

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.03.2021

Delivered on : 26.03.2021

CORAM

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

CRP.(PD).No.966 of 2017
and
C.M.P.No.4806 of 2017

Ramasamy

... Petitioner

VS.

1.Durairaj

2.Chettiannan

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 17.10.2016 in I.A.No.53 of 2016 in O.S.151 of 2006 on the file of the District Munsif Court, Rasipuram.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.S.R.Varun Karthik
for Mr.C.Jagadish

ORDER

This civil revision petition is directed as against the fair and decreetal order dated 17.10.2016 in I.A.No.53 of 2016 in O.S.151 of 2006 on the file of the District Munsif Court, Rasipuram, thereby dismissing the petition for rejection of plaint.

2. The learned counsel for the petitioner would submit that the petitioner already filed a suit in O.S.No.21 of 1984 before the District Munsif Court, Rasipuram for declaration, mandatory injunction and also permanent injunction as against the respondents and the same was decreed in favour of the petitioner and confirmed by this Court in S.A.Nos.1536 and 1537 of 1994 dated 23.12.2005. In fact, after the decree passed in favour of the petitioner, the respondents attempted to trespass into the suit schedule property and as such, the petitioner was constrained to file a Execution Petition in R.E.P.No.104 of 2006 for disobedience of the injunction order granted as against the respondents herein. In the execution proceedings, the respondents had given undertaking that they will not violate the injunction order and recorded the said submission, the execution petition was closed.

3. He further submitted that thereafter, they failed to remove the

obstruction and as such, the petitioner filed R.E.P.No.113 of 2006 in which the Advocate Commissioner has appointed and as per his report, the respondents encroached some portion of the suit property.

4. The second respondent also filed application in R.E.A.No.170 of 2007 under Section 47 of Civil Procedure Code, 1908 (hereinafter referred to as the 'C.P.C.,' for short) alleging that the property comprised in Survey No.117/2 belong to him and the decree obtained by the petitioner in respect of the property comprised in Survey No.117/1 and as such, the said decree is inexecutable. The said contention was rejected by the Execution Court as well as this Court confirming the said order in C.R.P.No.33 of 2008 by an order dated 21.07.2011. Therefore, the present suit has been filed only to prevent the petitioner from executing the earlier decree granted in his favour in O.S.No.21 of 1984. Therefore, the present suit in O.S.No.151 of 2006 is nothing but re-litigate the very same property and very same issues.

5. There is absolutely no cause of action for filing the present suit and as such, it is liable to be rejected. The respondents repeatedly and unrepentantly resorts to vexatious proceedings and it is a gross abuse of

process of Court and as such, the plaint is liable to be rejected.

6. In support of his contention, learned counsel for the petitioner relied on the judgement of the Hon'ble Supreme Court in ***Shrawan Kumar Jaipuriyar vs. Krishna Nandan Singh*** reported in ***(2020) 16 SCC 594***.

7. Per contra, learned counsel for the respondents would contend that the suit property in the suit in O.S.No.21 of 1984 and the present suit is completely different. The earlier suit filed by the petitioner in O.S.No.21 of 1984 in respect of the property comprised in Survey No.117/1 measuring to an extent of 12 cents, whereas, the present suit is filed by the respondents in respect of suit property comprised in Survey No.117/2. Therefore, the subject matter is completely different and issues also different in both the suits. The present suit in O.S.No.151 of 2006 has been filed on a fresh cause of action.

8. He further submitted that the petition itself is not maintainable.

Since it was filed in the fag end of the trial and only to drag the proceedings. In the litigations relating to Survey No.117/1 and nowhere it

has been stated how the present suit filed by the respondents relating to the said survey number, when it is filed in respect of Survey No.117/2. Therefore, it is not hit by the principle of *res judicata*. Though the petitioner had taken the plea of *res judicata* and it cannot be rejected for the reason that it has to be decided only in the trial. The respondents specifically averred in the plaint that in pursuant to the decree obtained in O.S.No.21 of 1984 in respect of property comprised in Survey No.117/1, the petitioner attempted to trespass into the property comprised in Survey No.117/2 which is belong to the respondents and as such, they filed suit for declaration, injunction and also recovery of possession in respect of the property comprised in Survey No.117/2 situated at Namagiripet Village, Namakkal District. Therefore, the Court below rightly dismissed the petition and it does not warrant any interference by this Court.

9. Heard Mr.R.Subramanian, learned counsel for the petitioner and Mr.S.R.Varun Karthick learned counsel represented Mr.C.Jagadish, counsel for the respondents and perused the materials placed on record, apart from the pleadings of the parties.

10. The petitioner is the first defendant in the suit filed by the

respondents for declaration and injunction in respect of the suit property comprised in Survey.No.117/2 situated at Namagiripet Village, Namakkal District. The respondents prayed in the suit for declaration and injunction and along with recovery of possession. According to the respondents, the petitioner is already obtained decree in O.S.No.21 of 1984 by judgement and decree dated 23.12.2005 in respect of the suit property comprised in Survey No.117/1. In pursuant to the said decree, the petitioner encroached the portion of the property comprised in Survey No.117/2 and it is also evident from the Advocate Commissioner's report.

