

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (PD) No.4063 of 2010
and M.P.No.1 of 2010

Saraswathiammal

..Petitioner
/Defendant

Vs

1.K.Vijayalakshmi
2.K.Ezhilarasan
3.K.Ramesh (died)
4.K.Janarthanan
5.K.Balamurugan
6.Rekha
7.Nishanth
8.Krithika
R6 to R8 brought on record as
LRs of the deceased R3 K.Ramesh
vide order of Court dated
06.08.2020.

..Respondents/
Plaintiffs.

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order made in I.A.No.2232 of 2009 in O.S.No.559 of 2006 dated 02.07.2010 on the file of the Principal District Munsif, Cuddalore.

For Petitioner : Mr.T.S.Baskaran

For Respondents : Mrs.R.Meenal for R1, R2, R4 and R5.

ORDER

The respondents 1 to 5 filed the suit against the petitioner in O.S.No.559 of 2006 on the file of Principal District Munsif Court, Cuddalore. The petitioner, after filing written statement, after listing the matter for trial, filed application in I.A.No.2232 of 2009 under Order VII Rule 11 CPC, to reject the plaint. The said petition was dismissed after enquiry. Challenging the said dismissal order passed in I.A.No.2232 of 2009, the petitioner is before this court, by way of this civil revision petition.

2. The learned counsel for the petitioner would submit that earlier, the petitioner filed suit against Abimannan, Natesapadayachi and others in O.S.No.202 of 1982, on the file of the District Munsif Court, Cuddalore. The said suit was decreed and challenging the Judgment of the trial court, the defendants filed appeal before the Subordinate Court, Cuddalore, in A.S.No.89 of 1991. The said appeal was dismissed on 06.12.1991. Again, challenging the said judgment of the appellate court, the appellants therein filed second appeal in S.A.907 of 1992. The same was dismissed by this court

on 13.07.1992. Thereafter, the petitioner filed Execution Petition in E.P.217 of 2000 and during the pendency of the Execution proceedings, the respondents filed the suit in O.S.No.559 of 2006, suppressing earlier suit filed by the petitioner herein and the filing of second appeal before this court. Further, the respondents have not challenged further on the judgment of the second appeal and therefore, the finding arrived in the suit in O.S.No.202 of 1982 has become final and E.P., has been filed for the delivery. In view of suppressing the above material facts, the respondents filed O.S.No.559 of 2006, the petitioner filed the application in I.A.No.2232 of 2009 to reject the plaint, stating that the present suit is nothing but abuse of process of the court by suppressing earlier litigation.

3. The issue involved in the suit in O.S.No.202 of 1982 is with reference to two sale deeds and trial court answered that the sale deeds said to be executed in favour of the present respondents as null and void. Also in the said judgment, sale deeds dated 04.07.1981 and also 11.07.1981 were declared as null and void and therefore, the respondents have no title for the property. Thus, the suit in O.S.No.202 of 1982 was filed for declaration and for recovery of possession and mesne profits. The suit was decreed in favour

of the petitioner. She has filed E.P. for recovery of possession. At that time, one Lakshmanan claiming title in respect of a part of one item of the suit properties in the former suit in O.S.No.202 of 1982 filed a suit in O.S.No.387 of 1993 on the file of the Principal District Munsif, Cuddalore, and obtained an order of exparte injunction restraining the petitioner from executing the decree in O.S.No.202 of 1982. The said suit was dismissed after full trial in the year 2000. Thereafter, the petitioner filed E.P.217 of 2000 for taking delivery of the suit properties and the same is pending. The petitioner has not taken delivery of the suit properties. In such view of the matter, filing of the second suit by the respondents, in respect of the same properties in O.S.No.559 of 2006, is nothing but abuse of process of the law and court. The trial court failed to consider the said aspect and dismissed the application in I.A.No.2232 of 2009, on the ground that the said application has been filed belatedly. The trial court, pointed out that even prior to the filing of the written statement, the law permits the petitioner to file such an application at very early stage; inspite of that the petitioner has filed the petition under Order 14 Rule 2 of CPC for trying Preliminary issue and then under Order 7 Rule 11 of CPC; since the respondents are still in possession of the suit properties, they cannot be removed from the court by non-suiting their plaint.

