



C.R.P.No.3895 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3895 of 2022

and

C.M.P.No.20401 of 2022

1.K.Antonisamy

2.A.Lency Suganthi Mary

... Petitioners

Vs.

S.Velusamy

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the decretal and fair order dated 09.09.2022 passed by the learned Principal District Munsif Court, Tirupur in I.A.No.809 of 2019 in O.S.No.197 of 2019 dated 09.09.2022 and consequently reject the plaint in O.S.No.197 of 2019.

For Petitioners : M/s.T.Sunderanathan

For Respondents : No Appearance

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing petition filed by the petitioners/defendants seeking to reject plaint under Order 7 Rule 11 of C.P.C.



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WEB COPY 2. The respondent herein filed a suit for injunction restraining the petitioners/defendants from interfering with his right to worship the suit temple more particularly by demolishing, damaging the temple. The respondent also sought for injunction restraining petitioners from cutting down the trees in the suit properties. He also sought for injunction regarding use of PAP Channel and PAP for water irrigation. The respondent also prayed for injunction restraining the petitioners from interfering with his common right of user and enjoyment over the suit properties.

3. The defendants filed I.A.No.809 of 2019 seeking to reject the plaint in O.S.No.197 of 2019. In the affidavit filed in the support of the said petition, the petitioners had averred that earlier father of the respondent/plaintiff namely Mr.Subbaraya Goundar filed a suit for declaration and injunction in O.S.NO.196 of 1978 on the file of the District Munsif Court, Tirupur and the said suit was decreed by declaring 1/3rd right to the Mr.Subbaraya Goundar over the common well and channel situated at S.F.No.148 to pump out water by electric motor pump to irrigate in S.F.No.147. According to the petitioners, the said suit was suppressed by the respondent while filing the present suit. Therefore, it will amount to abuse



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of process of law and Court. It is stated that the present suit is a re-litigation on the part of the respondent. The revision petitioners also raised points of resjudicata.

The petitioner has also averred in the affidavit that respondent does not disclose the cause of action and the present suit is barred under Order 2 Rule 2 of C.P.C. The Court below after considering rival submissions of both the parties came to the conclusion that the relief sought for in the present suit, namely injunction restraining the petitioners from interfering with the respondent's right to worship in the suit temple. The said relief was not at all prayed for in a suit filed by the father of the respondent. Therefore, the plea of suppression of material fact, re-litigation etc., raised by the petitioner cannot be accepted.

4. As far as the question of resjudicata is concerned, the same shall be considered at the time of the final disposal by perusing documents filed by the revision petitioners. Therefore, the petition filed by the revision petitioners was dismissed by the Court below and aggrieved by the same petitioners are before this Court by way of revision.

5. The learned counsel for the petitioners mainly attacked the order impugned in the revision on the ground that the Court failed to consider the points



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raised by the petitioners in support of the prayer for rejection of the plaint namely failure of cause of action, bar under Order 2 Rule 2 of C.P.C., and abuse of process of law and Court.

6. A perusal of the order impugned in this petition would suggest that points raised for rejection of plaint namely such as abuse of process and re-litigation raised by petitioner were very well considered by the Court below. The earlier suit filed by the father of the respondent was for a declaration and injunction in respect of the irrigation rights to his land in S.F.No.147. The main relief sought for in the present suit is for right to worship the suit temple. Therefore relief sought in the present suit and the earlier suit are not similar. Hence, it can not be said that the present suit is vitiated by suppression of the material facts and consequently abuse of process of Court. It is settled law while considering petition filed under Order 7 Rule 11 of C.P.C., the Court below should see only plaint averments and the documents filed along with the plaint. Therefore, the question of resjudicata, bar under order 2 Rule 2 of C.P.C., raised by the revision petitioners requires perusal of the pleadings in the earlier suit which cannot be done at this stage. The Court below rightly rejected the said plea on the ground that it can be considered at the time of final disposal of the suit.



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7. As far as failure to disclose cause of action is concerned, the respondent has clearly averred that the petitioner tried to interfere with his right to worship by destroying temple in the suit property. Therefore, the plaint does disclose cause of action. Whether the plaint is barred by resjudicata or not has to be decided based on the evidence to be led by the parties at the time of final disposal. Therefore, the Court below rightly dismissed the petition filed by the revision petitioners seeking rejection of the plaint. I do not find any error in the impugned order passed by the Court below. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2022

Index: Yes/ No
Speaking Order / Non-Speaking Order
jai



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S.SOUNTHAR, J.

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To

1.The Principal District Munsif Court,
Tirupur.

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