11. No doubt, it is true that the petitioner filed suit in O.S.No.21 of 1984 in respect of the suit property comprised in Survey No.117/1 for a declaration and injunction and the same was decreed by a judgement and decree dated 23.12.2005 and the same was confirmed by this Court in S.A.Nos.1536 of 1537 of 1994. Now, the respondents filed the present suit for declaration, injunction and recovery of possession in respect of the property comprised in Survey No.117/2.

12. In such circumstances, whether the present suit is hit by the

principle of *res judicata*. Even assuming that the present suit hit by *res judicata* it shall not be the ground for rejection of plaint. The question of *res judicata* shall be a mixed question of law and fact. It has to be gone into and decided in the trial. Further, the plaint cannot be rejected on the basis of the written statement of the defendant or any averments made in the affidavit filed in support of application under Order VII Rule 11 of C.P.C. Admittedly, the present suit is filed for different property with completely new cause of action. Therefore, the present suit is not hit by the principle of *res judicata*.

13. Learned counsel for the petitioner relied upon the judgement of the Hon'ble Supreme Court in ***Shrawan Kumar Jaipuriyar vs. Krishna Nandan Singh*** reported in **(2020) 16 SCC 594** in which paragraph No.9 held as follows:-

“9. This Court in Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust has referred to the earlier judgment of this Court in A.B.C. Laminart (P) Ltd. v. A.P. Agencies, to explain that the cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to seek a decree

and relief against the defendant. Cause of action requires infringement of the right or breach of an obligation and comprises of all material facts on which the right and claim for breach is founded, that is, some act done by the defendant to infringe and violate the right or breach an obligation. In T. Arivandanam v. T.V. Satyapal this Court has held that if the plaint is manifestly vexatious, meritless and groundless, in the sense that it does not disclose a clear right to sue, it would be right and proper to exercise power under Order 7 Rule 11 of the Code of Civil Procedure, 1908 ("the Code", for short). A mere contemplation or possibility that a right may be infringed without any legitimate basis for that right, would not be sufficient to hold that the plaint discloses a cause of action."

14. The Hon'ble Supreme Court held that it is necessary for the plaintiff to prove in order to seek a decree and relief against the defendant. Cause of action requires infringement of the right or breach of an obligation and comprises of all material facts on which the right and claim for breach is founded, that is, some act done by the defendant to infringe and violate. The right of breach an obligation. A mere contemplation or possibility that a right may be infringed without any legitimate basis for that right. would not be sufficient to hold that the plaint discloses a cause of action.

15. In the case on hand, as stated supra, the present suit has been filed for different property with new cause of action. The issues completely different and no way connected with the earlier suit filed by the petitioner in O.S.No.21 of 1984. Therefore, the above judgement is not helpful to the present case.

16. In view of the above, this Court finds no irregularity or infirmity in the order passed by the Trial Court.

17. Accordingly, the civil revision petition is dismissed. No Costs. Consequently, the connected civil miscellaneous petition is closed.

26.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

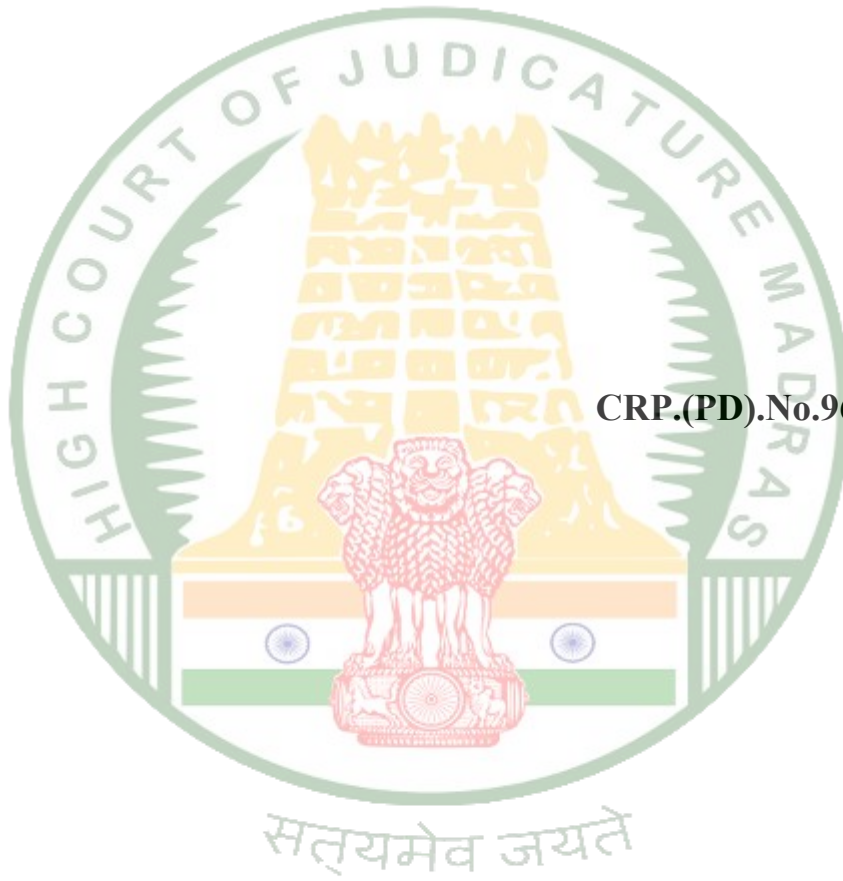
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To

The District Munsif Court,
Rasipuram.

G.K.ILANTHIRAIYAN,J.

dm



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