Therefore, the ground taken by the petitioner that the suit is barred by Section 11 of CPC under the doctrine of resjudicata, is connected with the merits of the suit and the matter requires to be decided along with other issues. Therefore, it is only triable issues and therefore, the suit has to be disposed of only after trial after giving opportunity to both the parties and all the points to be decided after trial. Holding so, the said petition was dismissed.

4. Challenging the above said order passed in I.A.No.2232 of 2009, the present Revision Petition is filed. The learned counsel for the petitioner placed reliance on the following judgments:-

(1)(2017) 13 SCC 174 [Madanuri Sri Ramachandra Murthy v. Syed Jalal]

(2) (1999) 1 LW 727 [Mana Soosai and another v. Esakkiammal Mana Soosai and another v. Esakkiammal Mana Soosai and another v. Esakkiammal]

(3)2014 (4) LW 314 [Karuppana Gounder Vs.Shanmuga Gounder]

5. On the other hand, the learned counsel for the respondents would submit that during the pendency of this revision petition, the suit in O.S,559 of 2006 was dismissed for default. Therefore, the petitioner proceeded with

E.P. and got delivery and now E.P., also terminated. The learned counsel for the respondents would further submit that since the suit itself is dismissed for default, now the petition has been filed seeking to set aside the said dismissal order and restore the said suit. As such, the said suit in O.S.No.559 of 2006, is not pending but only restoration application is pending. Therefore, this Civil Revision Petition has become infructuous.

6. Heard and perused the records.

7. Admittedly, the petitioner herein earlier filed suit in O.S.No.202 of 1982 against the grand father of the defendants herein and others, way back in 1982 before District Munsif Court, Cuddalore and the same was decreed in favour of the petitioner. Challenging that, the defendants therein filed appeal in A.S.No.89 of 1991 before the Subordinate Court, Cuddalore, and the said appeal suit was also dismissed. Challenging the same, the defendants in the said suit filed Second Appeal before this court in S.A.907 of 1992. The same was also dismissed. Challenging the judgment of this court passed in S.A.907 of 1982, no further appeal was filed and therefore, finding given in the second appeal has become final. Subsequently, the petitioner filed Execution

Petition. While Execution Petition was pending, the respondents herein filed suit in O.S.No.559 of 2006. Though the petitioner herein filed written statement and also application to try the preliminary issue, subsequently, filed application in I.A.No.2232 of 2009 under Order 7 Rule 11 CPC to reject the plaint and the said application was dismissed on the ground of delay and not covered under Order 7 Rule 11 CPC and also the principle of resjudicate is connected with the merit of the matter and the same has to be decided after trial.

8. On a careful perusal of the records, it is seen that earlier suit was filed in O.S.No.202 of 1982 wherein, specific issue was framed before the trial court and specific finding with regard to sale deeds dated 04.07.1981 and 11.07.1981 is given holding that sale deeds executed in favour of 9th defendant or other persons are not valid and declaring it as void. Challenging the said judgment, defendants filed Appeal in A.S.No.89 of 1991. The First Appellate court also dismissed the said A.S.No.89 of 1991 and hence the defendants filed further appeal in S.A.No.907 of 1992. The said Second Appeal was also dismissed. But thereafter, no further appeal is filed. Therefore, the finding recorded by the trial court in respect of sale deeds is

final. The petitioner filed E.P. and though the same is pending, the finding of the trial court, will bind the parties and also the successors, legal heirs of the defendants in O.S.No.202 of 1982. Therefore, they cannot agitate the findings that entered finality.

