

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No.4321 of 2013
and
MP.No.1 of 2013

1.Pongiyannan
2.Nachaiyammal
3.Saravanan
4.Sakthivel
5.Thulasimani
6.Manoharan

... Petitioners/Defendants

Versus

1.Arjunan
2.Ponnusamy
3.Kannusamy

... Respondents/Plaintiffs

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 26.08.2013 in I.A.No.303 of 2013 in O.S.No.90 of 2013, on the file of the I-Additional District Munsif, Erode District.

For petitioners : No Appearance
For Respondents : Mr. A.K. Kumarasamy (for R1 & R3)
: R2 - Died

ORDER

This Civil Revision Petition has been filed by the defendants/ petitioners herein against the order of dismissal of the petition in I.A.No.303 of 2013 in O.S.No.90 of 2013 filed under Order VII and Rule 11(d) of CPC., seeking rejection of the plaint filed by the respondents/plaintiffs.

2.Prior to this suit in O.S.No.90 of 2013, previously a suit in O.S.No.170 of 1983 was filed by the first defendant Pongiyannan along with others, seeking bare injunction against the respondents herein and the same was decreed in favour the

petitioners/ defendants herein, and therefore, prayed the trial court to reject the suit as barred either under Section 115 of CPC, Section 40 of Indian Evidence Act and Section 11 of CPC on the principles of res-judicata. The second ground on which the the plaint was sought to be rejected is that the Plaint is barred under Section 40 of the Indian Evidence Act, hence, the respondents herein/plaintiffs are estopped by the previous judgment in filing the present suit. The third and final ground made by the petitioners/defendants is that the respondents' predecessors have mentioned in their written statement filed in O.S.No.170 of 1983 that there is no 15 links' wide cart track in R.S.No.24, hence, the present suit filed by stating that the suit property is a common cart track is barred under the principle of estoppel as per the Section 115 of the Indian Evidence Act. However, the trial court dismissed the I.A.No.303 of 2013 and hence the present Civil Revision Petition.

4.Heard the learned counsel for the respondents 1 and 3 and perused the materials available on record.

5.On perusal of the records Ex.P1/Certified copy of the decree passed in O.S.No.170 of 1983, dated 08.04.1992 and Ex.P2/Certified copy of the written statement filed by Komarasamy Gounder in O.S.No.170 of 1983 and Ex.R1/08.04.1992, Xerox copy of the judgment passed in O.S.No.170 of 1983, it is clear that the plaintiffs in the present suit are the defendants in the previous suit. In the present suit, they denied the existence of the cart track in R.S.No.24 but according to the petitioners/defendants, the plaintiffs herein have clearly mentioned about the existence of cart track in R.S.No.24 in the earlier suit in O.S.No.170 of 1983, which was also the subject matter of A.S.No.42 of 1994.

6.The petitioners have produced Ex.P1 and Ex.P2 in proof of their claim, whereas the respondents have produced Ex.P1, in support of their contentions. On perusal of Ex.P1 and Ex.P2 and Ex.R1, there is no doubt that the decree passed in the previous O.S.No.170 of 1983 binds both the parties in this suit. Ex.P1 refers to 15 links wide cart track, which runs through R.S.No.24/16, 24/15, 24/14, 24/13, 24/11 and 24/3 and it is a common cart track. Furthermore, in Ex.P2/written statement, the defendants therein had denied the existence of cart track in R.S.No.24. The suit was decreed, which was also confirmed in A.S.No.42 of 1994. However, in the present suit O.S.No.90 of 2013 the respondents/plaintiffs herein admitted the existence of pathway and their common enjoyment. The present suit had been filed in the nature of a counter-claim in order to restrain the petitioners/defendants from interfering with the common enjoyment of the suit pathway and for other reliefs. Therefore,

the petitioners/defendants could not contend that the respondents/ plaintiffs are estopped or barred either under Section 115 CPC, Section 40 of Indian Evidence Act or under Section 11 of CPC merely because of the previous decree for permanent injunction in O.S. No. 170 of 1983. Hence, the reason assigned by the Trial Court is well considered and well merited, thus, this Court does not find any reason to interfere with the order passed in the application in I.A.No.3030 of 2013 is confirmed and the Trial Court is directed to dispose of the suit, within a period of twelve weeks, from the date of receipt of a copy of this order.

7.With these observations, the Civil Revision petition is dismissed confirming the order dated 26.08.2013 in I.A.No.303 of 2013 in O.S.No.90 of 2013, on the file of the I-Additional District Munsif, Erode District. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

klr

To

The I-Additional District Munsif, Erode District.

+lcc to Mr.Mr.S. Kaithamalai Kumaran, Advocate, S.R.No.14585

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and

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RV (CO)

KKV/19/05/2020

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