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**C.R.P.(MD).No.1648 of 2021**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :07.02.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S.ANANTHI

C.R.P. (MD) .No.1648 of 2021

and

C.M.P (MD) No.8923 of 2021

Princelin Noel

... Petitioner/Petitioner

Vs.

Antro Selva Faustin

... Respondent/Respondent

**PRAYER** : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order, dated 17.09.2021 passed in I.A.No.3 of 2021 in I.D.O.P.No.89 of 2021 on the file of the Family Court, Tirunelveli and allow this Civil Revision with costs.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent : Mr.J.Jeyakumaran

### **O R D E R**

This Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 17.09.2021 passed in I.A.No.3 of 2021 in I.D.O.P.No.89 of 2021 on the file of the Family Court, Tirunelveli.

2.The said I.A.No.3 of 2021 was filed by the petitioner under Order VII Rule 11 of CPC r/w Section 151 CPC, to reject the petition in IDOP.89 of 2021 on the ground that already for the same cause of action, the respondent has filed a petition in I.D.O.P.No.220 of 2018, which was dismissed for default on 11.02.2021. Without restoring the same, the respondent has filed I.D.O.P.No.89 of 2021 and he did not enclose the dismissal order of I.D.O.P.No.220 of 2018.

3.The learned counsel for the respondent contended that IDOP.No.220 of 2018 was dismissed for default, on 18.01.2021. Thereafter, the revision petitioner along with henchman attacked the respondent's father and also damaged the Car. Therefore, the respondent gave a complaint. But the Inspector of police refused to number the complaint.

4.A perusal of records show that the learned Judge, Family Court, Tirunelveli has dismissed the petition filed in I.A.No.3 of

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2021 in I.D.O.P.No.89 of 2021 under Order VII Rule 11 of CPC r/w Section 151 CPC on the ground that the respondent has filed the fresh original petition on different cause of action and therefore the fresh original petition is not prohibited by law and previous original petition, which was dismissed for default is not a bar for filing of fresh original petition on different cause of action. Order 7 Rule 11 made it clear that if a plaint or petition is looked into and if it is shown from the plaint or petition averments and that it is barred under law, then alone Order 7 Rule 11(d) of CPC is applicable. Now the petitioner has filed this application and has stated that previous IDOP.No.220 of 2018 has been filed and that proves to be a bar to fresh petition as detailed under Order 9 Rule 8 and 9 of CPC. However to reject the plaint or petition, it should be prima facie shown in the petition averments itself that the said petition is barred under law. However the claim of the respondent is that he has filed fresh original petition on different cause of action. Therefore, the said aspects have to be determined only after full fledged trial as it is a mixed question of law and the fact that since this case is in preliminary stage, it cannot be decided at present. The learned counsel for the respondent submitted that after dismissal of IDOP.No.220 of 2018, on 11.01.2019, a subsequent cause of action has been taken on 18.01.2021. Therefore, if there any fresh cause of action takes place, a fresh petition or suit can be filed and it is not barred by the dismissal of previous petition, which was clearly explained by the learned Judge. Therefore, the learned Judge, Family Court, Tirunelveli, has rightly dismissed the I.A.No.3 of 2021 in IDOP.No.89 of 2021. This Court has no valid reason to interfere with the order of the Court below.

5.In view of the foregoing reasons, the Civil Revision Petition stands dismissed by confirming the order, dated 17.09.2021 in I.A. No.3 of 2021 in IDOP.No.89 of 2021 passed by the learned Judge, Family Court, Tirunelveli. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Judge, Family Court,  
Tirunelveli.

2.The Section Officer, V.R.Section,  
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate ( SR-4697[F] dated  
08/02/2022 )

+1 CC to M/s.J.JEYAKUMARAN, Advocate ( SR-4582[F] dated 07/02/2022 )

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RD(11.03.2022) 3P 6C