9. This court perused the entire materials on record including the application in I.A.No.2232 of 2009 and finding of the trial court and appellate courts. In the previous suit, finding has been arrived at and the same has become final. In such circumstances, neither the respondents nor their successors or legal heirs can reagitate the same issue. Therefore, in the considered opinion of this court, the filing of suit in O.S.No.559 of 2006 by the respondents, clearly shows that it is abuse of process of the court. On that ground, the order passed by the trial court in I.A.No.2232 of 2009 dated 02.07.2010 is set aside. Plaint in O.S.No.559 of 2006, is rejected. Though the learned counsel for the respondents submitted that as on date, no suit is pending in O.S.No.559 of 2006 and it was dismissed for default, however, since the respondents have filed application to restore the suit, if the restoration application is allowed, once again, suit will come to play.

Since Plaint in O.S.No.559 of 2006 is rejected by this court, the trial court is directed to reject the application seeking to set aside the dismissal order passed in O.S.559 of 2006. Trial court is therefore, directed to reject the application to restore the suit. While invoking Article 227 of Constitution of India, if this Court finds that filing of any suits or proceedings are nothing but an abuse of process of court and law, the suit can be rejected by the order of this court.

10. In the result, the Civil Revision Petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

19.08.2020

Index:Yes/No

Speaking/Non Speaking

nvsri

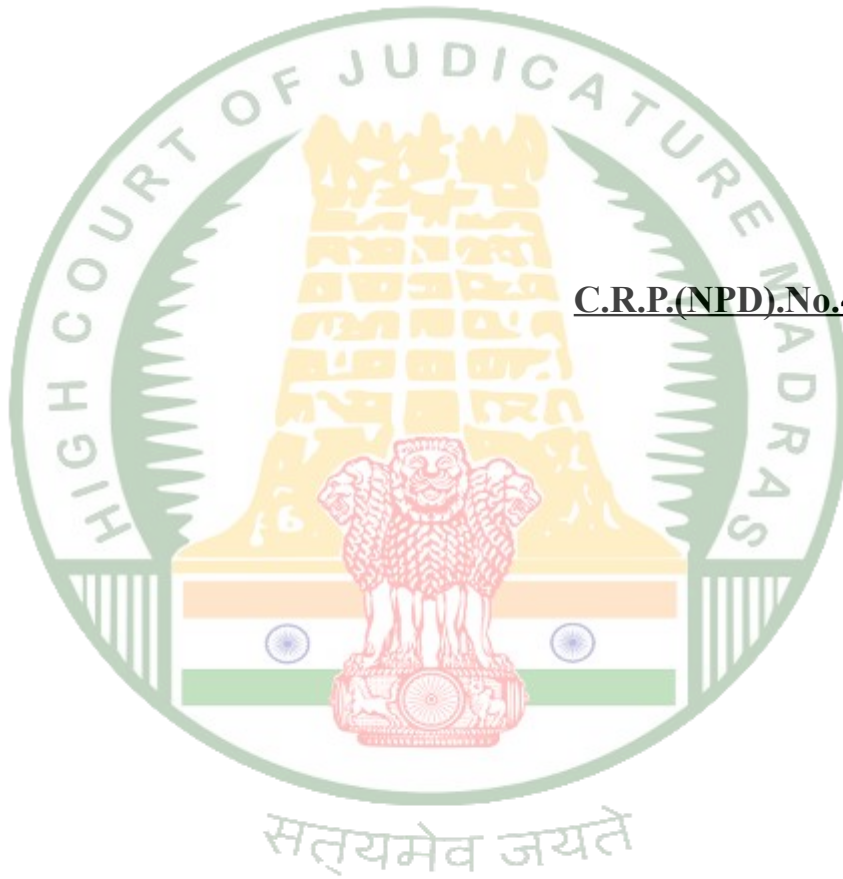
1.The Principal District Munsif, Cuddalore.

2. The Section Officer, V.R.Section, High Court, Madras.

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P.VELMURUGAN, J.

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