

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2021

PRONOUNCED ON : 01.02.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD)No. 3820 of 2015
and M.P.No.1 of 2015

A.Mohammed Isac

... Petitioner

Vs.

1. K.Srineevasayya
2. K.Prakash
3. K.Narayanaswamy
4. K.Sreenivasayya
5. K.Kothandappa

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 13.08.2015 passed in I.A.No.518 of 2014 in O.S.No.64 of 2014 on the file of the Subordinate Court, Hosur, Krishnagiri.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.A.R.L.Sundaresan
Senior Counsel
For Mr.P.Valliappan

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 13.08.2015 passed by the learned Subordinate Judge, Hosur, Krishnagiri, in I.A.No.518 of 2014 in O.S.No.64 of 2014 thereby dismissing the petition filed by the petitioner for rejection of plaint.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the defendant in the suit filed by the respondents for declaration declaring that the sale deed dated 28.06.1994 and the Will dated 05.10.1998 are null and void and for permanent injunction. He would further submit that the respondents/plaintiffs are not parties to those documents and as such they have no locus to question both the documents. In fact, the petitioner's father viz., Mohammed Ayub Sahib already filed a suit in O.S.No.279 of 1996 before the District Munsif Court, Hosur, for declaration of title in respect of very same property and the same was decreed on 31.03.2000.

2.1. Aggrieved by the said judgment and decree, one Sridharmurthy preferred an appeal suit in A.S.No.9 of 2000, on the file of the Sub Court, Hosur and the same was also dismissed by the judgment and decree dated 27.06.2003. Again he preferred second appeal before this Court in S.A. No.1996 of 2003 and the same was also dismissed by the judgment and decree dated 23.11.2011. He also filed Special Leave Petition before the Hon'ble Supreme Court of India in S.L.P.No.7770 of 2012 and the same was dismissed by a judgment and decree dated 08.05.2012.

2.2. He further submitted that the petitioner's father viz., Mohammed Ayub Sahib also filed suit for recovery of possession in respect of the very same property in O.S.No.109 of 2000 before the District Munsif Court, Hosur. In the said suit the respondents herein filed petition to implead themselves as parties in I.A.No.572 of 2013 and the same was dismissed by the judgment and decree dated 26.11.2013. In fact they also preferred Civil Revision Petition in C.R.P.No.53 of 2014 before this Court and the same was dismissed by an order dated 29.01.2014.

2.3. While dismissing the Civil Revision Petition in C.R.P.No.53 of 2014, this Court observed that the right and interest of the said Mohammed Ayub Sahib has been declared in O.S.No.279 of 1996 and thereafter the suit in O.S.No.109 of 2000 has been instituted only for consequential relief for recovery of possession. The declaration of the suit property in favour of Mohammed Ayub Sahib has become final as against respondents, who are the defendants in O.S.No.109 of 2000 viz., Sridharmurthy and another. While being so, only on the instance of the said Sridharmurthy the present suit in O.S.No.64 of 2014 has been filed. The respondents herein now filed the present suit suppressing the above facts with unclean hands and the present suit is nothing but abuse of process of law. Therefore, the petitioner filed petition for rejection of plaint. Without considering the above facts, the Court below dismissed the petition filed by the petitioner to reject the plaint and therefore, the present revision petition.

3. Per contra the learned Senior Counsel appearing on behalf of the respondents submitted that the respondents filed suit for declaration of title and permanent injunction in respect of the suit property situated in

survey No.80/31B, Berikai Village, Hosur Taluk, Krishnagiri District, ad measuring 125 sq.ft and to declare that the sale deed dated 28.06.1994 registered vide document No.3357 of 1994 and the Will dated 05.10.1998 registered vide document No.104 of 1998 are null and void.

3.1. He further submitted that the petitioner's father filed the suit in O.S.No.109 of 2000 for recovery of possession on the strength of the judgment and decree passed in O.S.No.279 of 1996. In the said suit in O.S.No.109 of 2000, the respondents herein filed application in I.A.No.572 of 2013 to implead themselves as party. The same was dismissed and aggrieved by the same, the respondents preferred a civil revision petition in C.R.P.No.53 of 2014 before this Court. While dismissing the said revision petition, this Court observed that the respondents are third parties and they can get the relief of impleadment only by restoring to separate legal remedy. Further, the Hon'ble Supreme Court of India also observed that if so advised, the respondents may file separate suit for establishing their rights. Accordingly, the respondents filed the present suit for declaration and injunction as against the petitioner herein.

