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C.R.P. No. 3977 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2022

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3977 of 2017
and
C.M.P. No. 18551 of 2017

J.Ameer Hamza,
S/o. Jalal

... Petitioner

Vs

C.Srinivasan,
S/o.Chinnaswamy

... Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the order and decretal order dated 30.08.2017 passed in I.A.No. 121 of 2017 in O.S.No.2491 of 2015 on the file of XV Addl. Judge, City Civil Court, Chennai.

For Petitioner : Mr.N.Sayeedeen Mohamed Arif Hayath

For Respondent : Mr.A.Balasingh Ramanujam



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ORDER

The Revision Petitioner herein is the defendant in the suit in O.S.No.2491 of 2015, on the file of XV Addl. Judge, City Civil Court, Chennai, which was filed by the respondent/plaintiff herein for the relief of recovery of possession of the property viz., at No.8/5, Second Cross Street, V.O.C.Nagar, Anna Nagar East, Chennai and also seeking damages from the defendant.

2. The contention of the defendant is that the land is belong to the plaintiff as per the settlement deed executed by his mother and the superstructure was put up by the defendant's family, subsequently it was demolished. Thereafter, there was a dispute between plaintiff and defendant, which resulted in the earlier proceedings. Subsequently, since the superstructure was demolished and the defendant attempted to put up a new construction, the plaintiff filed a suit for recovery of possession and other reliefs. The defendant contested the suit by denying the plaintiff's contention by filing his written statement and in that written statement, he took many defences and also denied the plaintiff's claim over the property.

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Further, he contended that he is the tenant of the property and enjoyed the premises by putting up a superstructure, but the plaintiff attempted to demolish the superstructure, which is unlawful. Thereafter, issues were framed and when the suit was posted for trial, the defendant filed an application in I.A.No. 121 of 2017 under Order VII Rule 11 r/w Sec.11 and 151 of C.P.C. praying to reject the plaint on the ground that already this defendant obtained an exparte decree against the plaintiff in the suit in O.S.No.2095 of 1994 on the file of VII Asst. City Civil Court, Chennai on 16.08.1996 and till date, the decree is not set aside. Thus, the plaintiff's claim is barred by resjudicata. The said application was strongly objected by the plaintiff stating that the property originally belong to his mother and thereafter, as per the settlement deed executed by his mother, the plaintiff became absolute owner of the property and the superstructure belong to the defendant. When the plaintiff requested to vacate the suit property for his own occupation, defendant demolished the superstructure and set up a case against the plaintiff as if it was the plaintiff, who had demolished the superstructure. Even though there was a litigation pending, now the suit for recovery of possession was filed. Since the superstructure was demolished



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by the defendant and contended that principle of resjudicata is the ground for rejection because it is a mixed question of law and facts. By relying the ratio laid down by Hon'ble Apex Court in **AIR 2015 SC 3357** in the case of ***Vaish Agarwal Panchayat vs. Indir Kumar***, wherein held that plea of resjudicata is a mixed question of law and facts, which requires examination of witnesses cannot be a ground for rejection of plaint. Based upon that, the said application was dismissed. Challenging the said findings, the defendant preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioner submitted that the trial court failed to see that the suit is barred by principles of resjudicata due to the exparte decree obtained by the defendant against the plaintiff in the suit in O.S.No.2095 of 1994. He has also further contended that the defendant is the tenant in respect of land and the superstructure is owned by him, but it was not accepted by the learned trial judge and without considering the legal aspect, the trial judge erroneously dismissed the application. Hence, he prayed to set aside the findings of trial judge.



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4. The learned counsel for respondent submitted that already the defendant raised the principles of resjudicata in his written statement and now issues were framed and after recording of evidence of P.W.1, only to drag on the proceedings, he filed the said application. Accordingly, he prayed to dismiss this Civil Revision Petition.

5. Heard and considered rival submissions made by learned counsel for petitioner as well as respondent and perused the records.

6. On considering both side submissions and on perusal of records, it reveals that the plaintiff filed a suit for the relief of recovery of possession, however, on seeing the pleadings, it reveals that prior to the filing of the suit, there was a previous litigation between the parties and on one occasion, the defendant filed a suit for permanent injunction restraining this plaintiff not to interfere except under due process of law in O.S.No.2095 of 1994. So, that suit was decreed exparte. But, admittedly, it is a settled preposition, even the exparte decree is not a decree on merits, if at all, the trial court not tried to adjudicate the issue between the parties by framing issues. However,



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the defendant produced the document shows that the decree was not passed on merits by the earlier trial court. Furthermore, as per the ratio laid down by Apex Court, it is a mixed question of law and facts and it cannot be ground for rejection of plaint, as such is acceptable one. Moreover, the reasons assigned by the learned trial judge is valid one, which needs no interference.

7. In the result, this Civil Revision Petition is dismissed and the order passed by the learned trial judge in I.A.No. 121 of 2017 is confirmed. Liberty is granted to the revision petitioner to raise all his defence before the trial court. Since the suit is pending from the year of 2015, the trial court is directed to proceed with the trial and dispose the case within a period of eight months from the date of receipt of copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

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Index : Yes/No
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XV Addl. Judge, City Civil Court,
Chennai.

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T.V.THAMILSELVI, J.

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