



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2022

CORAM

THE HON'BLE MRS.JUSTICE S.ANANTHI

C.R.P (MD)No.1631 of 2021

and

C.M.P (MD)No.8869 of 2021

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- 1.Suguna
- 2.Karunakarasethupathi
- 3.Alazhaguvel
- 4.Sivapriya

... Petitioners/Petitioners/
Defendants 1 to 4

Vs.

Sundaramoorthy

...Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition with exemplary cost by setting aside the order dated 28.09.2021 passed in I.A. No.2 of 2019 in O.S.No.209 of 2019 on the file of Sub Court, Manamadurai, consequently struck off the said suit.

For Petitioners : Mr.A.Sivaji
For Respondent : Mr.P.Thiyagarajan

ORDER

The Civil Revision Petition has been filed to set aside the order dated 28.09.2021 passed in I.A.No.2 of 2019 in O.S.No.209 of 2019 on the file of the learned Subordinate Judge, Manamadurai.

2.I.A.No.2 of 2019 was filed by the revision petitioners/defendants under Order 7, Rule 11 of CPC., to reject the plaint on the ground that the respondent/plaintiff has filed the suit suppressing the some facts of earlier suit. So the suit is hit by suppression. The trial Court dismissed the said petition by holding that the said issue cannot be decided at the filing stage and it should decided only during the trial basing on the evidence.

3.Now the learned counsel for the revision petitioners had given up the said plea of the rejection and conceded that there is suppression of material facts and it has been pleaded fraudulently before the Court. He further submitted that as per the judgment of this Court reported in **2019(6) CTC 263 (Madras)** in the case of **A.Kalieur Rahman & Others Vs. P.Kannan & Others**, apart from the reasons stated in the order 7 Rule 11 of CPC., there are some other grounds to reject plaint, which are as follows:-

- ''a)On the ground of re-litigation.
b)Abuse of process of law. And:
c)Fraud. ''*



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4.The Honourable Supreme Court in the case of **Saleem Bhai v. State of Maharashtra, reported in (2003) 1 SCC 557**, held as follows:-

"18.It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. vs. Ganesh Property (1998) 7 SCC 184 and Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and Others (2006) 3 SCC 100."

5.Therefore, as per the cause of action, the plaintiff has stated that on the basis of the injunction, the revision petitioners/defendants disturbed their possession. Further the previous suit is filed by the revision petitioners for the relief permanent injunction only and the title of the parties cannot be decided in the permanent injunction suit. Now the suit is filed by this respondent/plaintiff for declaration and injunction. Against which, the revision petitioners filed I.A. to reject the plaint. In the said petition, the trial Court mainly decide the issue of the rejection of plaint and rejected the said petition.

6.As per the judgment reported in **2021 SCC 432** in the case of **Sri Hari Hanumandas Totala Vs. Hemant Vithal Kamat & Others**, the Honourable Supreme Court observed as under:-

"20.On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defense made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the suit is decided, (ii) the issues in the



subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) 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 11 (d), where only the statements in the plaint will have to be perused.''

7.Now the only question arises for consideration is whether the plaintiff suppressed about the previous suit and only on the basis of decree in the said suit, the defendant disputed the possession of the revision petitioners. Now the respondent filed the present suit seeking the relief of declaration of title and permanent injunction, which should be decided separately. So at this stage, the plaint cannot be rejected and the title of the parties can be decided only after full fledged trial.

8.In view of the above, the Civil Revision Petition is dismissed and the order dated 28.09.2021 made in I.A.No.2 of 2019 in O.S.No.209 of 2019 passed by the learned Subordinate Judge, Manamadurai, is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (ADMIN-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To
The Subordinate Judge,
Manamadurai.

+1 CC to M/s.A.SIVAJI, Advocate (SR-14752[F] dated 28/03/2022)

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