



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2021

(Reserved on 23.03.2021)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANUCRP(MD)No.202 of 2020andCMP(MD)No.1194 of 2020

WEB COPY

K.Shanmugaiya

... Petitioner /
Petitioner / Defendant

vs.

K.Avudaiyammal

... Respondent /
Respondent / Plaintiff

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 22.01.2020 passed in I.A.No.179 of 2017 in O.S.No.196 of 2012 on the file of the Additional District Munsif Court, Sankarankovil.

For petitioner : Mr.G.Prabhu Rajadurai

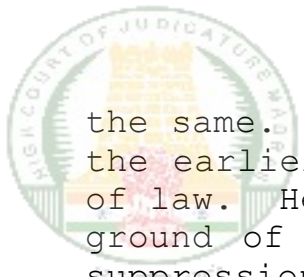
For respondent : Mr.H.Arumugam

ORDER

Against the dismissal of the petition filed under Order 7 Rule 11(d) of CPC, this Civil Revision Petition is filed by the petitioner/defendant.

2.The respondent/plaintiff has filed the above suit in O.S.No.196 of 2012 for declaration that the 2nd schedule property absolutely belongs to her and for mandatory injunction to remove the illegal construction made in the property obstructing the flow of drainage water from the house of the plaintiff. Pending suit, the revision petitioner/defendant filed the present petition to reject the plaint which was dismissed by the trial Court, against which, this revision petition is filed.

3.The learned counsel for the petitioner/defendant would further submit that the respondent/plaintiff suppressed the decree dated 31.10.1985 passed in the earlier suit in O.S.No.707/1981 contested between the predecessors in title of the defendant and plaintiff, wherein the issue involved in the present suit had already been decided and settled, and therefore, the plaint is liable to be rejected on the principles of *res judicata*. He would further state that the finding in the earlier suit and the Commissioner Report filed in the present suit would show that the suits are one and the same.



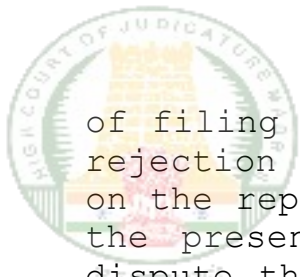
the same. The respondent/plaintiff did not disclose the factum of the earlier suit in the plaint, which is a clear abuse of process of law. Hence, the suit is liable to be dismissed not only on the ground of principle of *res judicata* but also on the ground of suppression of fact. In support of his contentions, he would rely on the judgment of the Hon'ble Supreme Court in **Akbar Ali vs. Umar Khan** in SLP.No.31844/18 dated 12/02/21 wherein, it has been held that the reasons in Order VII Rule 11 CPC is not exhaustive and the Court has got powers to set aside even vexatious suit. The Court below, without considering the above aspects, has erroneously dismissed the application filed by the petitioner. Thus, he prayed to allow this revision petition.

4.The learned counsel for the respondent/plaintiff would submit that the present petition to reject the plaint has been filed 5 years after the institution of the suit only to drag on the proceedings. He would further state that the scope of Order 7 Rule 11(d) of CPC cannot be expanded beyond the averments in the plaint and the plea of *res judicata* can be considered only during trial based on evidence and documents. He would also state that the application under Order 7 Rule 11 of CPC cannot be filed after filing of the written statement and during trial. Further, all the contentions raised in the present petition have already been raised in the written statement and it cannot be adjudicated in an interlocutory application. It is further submitted that the present suit is not a case of re-litigation, but it is based on different cause of action of encroachment by the defendant beyond the measurement to which he is entitled to as per the judgment passed in the earlier suit. Thus, he would state that the trial Court has rightly dismissed the petition for rejection of plaint. Thus, he prayed to dismiss this revision petition.

5.Heard the learned counsel for the petitioner as well as the respondent.

6. The main contention of the learned counsel for the petitioner/defendant is that the suit is barred by *res judicata* and it is a re-litigation and that the report of the Commissioner proves the said factum. According to the respondent/plaintiff, it is not a re-litigation and the suit is filed for different cause of action ie., encroachment by the defendant beyond the measurement to which he is entitled to as per the judgment passed in the earlier suit. The Court below has held that the statement made in the plaint did not come within the scope of Order 7 Rule 11(d) of C.P.C. and in the interest of justice, the petition is liable to be dismissed and accordingly, dismissed the petition.

7. Admittedly, in this case, the petitioner has already filed written statement and raised the grounds raised in the Interlocutory Application. After about five years from the date



of filing of the written statement, he has filed the petition for rejection of plaint. In this case, the petitioner mainly relying on the report of the Commissioner filed in the earlier suit and in the present suit, wanted to reject the plaint. It is not in dispute that the trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit before the conclusion of the trial. It is a settled law that for the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 of CPC, the averments in the plaint are germane and the pleas taken by the defendant in the written statement, documents produced by the defendant and the report of the Commissioner, etc. would be wholly irrelevant at that stage. Therefore, the contention of the petitioner has no legs to stand.

8. It is well settled that while considering an application under Order VII Rule 11 of the CPC, the question before the Court is whether the plaint discloses any cause of action or whether the suit is barred by any law, on the face of the averments contained in the plaint itself. While considering an application under Order VII Rule 11 of the CPC the Court is not to look into the strength or weakness of the case of the plaintiff or the defence raised by the defendant. On perusal of plaint, this Court is of the view that in this case, the issue of principles of *res judicata* cannot be decided at this stage. It can be decided only by oral and documentary evidence to be adduced by the parties. Therefore, in the interest of justice, the petition for rejection of plaint is liable to be dismissed and the Court below has rightly dismissed the petition for rejection of plaint. This Court does not find any valid reason to interfere with the impugned order.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

<https://hcservices.courts.gov.in/hcservices/>



To
The Additional District Munsif,
Sankarankovil.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-25216[F] dated 04/08/2021)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-25233[F] dated 04/08/2021)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-25432[F] dated 05/08/2021)

ORDER MADE IN
CRP(MD)No.202 of 2020
DATED : 03.08.2021

_CN(11.08.2021) 4P 5C