



CRP (MD) No.2280 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15.12.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP (MD) No.2280 of 2022

S.Harihara Suthan

... Petitioner

Vs

1.V.Monokandan

2.V.Lekshmibai

3.The CSI Diocese,
Represented by the Bishop,
Diocese Building,
Nagercoil,
Nagercoil Post,
Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District

4.A.Savarimuthu

5.S.Anton

6.S.Albin

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertains to the order passed in CF.No.202 of 2022 dated 08.04.2022 by the learned Additional District Munsif Court, Eraniel, Kanyakumari District and set aside the same and further direct the District Munsif Court, Eraniel, Kanyakumari District to number the unnumbered Original Suit and to hear the case on merits and to pass orders.



CRP (MD) No.2280 of 2022

For Petitioner : Mr.K.P.Krishnadoss

WEB COPY

ORDER

The Revision petitioner before this Court is the plaintiff in un-numbered O.S.No. of 2022 before the District Munsif Court, Eraniel, which was filed for the relief of declaration and other reliefs. The trial court in C.F.No.202 of 2022, by order dated 04.04.2022 rejected the plaint under Order 7 Rule 11(d) without numbering. Aggrieved over this the petitioner has filed the present revision.

2.The trial court rejected the plaint on the ground that the plaintiff's father has already filed a suit in OS.No.531 of 1995 regarding the very same suit property, which was dismissed and the appeal filed in AS.No.38 of 1997 was also dismissed. Hence the trial court held that the suit is expressly hit by the doctrine of *res judicata* under explanations VI and VIII in Section 11 of the Code of Civil Procedure.

3.The learned Counsel for the petitioner contends that the plaintiffs and defendants are not one and the



CRP (MD) No.2280 of 2022

same in the suits. Some more parties were added to the present suit. The plaint cannot be rejected on the ground of *res judicata* as it is coupled with a mixed questions of law and facts, for which evidence is necessary.

4.The case of the petitioner is that his father, Sivathanu Pillai, out of partition from his brothers received 10.5 cents in S.No.572/2B, in which northern 5 cents were settled by his father to the petitioner's sister Usha Kumari, who in turn sold the property to the petitioner's brother-in-law Narayanan Pillai and after the death of the petitioner's parents, the petitioner and his 3 sisters inherited the remaining 5.5 cents jointly, which is A schedule property. The petitioner states that to the north of the A-schedule property in S.No.527/3, there is B-schedule property, which belonged to Velayuthan Pillai and was later inherited by 1st and 2nd respondents. The plaintiff further states that both Sivathanu Pillai and Velayuthan Pillai are descendants of a common ancestor Perumal Pillai.



CRP (MD) No.2280 of 2022

5. The grievance of the petitioner is that he has acquired the right to ingress and egress over B-schedule property and C-schedule property, which is on the eastern side, by prescription and necessity. The main cause of action for the suit is that the respondents 1 and 2 obstructed the plaintiff from using the B- schedule property. Therefore, the relief of declaration of his right of pathway over B and C schedule properties and consequential injunction are sought.

6. A perusal of the judgment passed in OS.No.531 of 1995, shows that the suit was instituted by the plaintiff's father Sivathanu Pillai against the very same 1st and 2nd respondents herein. The A-schedule property in this suit is the entire 10.5 cents received by Sivathanu Pillai in partition and only after the institution of the suit, the northern 5 cents were settled by him to his younger daughter. The B-schedule property is the disputed pathway in S.No.572/3, which is the very same B-schedule property in the suit instituted by the petitioner. The presence of 3rd to 6th respondents next to the B-schedule property is also confirmed in the suit. Likewise, this suit was also



CRP (MD) No.2280 of 2022

instituted for the right of the pathway in the B-schedule property. The respondents 1 and 2 herein marked the partition deed of one Narayana Pillai and others dated 1104 (M.E) as Ex.B1. This partition deed was executed by the ancestors of the said Sivathanu Pillai and Velayuthan Pillai. The court on consideration of the fact and evidence held that the parties are using the pathway as mentioned in the Ex.B1 partition deed and accordingly it was decided that Sivathanu Pillai was using the canal bank as the pathway. Hence the suit was dismissed holding that Sivathanu Pillai has no easement rights as far as B-schedule property is concerned. These findings of the trial court were also upheld by the 1st appellate court in AS.No.38 of 1997.

7.Now the question to be considered is whether the plaint is liable to be rejected by the doctrine of *res judicata*. For sake of convenience, section 11 of the Code of Civil Procedure is extracted hereunder:

"11. Res judicata.

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and



WEB COPY



CRP (MD) No.2280 of 2022

substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

8.The petitioner herein is the son of the plaintiff in the earlier suit in OS.No.531 of 1995. The petitioner herein has also added the owners of the adjacent property to the B-schedule property as defendants 3 to 6. Based on this, the petitioner claims that the parties in the suit are different and the decree in the previous suit does not bind him. It has to be seen that *res judicata* not only applies between the same parties in the earlier suit but also between the parties under, whom they or any of them claim. Here the petitioner filed the suit after the death of his father, for the very same relief, which was sought for in the earlier suit and there is no other evident difference between both suits. The petitioner cannot disguise his suit by adding respondents 3 to 6 as defendants and their property as suit property. The



CRP(MD)No.2280 of 2022

issue to be decided in the present suit is the same as of the one in the previous suit. Since it has already been decided by the competent courts, the present suit is clearly hit by the doctrine of *res judicata*.

9.In view of the above discussion, this Court does not find any reason to interfere with the orders of the trial Court. Hence this civil revision petition is dismissed. No costs.

15.12.2022

dsk

To

The Additional District Munsif,
Eraniel,
Kanyakumari District.



WEB COPY



CRP (MD) No.2280 of 2022

B. PUGALENDHI, J.

dsk

CRP(MD)No.2280 of 2022

15.12.2022