



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.09.2019**

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CRP PD(MD)No.714 of 2012

and

M.P. (MD)No.1 of 2012

Ganesan

... Petitioner/Petitioner
Defendant

Vs.

Thangavel

... Respondent/Respondent
Plaintiff

PRAYER: This petition is filed under Article 227 of Civil Procedure Code, against the fair and decreetal order dated 08.12.2011 passed in I.A.No.609 of 2011 in O.S.No.182 of 2011 on the file of the Additional District Munsif, Lalgudi.

For Petitioner : Ms.J.Anandhavalli
For Respondent : Mr.R.Devaraj

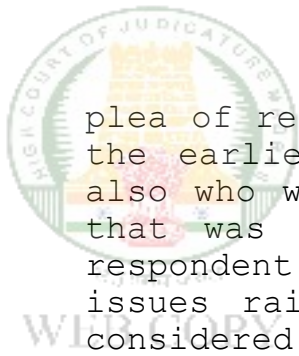
O R D E R

This petition has been filed against the fair and final order of the Court below dismissing the application filed under Order 14 Rule 2 (2) (b) of the Code of Civil Procedure, 1908.

2. The respondent filed a Suit for bare injunction against the petitioner on the ground that he is the owner of the property by virtue of a Sale Deed, dated 11.09.1986 and that he is cultivating the lands. The further plea that has been raised by the respondent is that the petitioner is interfering with the possession and enjoyment of the property right from the year 2011 onwards and therefore, the respondent has sought for the relief of permanent injunction restraining the petitioner from in any manner interfering with the possession and enjoyment of the property.

3. The petitioner filed an application under Order 14 Rule 2 (2) (b) of the Code of Civil Procedure, on the ground that the suit itself is barred by resjudicata, since the dispute between the parties has already been contested in two previous suits in O.S.No.409 of 1995 and O.S.No.422 of 1995 and therefore, the present suit is barred by law and the same has to be taken as a preliminary issue.

4. The Court below on considering the application filed by the petitioner, dismissed the application on the ground that the
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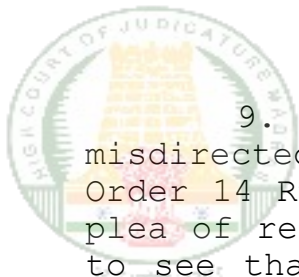
plea of resjudicata is a mixed question of fact and law and that in the earlier suits apart from petitioner there were other parties also who were involved in the litigation and therefore, the decree that was passed in the earlier suits cannot be a bar for the respondent to maintain the suit against the petitioner and the issues raised in the present suit will have to be independently considered only after taking evidence in the case.

5. The learned counsel appearing on behalf of the petitioner submitted that the present suit is clearly barred by law, since it is hit by the Rule of Res-judicata. The learned counsel brought to the notice of this Court the earlier suits filed in O.S.Nos.409 of 1995 and O.S.No.422 of 1995 and the decrees passed therein. The learned counsel submitted that O.S.No.409 of 1995 was filed by the petitioner along with two others against the respondent and the Executive Officer of the Temple, with regard to the very same suit property, seeking for the relief of permanent injunction and by Judgment and Decree, dated 24.07.1996, the suit was decreed and the said decree has become final. The learned counsel further submitted that O.S.No.422 of 1995 was filed by the respondent against the petitioner and four others, with regard to the very same suit property, seeking for the relief of declaration and consequential permanent injunction. This suit was dismissed by Judgment and Decree, dated 24.07.1996. The learned counsel submitted that this decree has also become final.

6. By pointing out these two decrees passed by a competent civil Court, the learned counsel submitted that the dispute between the parties has been finally decided and the suit filed by the petitioner was decreed and the suit filed by the respondent was dismissed and therefore, respondent is barred from maintaining one more suit with regard to very same suit property against the petitioner.

7. Per contra, the learned counsel appearing on behalf of the respondent submitted that the earlier suits that have been referred by the learned counsel for the petitioner involved more than one party and apart from the petitioner, there were also other parties, who were shown as either plaintiffs or defendants. The learned counsel submitted that it was not an individual suit as between the petitioner and the respondent and therefore, the individual right pertaining to the suit property will have to be necessarily decided by the Court below and the suit cannot be dismissed on the preliminary issue of resjudicata. The learned counsel submitted that the Court below has given cogent reasons for dismissing the application filed by the petitioner and that there is no ground to interfere with the same.

8. This Court has carefully considered the submissions made on either side and perused the materials available on record.



9. In the considered view of this Court, the Court below has misdirected itself while considering the application filed under Order 14 Rule 2(2) (b) of the Code of Civil Procedure, to decide the plea of resjudicata as a preliminary issue. The Court below failed to see that the earlier suit that has been referred supra clearly dealt with the right, title and interest over the very same suit property and in both suits it was held against the respondent. The respondent has filed yet another suit for the very same suit property in which the competent civil Court, by Judgment and Decree made in O.S.No.422 of 1995, has held that the respondent has no right or title over the property. This decree is a clear bar for the respondent to maintain the present suit.

10. The Court below did not consider the Judgment and Decree passed in O.S.No.422 of 1995 wherein the respondent was held to be not entitled to the suit property. Therefore, there was no requirement for the Court below to again go through the entire process of trial to decide an issue which has already become final in the above said suit.

11. In the considered view of this Court, the present suit filed by the respondent in O.S.No.182 of 2011, is clearly barred by resjudicata and the Court below ought to have decided the preliminary issue in favour of the petitioner and dismissed the suit. This Court has no hesitation to interfere with the order passed by the Court below. Accordingly, the fair and final order passed by the Court below in I.A.No.609 of 2011, dated 08.12.2011, is hereby set aside and the suit filed by the respondent is hereby dismissed. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.S))

// True Copy //

Sub Assistant Registrar(CS)

To

Additional District Munsif, Lalgudi.

+1 CC to M/s.J.ANANDHAVALLI, Advocate SR-85954.

+1 CC to Mr.R.DEVARAJ, Advocate SR-86269.

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