

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

CORAM

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

CRP.PD.No. 3253 of 2016

and

CMP.No.10723 of 2020

A.Chandrasekaran

... Petitioner

Vs.

Siddhi Vinayakar Temple
Represented by its Trustee
Mr.Bhaskaran
S/o.Late R.Ganesan, Hindu
Aged about 54 years
68/112, IInd Street,
Sivagami Ammaiyar Colony
Sharma Nagar, Chennai - 39.

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to dismiss the suit O.S.No.978 of 2012, hit by Section 11 CPC and re-litigation.

For Petitioner : Mr.V.Jayakumar

For Respondent : Mr.N.Nagusha

ORDER

This Civil Revision Petition has been filed to strike off the plaint in O.S.No.978 of 2012, on the ground that it is hit by Section 11 CPC and will attract the principles of re-litigation.

2. The petitioner is the sole defendant in the said suit filed by the respondent. The respondent filed the said suit for declaration, injunction and recovery of the vacant possession from the hands of the petitioner herein. While the suit was pending, the petitioner herein filed a petition for rejection of plaint on the ground the present suit is barred by the principles of “res-judicata” as the respondent continuously filed the suit for the very same property, which was already decided before the Court of law.

3. On a perusal of the records, it shows that the father of the respondent viz., Ganesan Thambiran filed a suit in O.S.No.1183 of 1979 for declaration and recovery of possession for the property situated at No.20, Vengu Pillai Street, Egmore, Chennai – 600 008, on the file of the VII Assistant Judge, City Civil Court, Chennai and the same was dismissed for default by the judgment and decree dated 05.03.1983. It is pertinent to note

here that the property in the present suit as well as the suit filed by his father is one and the same, though the present suit is filed for recovery of possession of the property ad-measuring 240 sq.ft situated at No.20, Vengu Pillai Street, Egmore, Chennai – 600 008. Therefore, both the property is one and the same. In fact, the father of the respondent herein also filed another suit in O.S.No.7721 of 1992 on the file of the XVII Assistant Judge, City Civil Court, Chennai for permanent injunction and partition, in respect of the very same property. The said suit was contested and dismissed by the judgment and decree dated 30.01.1997. The plaintiff viz., the father of the respondent herein had never been in possession of the said property, while pending the suit or at the time of passing of the judgment in the suit and therefore, the suit was dismissed.

4. Now, the present suit has been filed by the respondent viz., the son of the plaintiff in O.S.No.1183 of 1979 and O.S.No.7721 of 1992 for declaration and recovery of possession, in respect of the suit schedule property. Though the earlier suit filed by his father was dismissed for default, the decree had become final, since it was not challenged before any Court of law. Therefore, the present suit is nothing but clear abuse of

process of law filed for the very same relief repeatedly. The present suit is directly hit by the principles of “res-judicata” and it cannot be sustained as against the petitioner herein.

5. Accordingly, this Civil Revision Petition is allowed. The plaint in O.S.No.978 of 2012 is hereby struck-off from the file of the II Assistant Judge, City Civil Court, Chennai. Consequently, the connected Miscellaneous Petition is closed. No costs.

08.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The II Assistant Judge, City Civil Court, Chennai

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G.K.ILANTHIRAIYAN,J.

Kv



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