as no leave was obtained from the Court while withdrawing the earlier suit vide O.S.No.39 of 2000, hence the subsequent suit was not maintainable.

7. Per contra, the learned counsel for the respondents submitted that though the parties are same the cause of action for the suit in O.S.No.936 of 2011 was substantially different and therefore, the submissions made by the learned counsel for the petitioners is not correct.

8. I have considered the rival submissions of the parties.

9. The only point on which the court below has dismissed the application under Order VII Rule 11 CPC is on the ground that res-judicata is not a ground to reject the plaint.

10. The observation of the learned Judge in para 7 of the impugned order appears to be incorrect inasmuch as Order VII Rule 11 (d) makes it clear that where the suit appears from the statement in the plaint to be barred by any law; the plaint shall be rejected.

11. When Res-judicata under Section 11 of C.P.C. is attracted

no Court can try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

12. In this case, the suit filed in the year 2011 was clearly barred by law, in view of Section 9 of CPC. Section 9 makes it clear that the Court can only try any suit which is neither expressly nor impliedly barred. In this case, two earlier suits were already filed in respect of the same properties between the same parties.

13. Further Order XXIII Rule 1 CPC also makes it clear that without obtaining leave, the subsequent suit would be barred. In this case, the respondent had also made an attempt to set aside the exparte decree in T.O.S.No.576 of 1987 on an earlier occasion, vide I.A.No.523 of 2005. The said order was rejected against which Civil Revision Petition was filed vide CRP SR.No.92227 of 2011 with a delay of 1775 days.

14. While dismissing the said revision petition, this Court on 07.02.2012, observed that the respondent herein was set exparte in the year 1988 and later filed O.S.No.39 of 2000 for declaration of his right over the suit property without any enquiry about the result of T.O.S.No.576 of 1987 and that only in the year 2005, he withdrawn the suit and filed I.A.No.523 of 2005 for condoning the delay in setting aside the exparte decree after a lapse of 1632 days which was dismissed by the Court below on merits and came forward with the said application to set aside the exparte order passed. After a lapse of another six years, O.S.No.936 of 2011 was filed.

15. It is clear that O.S.No.936 of 2011 was barred under law. Even the earlier suit vide O.S.No.39 of 2000 was also barred as already a suit determining the rights of the party one way or other was subject matter of O.S.No.567 of 1987 where the respondent remained exparte.

WEB COPY

16. Therefore, the respondent neither had any right to initiate O.S.No.39 of 2000 nor file subsequent suit vide O.S.No.936 of 2011 as both the suits were barred by res-judicata.

17. Further, the respondent had withdrawn O.S.No.390 of 2000 without obtaining the leave of the Court and therefore subsequent suit in respect of the same property in respect of same cause of action would be clearly barred under law.

18. Both the suits filed in 2000 and 2011 were barred under law and therefore, the lower court was not justified in rejecting the application filed under Order VII Rule 11 CPC. Consequently, the order passed by the lower court deserves interference. Accordingly, this Civil Revision Petition is allowed with consequential relief. Consequently, connected miscellaneous petition is closed. No costs.

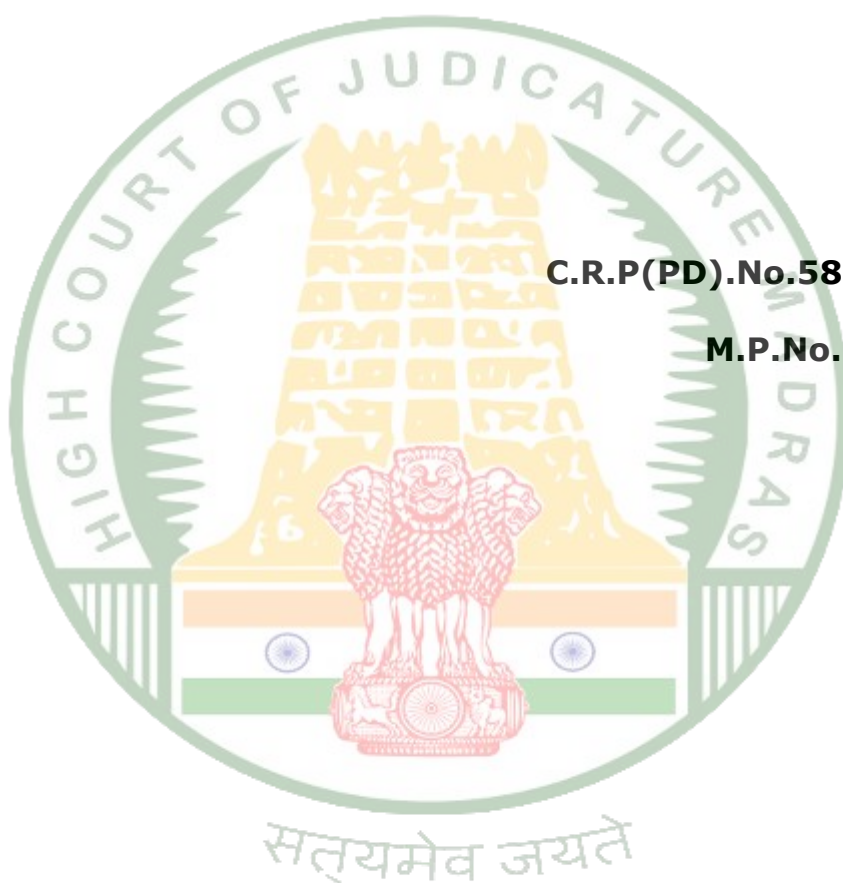
13.02.2019

Index:Yes/No  
Internet:Yes/No  
ssn

To  
The District Munsif,  
Chengam,  
Tiruvannamalai.

WEB COPY

**C.SARAVANAN, J.,**



**C.R.P(PD).No.584 of 2014  
and  
M.P.No.1 of 2014**

**WEB COPY 13.02.2019**