



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.03.2019**

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.566 of 2019

and

C.M.P. (MD) No.2830 of 2019

S.Alagammai

... Petitioner/Petitioner/1st defendant

vs.

1.M.Subbiah

... 1st respondent/1st respondent/Plaintiff

2.Pala Azhagi

3.Pala Subbiah

4.Pala Ganapathi

...Respondents 2 to 4/Respondents 2 to 4/
Defendants 2 to 4

PRAYER:- Civil Revision Petition filed the under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 21.12.2018 made in I.A.No.94 of 2018 in O.S.No.26 of 2016 on the file of the learned District Munsif cum Judicial Magistrate, Thiruppathur.

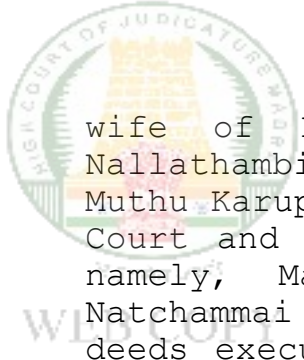
For Petitioner : Mr.P.Thiagarajan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 21.12.2018 made in I.A.No.94 of 2018 in O.S.No.26 of 2016 on the file of the learned District Munsif cum Judicial Magistrate, Thiruppathur.

2.Before the trial Court, the petitioner herein is the first defendant, the first respondent herein is the plaintiff and the respondents 2 to 4 are the defendants 2 to 4. For the sake of convenience, the parties will be referred to as per their rank before the trial Court.

3.I.A.No.94 of 2018 was filed under Order VII Rule 11 and Section 151 of CPC by the first defendant for dismissing the suit in O.S.No.26 of 2016. The first defendant contended that the relief sought by the plaintiff in the said suit was already decided in the earlier suit in O.S.No.467 of 1985. In O.S.No.467 of 1985, the first defendant contended that he has adopted the father of the plaintiff namely, Muthu Karuppa Thevar on 05.11.1947 and the case was contested by the plaintiff and that adoption was made by the



wife of Pazhaniappa Thevar namely, Mathuvi and the wife of Nallathambi Thevar namely, Natchammai and both have jointly adopted Muthu Karuppa Thevar. The said petition went to the Hon'ble Supreme Court and the objections raised by the wife of Pazhaniappa Thevar namely, Mathuvi and the wife of Nallathambi Thevar namely, Natchammai were also declared as null and void. Further, the sale deeds executed by the said Mathuvi and Natchammai were also valid. Against the said sale deeds, the plaintiff once again filed the suit in O.S.No.26 of 2016 and the same has been *res judicata*.

4.The first defendant had also made a clear averment regarding the facts that was elicited in the earlier suit based on the said two sale deeds. In O.S.No.26 of 2016, the plaintiff contended that based on the said two sale deeds, he filed a suit, whereas, in the suit in O.S.No.73 of 2003, those documents were marked as Exs.A4 & A5 and the plaintiff was also added as a defendant in the said suit and the said two sale deeds were also considered to arrive at a decision for the said suit.

5.The first defendant contended that already a judgment was passed in A.S.No.94 of 2006, which was preferred against the decree and judgment passed in O.S.No.73 of 2003, in which the plaintiff has no right or title over the suit property and hence, the said petition filed by the plaintiff claiming right over the suit property has to be dismissed by stating that the plaintiff was never in possession and enjoyment of the suit property. Further, there was also a declaration

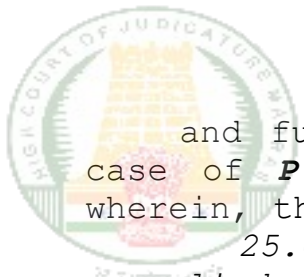
made that the sale deed dated 20.02.1968 is the valid document and the patta has also been transferred in the name of the first defendant.

6.In support of the learned counsel for the plaintiff/the first respondent herein contention, he has quoted the judgment in the case of **K.Vidhya vs. K.Sumithra** reported in **2018 4 MLJ 428**, wherein, this Court has held as follows:

39.Therefore, I find that there is no cause of action for the plaintiff to maintain the suit in obtained possession after litigating for over six years from enjoying fruits of the decree.

