



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE SETHILKUMAR RAMAMOORTHY

C.R.P. (PD) (MD) No. 973 of 2014

and

M.P (MD) No. 1 of 2014

WEB COPY

J. Rajendran

... Petitioner/Petitioner/
Defendant

vs.

M. Kamal Basha

... Respondent/Respondent/
Plaintiff

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 10.10.2013 passed in I.A.No.631 of 2012 in O.S.No.1334 of 2011 on the file of III Additional District Munsif, Tiruchirappalli.

For Petitioner : Mr.M.Saravanan
For Respondent : Mr.G.S.Ashok Adhityan

ORDER

This Civil Revision Petition is filed challenging the order dated 10.10.2013 in I.A.No.631 of 2012 in O.S.No.1334 of 2011. By the said order, an application filed by the revision petitioner/defendant, under Order 7 Rule 11 (a) and (d) of the Code of Civil Procedure, to reject the plaint, was dismissed .

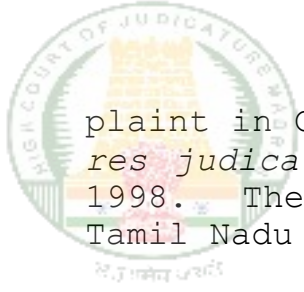
2.The facts which are necessary for the disposal of the present Civil Revision Petition may be stated briefly. The Civil Revision Petitioner contends that an earlier suit was filed by the respondent/defendant namely O.S.No.1392 of 1998 with regard to the same property. He further submits that the said suit culminated in a judgment and decree dated 27.09.2007. Therefore, it is the case of the revision petitioner that the plaint in O.S.No.1334 of 2011 is liable to be rejected on account of *res judicata*.

3.On the contrary, the case of the respondent is that the cause of action in the two suits is different and that therefore, the application for rejection of plaint is liable to be rejected.

4.The trial Court, by the impugned order, rejected the application on the basis that *res judicata* is a mixed question of fact and law and that, consequently the plea of *res judicata* cannot be decided without a full-fledged trial.

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5.At the hearing, the learned counsel for the revision petitioner raised two contentions. His first contention is that the



plaint in O.S.No.1334 of 2011 is liable to be rejected on account of *res judicata* in view of the judgment and decree in O.S.No.1392 of 1998. The second contention is that the suit is barred under the Tamil Nadu Cultivating Tenants Protection Act, 1965.

6.Per contra, the learned counsel for the revision petitioner submits that there is no error in the order of the trial Court, whereby, the petition under Order 7 Rule 11 was rejected.

7.The records were perused and oral submissions were carefully considered.

8.The law with regard to rejection of plaint is very well settled. In specific, a petition for rejection of plaint is required to be tested solely on the basis of the averments in the plaint. In this case, on examining the plaint, it is not possible to come to the conclusion that the suit is barred by *res judicata* in as much as there is no reference to the earlier suit namely O.S.No.1392 of 1998. In other words, the revision petitioner can succeed in his contention that the present suit is barred by *res judicata* only by examining the plaint and evidence in the earlier suit so as to establish that the matter in issue is substantially the same. Needless to say, this cannot be achieved merely by reading the plaint in O.S.No.1334 of 2011.

9.Similarly, as regards the second contention, it is not possible to come to the conclusion that the suit is barred in terms of the Tamil Nadu Cultivating Tenants Protection Act merely by reading the averments in the plaint. Consequently, there is no material irregularity in the order of the trial Court, whereby the present application was dismissed. Notwithstanding the said conclusion, in view of these specific defences raised by the revision petitioner/defendant, it is just and necessary that the trial court should frame an issue with regard to whether the suit is barred by *res judicata* and as to whether it is barred under the Tamil Nadu Cultivating Tenants Protection Act.

10.In the result, the Civil Revision Petition is dismissed with a direction to the trial Court to frame an issue as to whether O.S.No.1334 of 2011 is barred by law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



To

The III Additional District Munsif,
Tiruchirappali.

+1 CC to Mr.N.C.ASHOKKUMAR, Advocate (SR-77791[F] dated
26/07/2019)

+1 CC to Mr.G.S.ASOK ADHITHYAN, Advocate (SR-78050[F] dated
26/07/2019)

Order made in

C.R.P.(PD)(MD)No.973 of 2014
and

M.P(MD)No.1 of 2014
25.07.2019

LSS

MK (08.08.2019) 3P 4C