



CRP.NPD.No.1052/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.NPD.No.1052/2019

[Video Conferencing]

1.Murugathal
2.Sakthivel
3.Saraswathi

.. Petitioners

Vs.

1.M.Palanisamy
2.M.Subramaniam
3.A.Amsaveni
4.A.Shanmugasundaram
5.A.Vasanthamani
6.G.Sivabagyam
7.G.Nandhakumar
8.Krishnapriya

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 CPC to set aside the order passed in I.A.No.1219/2018 in O.S.No.1445/2018 dated 15.02.2019 on the file of the learned 1st Additional District Munsif Court, Coimbatore with exemplary costs to the petitioners.

For Petitioners	:	Mr.K.Balakrishnan
For Respondents	:	Mr.S.Karthikey Balan



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ORDER

- (1) This Civil Revision Petition is filed by the revision petitioners/defendants 1 to 3 in the Suit in O.S.No.1445/2018 rejecting the application which was filed by the revision petitioners/defendants 1 to 3 in I.A.No.1219/2018 to dismiss the main Suit as one barred by principle of *res judicata*.
- (2) Brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:
- (3) The respondents in this Civil Revision Petition as plaintiffs filed the Suit in O.S.No.1445/2018 on the file of the learned 1st Additional District Munsif Court, Coimbatore for permanent injunction restraining the revision petitioners/defendants 1 to 3 and their men from interfering with their peaceful possession and enjoyment of the Suit property.
- (4) The further prayer in the Suit is also for injunction restraining defendants 5 to 8 in any way giving any permission or license or approval to defendants 1 to 4 for forming a lay out in the Suit property. The third prayer is for an injunction to restrain the



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defendants from in any way alienating or encumbering the Suit property. During the pendency of the Suit, the revision petitioners filed an application in I.A.No.1219/2018 to dismiss the Suit as barred by principle of *res judicata*. The said application is filed under Section 11 read with Section 151 of CPC. The case of the revision petitioners before the Trial Court was that the dispute between the petitioners and the respondents had already been decided in an earlier Suit by the learned 3rd Additional District Munsif Court, Coimbatore in O.S.No.1657/1995, stating that the decree in the Suit was also upheld by the Appellate Court in AS.No.94/2001 by judgment and decree dated 20.08.2001.

- (5) It is stated in the counter affidavit filed by the respondents that the Suit is not barred by principle of *res judicata*. It is admitted that previous Suit in O.S.No.1657/1995 was filed by the revision petitioners for declaration of their title to the Suit property and for delivery of possession. However, it is pointed out that the respondents/plaintiffs were in physical possession of the property when the earlier Suit was filed, and it is their specific contention in



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the present Suit that the plaintiffs in the previous Suit did not execute the decree for recovery of possession pursuant to a compromise between parties. Therefore, on the strength of their possession and on the ground that the decree in the earlier Suit is not executable, the present Suit appears to have been filed. The Lower Court found that the issue involves disputed questions of fact and law and therefore, the Court is not desirous of dismissing the Suit on the ground of *res judicata*.

- (6) This Court is unable to find any illegality in the order of the Lower Court. First of all, the revision petitioners cannot maintain an application under Section 11 read with Section 151 of CPC as it was filed. Having regard to the pleadings and the case of revision petitioners an application under Order VII Rule 11 will be appropriate.
- (7) If an application under Order VII Rule 11 CPC has to be filed on the ground that the suit is barred by any law, the Court is expected to decide on the basis of averments made in the plaint and not on the basis of any materials or particulars that may be stated in the



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written statement or supplied by the defendants in the course of trial.

- (8) Secondly, this Court is able to see that the Suit filed by the respondent is on the basis of cause of action arose after the earlier Suit was disposed of. Whether the statements on facts found in the plaint are true or not cannot be decided summarily either in the application filed by the petitioner before the Lower Court or by way of an application under Order VII Rule 11 CPC.
- (9) In view of the settled position of law, this Court is not inclined to entertain the Civil Revision Petition as the petitioners cannot maintain either an application under Order VII Rule 11 CPC or an application under Section 11 read with 151 of CPC to strike out the Suit itself. Hence, the Civil Revision Petition is liable to be dismissed.
- (10) However the order in the present Civil Revision Petition affirming the order of Trial Court cannot be understood that this Court has expressed its opinion on the merits of the petitioners claim that the Suit is barred by principles of *res judicata*. This Court grants



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liberty to the revision petitioners to agitate their claim in the main Suit and the Trial Court is expected to frame appropriate issue and decide the same on merits in accordance with the law. The request of the learned counsel for the petitioners to direct the Lower Court to decide the issue as a preliminary issue cannot be countenanced as the issue involves disputed questions of fact, especially in the present case where several facts are interlinked to sustain the respective claims of parties. However, the Trial Court is directed to dispose of the Suit in O.S.No.1445/2018 as expeditiously as possible, preferably within the period of four months from the date of receipt of a copy of the order.

- (11) With the above observations, the present Civil Revision Petition stands **dismissed**. No costs.

30.11.2021

cda
Internet : Yes

To
The 1st Additional District Munsif Court, Coimbatore.



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S.S.SUNDAR, J.,

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