40.In my considered opinion, this attempt would amount to abuse of process of Court inasmuch as it seeks to prevent a decree holder from enjoying the fruits of the decree. It should also pointed out that the plaint exhibits envy and jealousy. The plaintiff has brought about illusory cause of action claiming that the partition wall to be a common wall and that construction is in violation of the Development Control Rules. I do not see any violation of the development

inasmuch as the building plan has been approved by the Corporation and the building is put up is strictly in accordance with law with sanctioned plan.



and further, the learned counsel quoted the judgment in the case of **P.Srikanth vs. R.Venkatesan** reported in **2017 3 LW 443**, wherein, this Court has held as follows:

25. Considering all the materials on record and judgments relied on by the learned senior counsel for the petitioner, I hold that the suit filed by the first respondent is a clear abuse of processes of Court and it is nothing but re-litigation of the very same issue of title to the suit property. The judgment relied on by the learned senior counsel for the petitioner with regard to re-litigation are squarely applicable to the facts of the present case. The relief sought for in the suit in O.S.No.11 of 2014 and the present suit is entirely different and cause of action for both the suits are also different. Further, the learned counsel for the first respondent has stated that the suit in O.S.No.111 of 2014 has become infructuous in view of the fact that the sale deed has been released to the petitioner. In view of the same, the suit is not hit by provisions of Order 2 Rule 2 CPC.

7. On the other hand, the plaintiff contended in his counter statement that though it has been confirmed that the father of the plaintiff was adopted by the said Mathuvi and Natchammai on 11.11.1947, however, the first defendant contended that there is a change of interpretation and the issues are also different in the previous case as well as in the present case. The plaintiff further contended that a new cause of action arises based on the fact that the said two women along with the public have made an adoption by the said fact.

8. The issues in the present case has been noted by the plaintiff and the trial Court dismissed the petition filed by the first respondent based on the provision of under Order VII Rule 11 CPC and rejected the plaint in the following cases:

(a) where it does not disclose a cause of action;

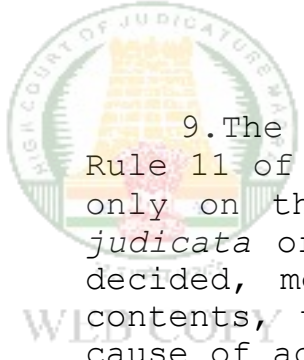
(b) where the relief claimed is undervalued, and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9;



9.The trial Court contended that the petition filed Order VII Rule 11 of CPC cannot be decided only based on the *res judicata* and only on the preliminary issue whether the suit is barred by *res judicata* or by limitation, only by enquiring the same it has to be decided, merely filing the petition along with the documents with contents, there is a claim made by the plaintiff that there a new cause of action has arisen.

10.On perusal of the documents, it is very much related to the adoption. The trial Court has given a finding that based on the contention raised by the first defendant for rejecting the plaint, the same cannot be decided. Hence, the order of the trial Court in dismissing the said petition is very much reasonable. When the plaintiff says that there is a new cause of action and the issues framed in the present suit have also been *res judicata* by the defendants.

11.On hearing the argument of the learned counsel for the first defendant, it is seen that the suit is nothing for trial and there is no need to file further suit and the plaintiff can very well prove the same by examining the parties and based on the evidence and documents, the trial Court properly decided the earlier suit.

12.In view of the above, the grievance made by the petitioner herein/first defendant in the previous suit has clearly discussed by the trial Court and the same is very much reasonable. Hence, this Civil Revision Petition is dismissed and the learned District Munsif cum Judicial Magistrate, Thiruppathur, is directed to dispose of the suit in O.S.No.26 of 2016 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif
cum Judicial Magistrate,
Thiruppathur.

+1 CC to M/s.P.THIAGARAJAN, Advocate in SR-56103

CRP(MD) No.566 of 2019
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