3.2. He further submitted that the petitioner raised a specific plea that the present suit is barred by res-judicata. But the schedule of property in both the suits in O.S.No.279 of 1996 & O.S.No.109 of 2000 and the present suit in O.S.No.64 of 2014 are completely different and the boundary is also different one. Admittedly, the respondents are not the parties to the earlier two suits viz., O.S.No.279 of 1996 and 109 of 2000. When it being so, the trial Court ought to have been framed issues and it has to be gone into full-fledged trial. Therefore, on the ground of res-judicata alone, the plaint cannot be rejected.

3.3. He further submitted that mere the fact that there was an earlier round of litigation, which went upto the Hon'ble Supreme Court of India, is not sufficient to reject the plaint, unless the petitioner categorically shows that the subject matter of the both suits i.e., the parties and the property are one and the same. Therefore, the earlier round of litigation will not operate as res-judicata to sustain the present suit and there are various factual questions involved in the present suit such as identity of the property and the locus standi of the respondents to maintain the suit which were

questioned by the petitioner. Therefore, all the issues can be decided only during the trial by let in evidence and as such the trial Court rightly dismissed the petition for rejection of the paint and prayed for dismissal of the Civil Revision Petition.

4. Heard Mr.V.Lakshminarayanan, learned counsel appearing for the petitioner and Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the respondents.

5. The petitioner is the defendant in the suit filed by the respondents herein for declaration and injunction in respect of the suit property. According to the petitioner, the very same property was already declared in his father's favour by the judgment and decree dated 31.03.2000 in O.S.No.279 of 1996, as against one Sridharmurthy. He went up to Supreme Court and confirmed in favour of the petitioner's father. On the strength of the judgment and decree of declaration one Mohammed Ayub Sahib viz., the father of the petitioner filed suit in O.S.No.109 of 2000 for recovery of possession in which, the respondents filed petition to implead

themselves as parties in I.A.No.572 of 2013 and the same was dismissed. Aggrieved by the same, they also filed Civil Revision Petition in C.R.P.No.53 of 2014 and the same was also dismissed. While dismissing the Civil Revision Petition, this Court observed that the respondents can very well approach separately for their relief and the Hon'ble Supreme Court of India also observed that the respondents if so advised, may file separate suit for establishing their rights.

6. That apart, the respondents are not the parties to the earlier proceedings which were filed by the petitioner herein in respect of the suit schedule properties. On perusal of the suit schedule of properties, in both the suits, the survey number did not match with the earlier suit property and the extend of the property are also varied. In fact, in the earlier two suits the properties were mentioned with patta number and the present suit with survey numbers.

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7. The petitioner also raised the plea of res-judicata and as such the same has to be gone into with full-fledged trial to prove the same by let

in evidence. As rightly pointed out by the learned Senior Counsel appearing for the respondents, it is not a quash petition under Section 482 of Cr.P.C., since several issues are involved in the suit and all have to be decided only in the full-fledged trial. In support of his contention, he relied upon the judgment reported in **1999 (1) LW 149** in the case of **Chhaganlal Jain Vs. T.K.Hamid Sultan**, in which this Court held as follows :-

"12. It is settled law that for the purpose of looking into the cause of action, Court is expected only to look into the plaint and not the contentions of the defendant. The wording that is used in Order 7, Rule 11 C.P.C., is "where the plaint does not disclose the cause of action"; that means, the Court is expected to look into the plaint, whether it disclosed the cause of action. If the contention of the petitioner is that the plaintiff has no cause of action, that will not be a ground to reject the plaint. The correctness of the said contention can be gone into only when the suit is finally disposed of."

8. He also relied upon the judgment of the Hon'ble Supreme Court of India reported in **2003 (1) CTC 186** in the case of **Saleem Bhai and ors Vs. State of Maharashtra and ors.**, which reads as follows :-

"8. A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII C.P.C. the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as

procedural irregularity. The High Court, however, did not advert to these aspects."

9. He also relied upon the judgment reported in **2008 (3) CTC 724** in the case of **Wipro Limited and anr vs. Oushadha Chandrika Ayurvedic India P Ltd. and ors**, which reads as follows :-

"18. In our opinion, the learned single Judge is clearly in error in going beyond the statement contained in the plaint. It has been repeatedly held by the Supreme Court that for the purpose of deciding an Application under clauses (a) and (b) of the Order 7, rule 11 of the C.P.C., the averments made in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. (see O.N. Bhatnagar v. Rukibai Narsindas, 1982 (2) SCC 244; RoopLal Sathi v. Nachhattar Singh Gill, 1982 (3) SCC 487 and Sopan Sukhdeo Sable v. Asst. Charity Commissioner, 2004(3) SCC 137)."

