



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 14TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

A.No.630 of 2022

in

C.S.No.332 of 2021

A.Muthu,
S/o S.P.Annamalai,
Flat No.G-1, Ground Floor,
Anandham Apartments (Behind Collector Office),
No.27/1, Agri Nagar,
Valudhareddy, Villupuram – 605 602.

... Applicant/Plaintiff

-Versus-

1.S.M.H.Sheik Mohammed,
S/o Hameed Sultan,
No.24, 3rd Cross Street,
Kumaran Nagar,
Chennai – 600 092.

2.M/s Gas Links,
A Partnership Firm,
Represented by its Managing Partner
Y.Syed Chanth Basha,
No.240/3, Poonamallee High Road,
Aminjikarai, Chennai – 600 029.

3.Mr.K.Shanmugavel,
S/o Mr.S.P.Karuppiyah,
B 6/4, TNHB Quarters,
Chennai – 600 101.

4. Mrs.T.Sundari,
W/o P.Thennavan,
15, Sai Nagar Annex,
Chennai – 600 092.



5. The Commissioner,
Greater Chennai Corporation,
Rippon Building,
No.2, Memorial Hall Road,
Park Town, Chennai – 600 003.

6. The Executive Engineer,
Greater Chennai Corporation,
Zone – 10, Ward No.127,
Koyambedu Zone,
Chennai – 600 092.

... Respondents/Defendants

A.No.630 of 2022:
Mr.S.M.H.Sheik Mohammed,
S/o Hameed Sultan,
No.24, 3rd Cross Street,
Kumaran Nagar,
Chennai – 600 092.

..Applicant/1st Defendant

VS

A.Muthu,
S/o S.P.Annamalai,
Flat No.G-1, Ground Floor,
Anandham Apartments (Behind Collector Office),
No.27/1, Agri Nagar,
Valudhareddy, Villupuram – 605 602.

2.M/s Gas Links,
A Partnership Firm,
Represented by its Managing Partner
Y.Syed Chanth Basha,
No.240/3, Poonamallee High Road,
Aminjikarai, Chennai – 600 029.

3.Mr.K.Shanmugavel,
S/o Mr.S.P.Karuppiyah,
B 6/4, TNHB Quarters,
Chennai – 600 101.

4. Mrs.T.Sundari,
W/o P.Thennavan,
No.15, Sai Nagar Annex,
Chennai – 600 092.



5. The Commissioner,
Greater Chennai Corporation,
Rippon Building,
No.2, Memorial Hall Road,
Park Town, Chennai – 600 003.

6. The Executive Engineer,
Greater Chennai Corporation,
Zone – 10, Ward No.127,
Koyambedu Zone,
Chennai – 600 092.

..Respondents 2 to 6th Defendants

Application praying that this Hon'ble Court be pleased to reject the
plaint as not maintainable in law and on facts with exemplary costs of the
applicants.

This application coming on this day before this Court for hearing in
the presence of Mr.T.Ramachandran, Advocate for the applicant herein and
Ms.C.S.Vedavalli, Advocate for the 1st respondent herein and
Mr.S.Manohar Ponraj, Advocate for the 2nd respondent herein and
Mr.B.Ullasavelan, Advocate for the 4th respondent herein and
Mr.R.Gopinath, Standing counsel for Corporation, appearing for the 5th and
6th respondents herein, and upon reading the judges summons and the
affidavit of S.M.H.Sheik Mohammed filed herein, and this Court having
observed that both the contentions of limitation and *res judicata* are mixed
questions of law and facts and the both can be decided only after trial and
not at the threshold, under these circumstances, this Court is not in



agreement with the grounds raised by the applicant/first defendant to reject the plaint. and further, it is settled proposition of law that at the time of deciding an application under Order VII Rule 11 CPC, the Court has to see the averments in the plaint and the documents annexed with the plaint and not the defence taken by the defendants. As already stated the question of limitation and the ground of res judicata are mixed questions of fact and law, which can be decided only after recording evidence and marking documents at the time of trial and not at this stage and therefore, there is no ground to reject the plaint,

It is ordered as follows:-

That the application in A.No.630 of 2022 be and is hereby dismissed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 14TH DAY OF MARCH 2022.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



5

DL
WEB COPY

02.06.2022

A.No.630 of 2022
in
C.S.No.332 of 2021

ORDER

DATED :14.03.2022

THE HON'BLE MR. JUSTICE
P.VELMURUGAN

FOR APPROVAL: 02.06.2022

APPROVED ON : 06.06.2022



WEB COPY

6

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 14TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

A.No.630 of 2022

in

C.S.No.332 of 2021

A.Muthu,
S/o S.P.Annamalai,
Flat No.G-1, Ground Floor,
Anandham Apartments (Behind Collector Office),
No.27/1, Agri Nagar,
Valudhareddy, Villupuram – 605 602.

... Applicant/Plaintiff

-Versus-

1.S.M.H.Sheik Mohammed,
S/o Hameed Sultan,
No.24, 3rd Cross Street,
Kumaran Nagar,
Chennai – 600 092.

2.M/s Gas Links,
A Partnership Firm,
Represented by its Managing Partnership,
Y.Syed Chanth Basha,
No.240/3, Poonamallee High Road,
Aminjikarai, Chennai – 600 029.

3.Mr.K.Shanmugavel,
S/o Mr.S.P.Karupiah,
B.6/4, TNHB Quarters,
Chennai – 600 101.



4. Mrs.T.Sundari,
W/o P.Thennavan,
15, Sai Nagar Annex,
Chennai – 600 092.

5.The Commissioner,
Greater Chennai Corporation,
Rippon Building,
No.2, Memorial Hall Road,
Park Town, Chennai – 600 003.

