

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2020

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

C.R.P.No.3533 of 2011 &
M.P.No.1 of 2011

1.V.V.Ramasamy
2.Sai Manoharan

.. Petitioners/Defendants 1&2/
Petitioners

Vs.

1.S.Subbulakshmi
2.Umadevi
3.Suganthi
4.Baby Janaki
5.Ramathal
6.Lakshmi
7.Ravi @ Palanisamy
8.M.Chitrakala
9.K.Krishnamoorthy
10.Rajeswari @ Sarasu
11.S.Amsaveni
12.R.Kannammal
13.R.Manonmani
14.Mohan Kumar @ Palanisamy
15.R.Manjula
16.R.Karuppusamy
17.P.Nanjappan
18.A.Shankar

..Respondets1to16/Plaintiffs/Respondents 1to16

..Respondents17&18/Defendant3&4/
Respondents 17&18

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 02.11.2010 made in I.A.No.46 of 2008 in O.S.No.143 of 2004, on the file of II Additional District Munsif Court at Coimbatore.

For Petitioner : Mr.S.Mukunth

For Respondents : Mr.R.Bharath Kumar for R1 to R15
R-16 died
No appearance for R-17 & R-18

O R D E R

The defendants 1 and 2 in O.S.No.143 of 2004 on the file of II Additional District Munsif Court, Coimbatore, are the petitioners herein. The respondents 1 to 16 / plaintiffs have instituted the suit against the defendants for bare injunction. After receipt of notice, the defendants filed their written statement. Thereafter, the defendants filed Interlocutory Application in I.A.No.46 of 2008 in O.S.No.143 of 2004 for rejection of plaint under Order 7 Rule 11 CPC. After contest, the said Application was dismissed. Challenging the said dismissal of the application, the petitioners / defendants have filed the present revision.

2. The learned counsel for the petitioners / defendants would submit that the respondents / plaintiffs initially filed a suit in O.S.No.1856 of 2004, on the file of learned District Munsif, Coimbatore. After contest, the said suit was decreed. Thereafter, the petitioners / defendants filed the appeal and the appeal was also dismissed. Against which, the petitioners / defendants have filed Second Appeal before this Court and the Second Appeal was also dismissed. Thereafter, the respondents/plaintiffs filed E.P.No.756 of 1999 and in the said E.P., the matter was settled between the parties and the E.P. was allowed to be dismissed. The learned counsel for the petitioners / defendants would further contend that once the suit filed by the parties was settled and subsequently E.P., was also dismissed, they cannot agitate an issue already decided in O.S.No.1856 of 2004, in the present suit in O.S.No.143 of 2004. It is further contended that the learned II Additional District Munsiff, Coimbatore has failed to consider that this is the second round of litigation and as such, the institution of the present suit in O.S.No.143 of 2004 is an abuse of process of Court and the learned Judge, without considering the points raised by the petitioners / defendants, dismissed the Application, which warrants interference of this Court.

3. The issue lie in narrow compass. The respondents/plaintiffs filed the suit against the petitioners / defendants in O.S.No.143 of 2004, in which, the petitioners filed the application to reject the plaint under Order 7 Rule 11 of C.P.C. It is the contention of the learned counsel for the petitioners / defendants that the earlier suit was settled and therefore Execution Petition in E.P.No.756 of 1999 was allowed to be dismissed as settled out of Court and therefore, no cause of action arises for filing a fresh suit. This Court is unable to accept the contention of the learned counsel for the petitioners / defendants for the reasons that, a perusal of the order passed in E.P.No.756 of 1999, it could be seen that the

Execution Petition was not dismissed as settled out of Court, it was dismissed as not pressed and no evidence has been produced to show that the earlier suit was dismissed as settled out of Court and therefore, the respondents have no cause of action to file the present suit. More so, the suit is filed only for bare injunction. Therefore, whether the plaintiffs have got cause of action or not and also the second suit is maintainable or not, shall be established only after recording evidence.

4. It is settled proposition of law, while rejecting the plaint, the Court has to see the averments made in the plaint and not the defense taken by the defendants in the written statement or defense stated by the defendants. Therefore, this Court can come to the conclusion that the plaint discloses a cause of action.

5. Considering all the above facts and circumstances, I am of the view that the impugned order of the Court below in dismissing the application filed by the petitioners / defendants for rejection of the plaint, does not warrant any interference. Accordingly, I find no merits in this Civil Revision Petition. The Civil Revision Petition fails and the same is dismissed. Since the Suit is pending fore more than 16 years, the learned II Additional District Munsif, Coimbatore is hereby directed to dispose of the Suit within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

r n s

To

The II Additional District Munsif Court,
Coimbatore.

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C.R.P.No.3533 of 2011 &
M.P.No.1 of 2011

NSA (CO)
RMP (01/09/2020)