



CRP. No.2565 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. No.2565 of 2017

1.V.Palanivel
2.S.Selvarani
3.K.Jayalakshmi
4.R.Susheela
5.Soundararajan
6. S.Vijayalakshmi

...Petitioners

Vs.

1.K.Ravi
2.K.Sundar
3.K.Bhaskar
4.K.Kala
5.K.Maheswari

...Respondents.

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the fair order and decreetal order dated 03.04.2017 passed in I.A No.214 of 2017 in O.S No.259 of 2014 on the file of the Principal District Munsif, Alandur.

For P1, P2, P5 and P6	: Mr.T.Sundar Rajan
For P3 and P4	: Mr.P.Satheesh Kumar
For R1 to R5	: Mr.N.Manokaran for P.Krishnan



WEB COPY



CRP. No.2565 of 2017

ORDER

Challenging the impugned order passed by the Principal District Munsiff, Alandur in I.A No. 214 of 2017 in O.S No.259 of 2014 the defendants in the suit preferred this Civil Revision Petition.

2. Originally the suit was filed by the respondent's/ plaintiff's father for the relief of permanent injunction and other consequential relief in respect of properties in Old S.No. 135, at Pallikaranai Village, Sholinganalur Taluk, Kancheepuram District for an extent of 52 cents. The defendants filed I.A No. 214 of 2017 in O.S No. 259 of 2014 under Section Order 7 Rule 11 of CPC r/w Section 151 of CPC to reject the plaint stating that it was barred by law and no cause of action for the suit, by Contending that there was injunction suit filed by the plaintiff's/respondent's father with respect to same property against these defendants/petitioner and the same was dismissed for default, later partition suit was filed by this revision petitioner against the respondent which was decreed. Therefore, without setting aside the previous orders the present suit is hit by resjudicata since already there was a decree of partition, hence the present case lack cause of action he prayed to reject the suit.



CRP. No.2565 of 2017

3. The learned counsel for the respondent/plaintiffs contended before the lower Court that the cause of action for filing the previous suit for injunction by the father of the respondent and the cause of action for filing the present suit are different and therefore the present suit is not hit by the principles of resjudicata.

4. On considering the submissions on either side the Trial Court held that with regard to earlier suit filed by the plaintiff's father was dismissed for default no issues were framed and it cannot be barred by resjudicata and also held that cause of action for this suit is totally different from the earlier suit's cause of action and dismissed the same.

5. Challenging the same the defendant preferred this Civil Revision Petition.

6. The learned counsel for the revision petitioner argued that the Court below failed to note that the plaint did not reveal the cause of action. The alleged cause of action is a vexatious one on the ground the plaint has to be rejected, apart from that already preliminary decree in O.S NO.463 of 2022 and on the date of filing of the present suit decree stands in their favour.



CRP. No.2565 of 2017

therefore the Trial Court ought to have allowed the application erroneously dismissed the application. Hence he prayed to set aside the findings of the lower Court in the said application.

7. By way of reply the learned counsel for the respondent/ plaintiff submitted that they filed the application under Order 9 Rule 13 in I.A No.399 and 400 of 2010 as pending before the Trial Court till date. In that the application revision petitioner filed interim application praying for injunction in I.A NO. 430 of 2014 which is pending. Furthermore, the learned counsel for the respondent submitted that the Principles of resjudicata could not be a ground for reject the plaint and he relied the Judgement of the *Supreme Court in the case of Srihari Hanumandas Totala Vs Hemand Vithal Kamat and Others in 2021 9 SCC 99:*

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 (d), where only the statements in the plaint will have to be perused."



CRP. No.2565 of 2017

8. Therefore the findings with regard to plea of rejection by the Trial

Court as such needs no interference and the above referred case is squarely applicable to the facts of the present case accordingly this Civil Revision Petition is dismissed. Further, on seeing the suit which is pending from the year 2014 and also the parties are senior citizens the Trial Court is directed to dispose the suit O.S No. 259 of 2014 within three months from the date of receipt of a copy of this order.

9. Further, the learned counsel for the 3 and 4 respondents submitted that their brother Palanivel fabricated their signature conducted the suit proceedings including CRP proceedings before this Court and also the sisters who appeared before this Court stated that without their knowledge he included them in the proceedings and they were not aware about the proceedings. On seeing the facts of the case the most of the parties are senior citizens approached the Court for remedy but the dispute between the parties are not reached finality. Hence, the Trial Court is directed to dispose the case within six months and the liberty is given to third and fourth respondent to raise objection about the contact of their brother as per manner known to law.



CRP. No.2565 of 2017

WEB COPY 10. In the result, Civil Revision petition is dismissed. No costs.

16.11.2022

pbl

To

1. The Principal District Munsif, Alandur.



WEB COPY



CRP. No.2565 of 2017

T.V.THAMILSELVI,J.

Pbl

CRP. No.2565 of 2017

16.11.2022