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C.R.P(PD).No. 1024 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

C.R.P.(PD).No. 1024 of 2016
and C.M.P.No.5697 of 2016

C.Srinivasan

... Petitioner

/Vs/

1.Akbar Ali

2.P.M.Mohammad Samsuddin

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.01.2016, made in I.A.No.171 of 2015 in O.S.No.157 of 2014 on the file of the learned Principal Subordinate Court at Krishnagiri.

For Petitioner : Mr.S.Parthasarathy
Senior Counsel
for Mr.P.Dinesh Kumar

For Respondents : No appearance

ORDER

The instant Revision Petition has been filed by the defendants in the suit in O.S.No.157 of 2014 on the file of the Principal Sub-ordinate Judge,



Krishnagiri, wherein, the application filed by the petitioner in Order VII Rule 11 of C.P.C., to reject the plaint has been dismissed.

2. The case of the petitioner is that he had purchased properties under four sale deeds dated 27.02.2012 from the respondents. It was an agreement between the parties to this petition that if the respondents herein paid a sum of Rs.75,00,000/- (Rupees Seventy Five Lakhs) within a period of five months, then the petitioner will reconvey the lands. However, the respondents herein started to interfere with the possession and enjoyment of the property which insisted him to initiate O.S.Nos.222 & 223 of 2012 on the file of the District Munsif Court, Krishnagiri, praying for a permanent injunction restraining the respondents from interfering with the properties purchased by him from the respondents.

3. The said suit was decreed and on appeal, the 1st Appellate Court has reversed the judgment and decree, against which the petitioner had preferred the Second Appeal before this Court. The Second Appeal came to be allowed by a detailed judgment and decree dated 11.03.2021, restoring the judgment and decree passed in O.S.Nos.222 & 223 of 2012.



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4. The respondents herein have not entered appearance inspite of notice in the Second Appeal also. It was also submitted that the respondents herein had initiated O.S.No.157 of 2014, seeking to cancel/ set aside the sale deeds dated 27.02.2012. The petitioner had taken out an application to reject the plaint inter-alia contending that the issues in the said suit had already been decided in the suit filed by the petitioner and hence, is hit by Section 11 of C.P.C. The respondent herein had filed counter submission repudiating the claim of the petitioner.

5. The learned trial Judge by his order dated 11.01.2016 had dismissed the application under Order VII Rule 11 holding that the suit filed by the petitioner was a suit for bare injunction and that the suit that is in issue is with respect of declaration and hence, the issue decided in this case will be different from the issue that were decided in the suit filed by the petitioner.

6. The learned senior counsel appearing on behalf of the petitioner vehemently contended that the Court below without appreciating the materials on record had dismissed his application for rejection of plaint. He had also submitted that this Court had confirmed the judgment and decree



passed by the learned trial Judge by its judgment and decree made in

Second Appeal Nos. 171 and 172 of 2018 dated 11.03.2021. Thereby, confirming the title of the petitioner. Hence, the present suit is hit by principles of *res judicata*.

7. The learned Senior counsel also relied upon the judgment in the case in ***Nesammal and another Vs Edward and another*** reported in **1998 3 CTC Page 165**. This Court, in its decision has held that the provisions of Order VII Rule 11 are not exhaustive and that the Court has got inherent powers to see that the vexatious litigations are not allowed to consume the time of the Court.

8. I have carefully considered the submissions made by Mr.S.Parthasarathy, learned Senior Counsel for Mr.P.Dinesh Kumar, learned Counsel appearing on behalf of the petitioner and perused the materials available on record.

9. The present petition has been filed under Order VII Rule 11 read with Section 11 of C.P.C. It is well established principles of law that a Court while dealing with an application Order VII Rule 11 shall be only guided by the averments made, if the plaintiff to see whether the plaintiff is hit by any of



the instances stipulated in Order VII Rule 11 of C.P.C. As seen, the present petition has been filed under Order VII Rule 11 read with Section 11 C.P.C. i.e., to reject the plaint as has been hit by the principles of *res judicata*. For the purpose of adjudicating whether the issue in a suit has been directly or indirectly decided in a former suit, it is necessary for the Court to travel beyond the plaint which has been deprecated by this Court and also the Hon'ble Apex Court on many occasions.

10. I would like to place reliance on the latest judgment of the Hon'ble Apex Court in the case of ***Srihari Hanumandas Totala v. Hemant Vithal Kamat*** reported in ***2021 9 SCC page 99***. The Apex Court in clear terms has held as follows:

“25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarised as follows:

25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

25.2. The defence made by the defendant in the suit must not be considered while deciding the merits of the application.

25.3. To determine whether a suit is barred by res judicata, it is necessary that (i) the “previous suit” is decided, (ii) the issues



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in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.

25.4. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the “previous suit”, such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.”

11. I am bound by the decision of the Hon’ble Apex Court, wherein, it has been clearly held that the pleadings, issues and decisions in the previous suit will be beyond the scope of Order VII Rule 11(d).

12. For the reasons stated above, the above Civil Revision Petition fails and is dismissed. Considering the pendency of the suit for nearly a decade, the learned trial Judge is directed to expedite the matter and dispose of the above suit as early as possible but not later than six months from the date of receipt of a copy of this order.



Consequently, connected miscellaneous petition is also closed.

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To

The Principal Sub-ordinate Judge,
Krishnagiri



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