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C.R.P.No.2554 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

CORAM

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

C.R.P.No.2554 of 2019

1. P.Sundarambal
2. Ranjini
3. Suseela

... Petitioners

Vs.

1. T.Krishnasamy
2. B.Rathina
3. B.Laxmi
4. B.Padmavathi
5. B.Saraswathi
6. B.Kanchana
7. B.Mageswaran
8. B.Laxmipathi
9. The Thasildhar
Kancheepuram Taluk,
Kancheepuram District.

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 29.11.2018 passed in I.A.No.302 of 2018 in O.S.No.148 of 2015 on the file of the Additional District Munsif Court, Kancheepuram.



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For Petitioners : Mr.V.Manoharan
For Respondents
For R1 to R8 : Mr.M.Senthamizhselvan
For R9 : Mr.C.Sathish
Government Advocate

ORDER

The Civil Revision Petition has been filed as against the fair and decreetal order dated 29.11.2018, passed by the learned Additional District Munsif, Kancheepuram, in I.A.No.302 of 2018 in O.S.No.148 of 2015, thereby allowing the petition filed under Section 11 of the C.P.C., on the ground of res-judicata.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit in O.S.No.148 of 2015 for declaration and permanent injunction in respect of the suit property. While pending the suit, the respondents filed an application in I.A.No.302 of 2018 under Section 11 of C.P.C., to reject the suit on the ground of res-judicata that in respect of the very same suit property they already filed in the suit in O.S.No.376 of 1978. The said application was allowed by the Court below, as against which the present Civil Revision Petition.

3. Heard Mr.V.Manoharan, learned counsel appearing for the



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petitioners, Mr.M.Senthamizhselvan, learned counsel appearing for the respondents 1 to 8 and Mr. C.Sathish, learned Government Advocate appearing for the ninth respondent.

4. On a perusal of records revealed that the earlier suit was filed for the very same property for declaration and injunction and the same was dismissed as not pressed, since there was a settlement between the parties. Though the said suit was settled out of Court, there was no compromise entered between the party. In fact, already the respondents filed petition for rejection of plaint in I.A.No.7 of 2016 and the same was dismissed. Therefore, in order to drag the present suit, the respondents filed the petition under Section 11 of C.P.C., by applying the principle of res-judicata.

5. When the application is filed under Section 11 of the C.P.C., in order to apply the general principle of res-judicata, the Court is required to find whether the issue in a subsequent suit was directly and substantially in issue in the earlier suit or proceeding, was it between the same parties and was it decided by such Court. It also emphasis that before a plea of res-



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judicata, the basic conditions to be fulfilled that the litigating parties must be the same and the subject matter of the suit property must be identical and the matter must be finally decided between the parties and also the suit must be decided by a Court of competent jurisdiction.

6. In fact, the respondents filed written statement and also the additional written statement. Further, during the trial, the respondents filed an application in I.A.No.7 of 2016 for rejection of plaint on the ground that the value of the suit has not been properly given and the same was also dismissed by the trial Court. Now the respondents came forward with the present petition for rejection of plaint on the ground of res-judicata. The earlier suit was filed in the year 1978 and the same was dismissed in the year 1982. Unfortunately, the Court below without even applying any one of the conditions as contemplated under the res-judicate mechanically allowed the application filed under Section 11 of C.P.C.

7. Therefore, this Court finds infirmity and illegality in the order



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passed by the Court below and it is liable to be set aside. Accordingly, order dated 29.11.2018, passed by the learned Additional District Munsif, Kancheepuram, in I.A.No.302 of 2018 in O.S.No.148 of 2015, is hereby set aside. The trial Court is directed to proceed with the trial and dispose the same in accordance with law, within a period of six months from the date of receipt of a copy of this Order.

8. With the above direction, the Civil Revision Petition stands allowed. There shall be no order as to costs.

23.12.2022

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order

rts



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G.K.ILANTHIRAIYAN, J.

rts

To

1. The Additional District Munsif,
Kancheepuram.

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