6.The Executive Engineer,
Greater Chennai Corporation,
Zone – 10, Ward No.127,
Koyambedu Zone,
Chennai – 600 092.

...
Respondents/Defendants

A.No.630 of 2022:
Mr.S.M.H.Sheik Mohammed,
S/o Hameed Sultan,
No.24, 3rd Cross Street,
Kumaran Nagar,
Chennai – 600 092.

..Applicant/1st Defendant

vs

A.Muthu,
S/o S.P.Annamalai,
Flat No.G-1, Ground Floor,
Anandham Apartments (Behind Collector Office),
No.27/1, Agri Nagar,
Valudhareddy, Villupuram – 605 602.

2.M/s Gas Links,
A Partnership Firm,
Represented by its Managing Partnership,
Y.Syed Chanth Basha,
No.240/3, Poonamallee High Road,
Aminjikarai, Chennai – 600 029.



3. Mr. K. Shanmugavel,
S/o Mr. S. P. Karuppiyah,
B 6/4, TNHB Quarters,
Chennai – 600 101.

4. Mrs. T. Sundari,
W/o P. Thennavan,
No. 15, Sai Nagar Annex,
Chennai – 600 092.

5. The Commissioner,
Greater Chennai Corporation,
Rippon Building,
No. 2, Memorial Hall Road,
Park Town, Chennai – 600 003.

6. The Executive Engineer,
Greater Chennai Corporation,
Zone – 10, Ward No. 127,
Koyambedu Zone,
Chennai – 600 092.

..Respondents 2 to 6th Defendants

Application praying that this Hon'ble Court be pleased to reject the
plaint as not maintainable in law and on facts with exemplary costs of the
applicants.

This application coming on this day before this Court for hearing, the
Court made the following order:

The first respondent is the plaintiff, the applicant is the 1st
defendant and the other respondents are defendants 2 to 6 in the suit in

<https://hcservices.ecourts.gov.in/hcservices/> C.S.No.332 of 2021. The first respondent/plaintiff has filed the above suit



in C.S.No.332 of 2021 against the applicant and other respondents herein for declaration, permanent injunction, mandatory injunction and also for damages.

2 During pendency of the said suit, the applicant/1st defendant has filed this present application to reject the plaint stating that the suit is barred by law of limitation and hit by *res judicata*.

3 The two main grounds taken by the applicant/first defendant are that the suit is barred by limitation and hit by *res judicata*. It is contended by the learned counsel for the applicant/1st defendant that even though the first respondent/plaintiff claimed that he purchased the suit property in the year 2001 and when he visited the same in the year 2018, he came to know about the encroachment made by the defendants. But the fact remains that the applicant is in continuous possession of the suit property since 1973. Therefore, if at all, the first respondent/plaintiff purchased the property, he should have filed the suit for recovery of possession within 12 years and therefore, the suit is barred by law of limitation. Further, the issue involved in the writ petitions have been duly adjudicated by this Court and the same issues though not against the applicant/1st defendant, it cannot be the issues in this suit for fresh adjudication and therefore, the law of *res judicata* will curtail the 1st respondent/plaintiff from raising those issues

once again in this suit. Hence, the suit has to be rejected under Order VII



Rule 11 (d) C.P.C. since the suit is barred by law.

WEB COPY

4

The learned counsel for the applicant/first defendant would submit that the 1st respondent/plaintiff has not specifically stated about his title. Further, he has lost his possession long back and the order in the writ petition will not give him the right to file the suit for recovery of possession taking away the law of limitation and filing of a writ petition and adjudication on the same would not give any exemption for period of limitation. Therefore, the suit itself is not maintainable and it is barred by limitation and hence, the suit has to be rejected at the threshold to prevent the applicant/1st defendant from undergoing ordeal of trial and it would be only a futile exercise. Therefore, the plaint has to be rejected.

5

The learned counsel for the 1st respondent/plaintiff would submit that the suit is not either barred by law of limitation or hit by res judicata. Even otherwise, the limitation and res judicata are mixed question of law and fact and it cannot be decided at the threshold and it requires detailed trial and therefore, the grounds taken by the applicant/1st defendant are not sustainable and that the 1st respondent/plaintiff has elaborately given the details in the plaint. Further more, to decide the application under Order VII Rule 11 CPC, the Court has to see the entire averments in the plaint and not the defence taken by the defendants.

Therefore, as such it is not satisfied with any of the grounds under Order



VII Rule 11 CPC. Hence, the application has to be rejected and the suit has to be proceeded further in accordance with law for trial to decide the issues in the manner known to law.

6 The first respondent is the plaintiff who has filed the above suit for declaration, permanent injunction, mandatory injunction and also for damages. A reading of the averments in the plaint discloses the cause of action including the proceedings in the writ petition which were dismissed by this Court. The main contentions raised by the applicant/1st defendant is that the suit is barred by law of limitation and also hit by principle of *res judicata*.

7 Both the contentions of limitation and *res judicata* are mixed questions of law and facts and the both can be decided only after trial and not at the threshold. Under these circumstances, this Court is not in agreement with the grounds raised by the applicant/first defendant to reject the plaint.

8 Further, it is settled proposition of law that at the time of deciding an application under Order VII Rule 11 CPC, the Court has to see the averments in the plaint and the documents annexed with the plaint and not the defence taken by the defendants. As already stated the question of limitation and the ground of *res judicata* are mixed questions of fact and law, which can be decided only after recording evidence and marking



documents at the time of trial and not at this stage. Therefore, there is no ground to reject the plaint and the application is liable to be dismissed.

9 Accordingly, the application is dismissed.

Sd./-P.V.J.
14.03.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.