10. He further cited the judgment reported in **2009 (5) CTC 814** in the case of **M.Nelson Babu Vs. K.Kamalesh babu and anr**, which reads as follows :-

"11.Order 7 Rule 11(d) has limited application. For its applicability, it must be shown that the present suit is barred under law. Such a conclusion must be drawn from the averments made in the plaint. What would be the relevant for invoking Order 7-N Rule 11(d) of CPC. are the averments made in the plaint and for that purpose, there cannot be any addition or subtraction. For the purpose of invoking the said provision, no amount of evidence can be looked into."

In all the above causes, the Hon'ble Supreme Court of India and this Court held that for the purpose of deciding the petition for rejection of plaint, the averments made in plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

11. In the case on hand, as discussed above, the parties are different from the earlier suit and the description of the property is also differed. More over the respondents are not the parties to the sale deed and

the Will which were challenged in the present suit, as such the judgment and decree passed in the earlier suit will not operate as res-judicata. Therefore, the present suit has to be tried with all issues raised by the petitioner herein. That apart, while considering the petition for rejection of plaint, it has to be proved that both suits arose from the same cause of action and both the suits must be between the same parties and the earlier suit must be decided on merits. Therefore, the plea of rejection of plaint cannot be considered and the Court below rightly dismissed the petition. As such, this Court finds no illegality or infirmity in the order passed by the trial Court.

12. Accordingly, the Civil Revision Petition stands Dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

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Index : Yes/No

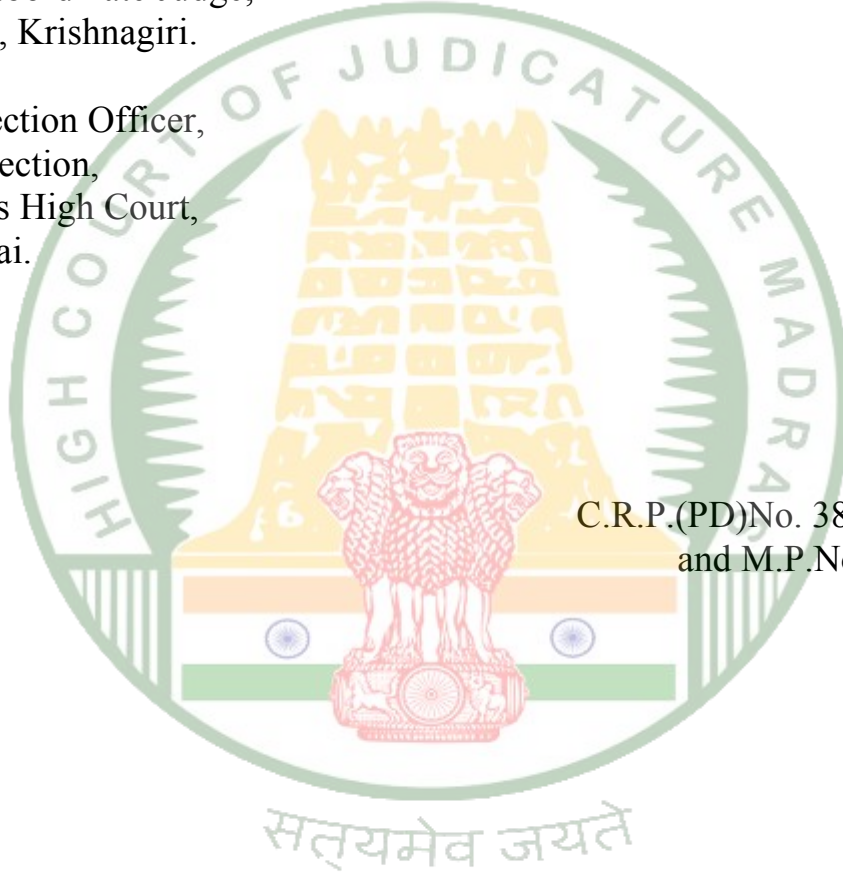
Speaking order/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

rts

To

1. The Subordinate Judge,
Hosur, Krishnagiri.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



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