

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.3799 of 2018 and
CMP No.21164 of 2018

1. Ashokan
2. Vimala
3. Muniyammal
4. Matheswaran

... Petitioners

Vs

1. Minor.Iyupkhan
 2. Minor.Posiya
 3. Minor.Irfan
- (Next friend mother Sharmila, Guardian)

.... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.08.2018 made in I.A.No.1514 of 2017 in O.S.No.110 of 2014 on the file of the District Munsif Court, Pappireddipatti.

For Petitioners : Mr.V.Sakkarapani

For Respondents :No appearance

ORDER

The defendants 4 to 7 in O.S.No.110 of 2014 have come up with this revision aggrieved by an order passed in I.A.No.1514 of 2017, an application filed by them, seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure on the ground that the suit is barred by the Principles of *Res judicata*.

2. The suit was laid by the plaintiffs seeking declaration that certain alienations made by the defendants 1 to 3 in favour of the 4th defendant are invalid in view of the preliminary decree that has been granted earlier in O.S.No.82 of 2009.

3. The defendants are resisting the said suit contending that the plaintiffs' mother Sharmila had suffered a decree in O.S.No.44 of 1999 wherein she has been allotted only 0.05 cents of land in the suit properties. Therefore, the plaintiffs cannot make a claim for 3/68th share now. The defendants 4 to 7 who are the successors in interest of the defendants 1 to 3, also claim that the present suit is barred by the Principles of *Res judicata* in

view of the earlier suits in O.S.No.44 of 1999 and O.S.No.82 of 2009.

4. The learned trial Judge, upon consideration of the material on record, concluded that the question whether the present suit is barred by the Principles of *Res judicata* or not, cannot be decided in the application filed under Order VII Rule 11 of the Code of Civil Procedure. The learned trial Judge also referred to various judgments of this Court as well as the Hon'ble Supreme Court which laid down that while deciding an application filed under Order VII Rule 11 of the Code of Civil Procedure the Court has to look into the plaint alone and not any other material. Upon such conclusion, the learned trial Judge dismissed the application. Aggrieved, the defendants 4 to 7 have come up with this revision.

5. I have heard Mr.V.Sakkarapani, learned counsel appearing for the petitioners. The respondents though served, are not appearing either in person or through counsel duly instructed.

6. Mr.V.Sakkarapani, learned counsel appearing for the petitioners

would vehemently contend that the trial Court was not right in dismissing the application for rejection of the claim. He would point out that the plaintiff's mother Sharmila had suffered a decree in O.S.No.44 of 1999 wherein only 0.05 cents of land was allotted to her. Suppressing the same, she had filed a suit in O.S.No.82 of 2009 and she and her children obtained a preliminary decree for partition on their 3/68th share.

7. The learned counsel would also point out that the final decree application was filed in O.S.No.82 of 2009 was also subsequently withdrawn. Therefore, according to Mr.V.Sakkarapani, the present suit is barred by the Principles of *Res judicata*. He would also submit that the trial Court was not right in concluding that the averments in the plaint alone should be looked into. The learned counsel would submit that Order VII Rule 11 of the Code of Civil Procedure are not exhaustive of any circumstances, which would constitute the basis for rejection of the plaint. He would submit that in a fit case, the Court is empowered to look into other records available to decide whether the suit is barred by limitation or *Res judicata* or the suit is an abuse of process of Court. In order to decide

upon any of the above three questions, it is well open to the Court to look into the documents produced by the defendants also.

8. While I am in agreement of the learned counsel on his legal submissions that the trial Court was not right in dismissing the application on the ground that the other documents produced by the defendants cannot be looked into, I am unable to countenance the plea that the plaint is liable to be rejected on the ground that it is barred by the Principles of *Res judicata*. The suit in O.S.No.44 of 1999 was for partition and the compromise final decree was passed. As per the terms of the final decree, the 3rd plaintiff namely the mother of the plaintiffs Sharmila was allotted only 0.05 cents of land in Survey No.10/2B of Bommidi Village. The plaintiffs filed another suit in O.S.No.82 of 2009 seeking partition and separate possession of their 3/68th share in the suit properties. That suit came to be decreed exparte on 09.04.2012. Pursuant to the said decree, the plaintiffs have now filed the present suit for declaration that the alienations made pending the said suit are bad. This suit cannot be said to be barred by the Principles of *Res judicata* on the face of it. The issue needs to be

examined on the basis of the evidence that is to be let in the suit. Therefore, the trial Court was justified in dismissing the application on the ground that the plea of *Res judicata* raised by the defendants 4 to 7 has to be examined on the basis of the evidence after trial and the same cannot form basis for rejection of the plaint at the threshold. I therefore, do not see any illegality or irregularity in the order of the trial Court to enable interference in a revision under Article 227 of the Constitution of India. The revision therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.10.2020

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Index: Yes/No

Speaking order / Non speaking order

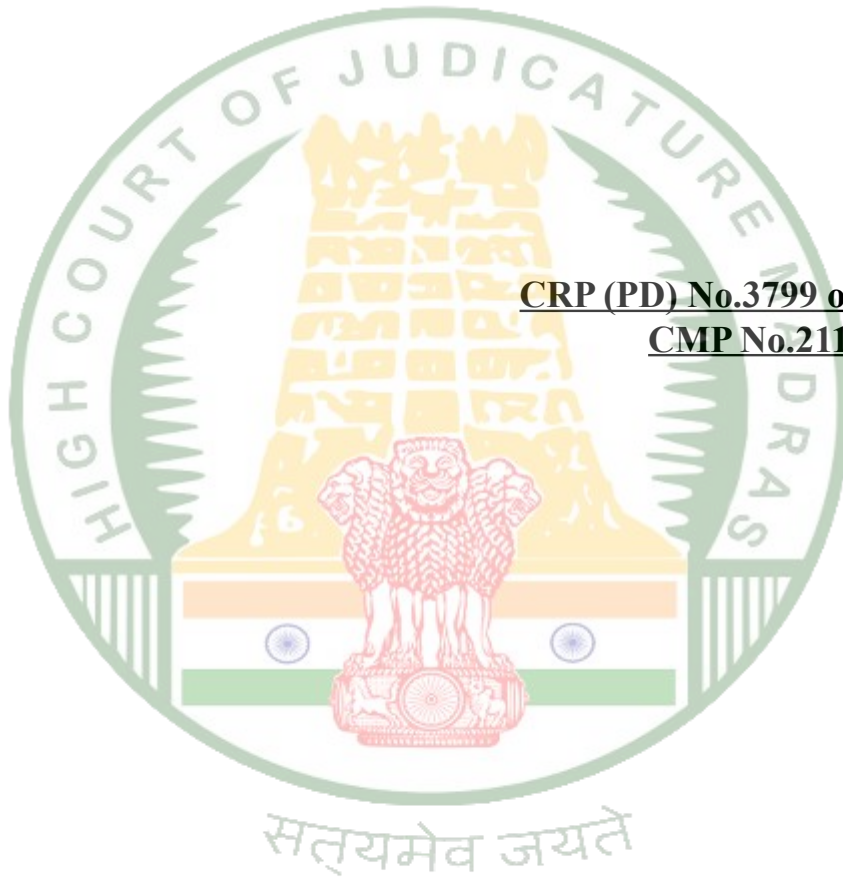
To

The District Munsif Court, Pappireddipatti.

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