



C.R.P.No.1302 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 11.04.2023

Delivered on 30.06.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1302 of 2020
and C.M.P.No.7096 of 2020

Seshadri

...Defendant/Revision Petitioner

-Vs-

Saroja

...Plaintiff/Respondent

Prayer:-Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.11.2019 made in O.S.No.71 of 2014 on the file of the learned Principal Subordinate Judge, Tindivanam.

For Petitioner : Mr.N.Suresh

For Respondent : Mr.S.Saranraj

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 11.11.2019 made in O.S.No.71 of 2014 on the file of the learned Principal Subordinate Judge, Tindivanam.



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2.Mr.N.Suresh, learned Counsel for the Revision Petitioner submitted his arguments.

3.The learned Counsel for the Revision Petitioner submitted that the Defendant in O.S.No.71 of 2014 on the file of the learned Principal Subordinate Judge, Tindivanam, had filed this Revision Petition under Article 227 of the Constitution of India. The learned Counsel for the Revision Petitioner submits that the suit had been filed by the Plaintiff in O.S.No.71 of 2014, who is none other than the 4th Defendant in O.S.No.612 of 1989, on the file of the learned District Munsif, Tindivanam. The learned Counsel for the Revision Petitioner further submitted that the Revision Petitioner herein and the father of the Revision Petitioner had filed the suit in O.S.No.612 of 1989, regarding the property in S.No.352. The Plaintiffs in O.S.No.612 of 1989 sought for declaration of title and for permanent injunction. In the said suit, there were four Defendants. All the Defendants had engaged Counsel Thiru.Malarmarban. Defendants were not present in Court, whereas the learned Counsel for Defendants was present in Court. Therefore, they were set ex-parte and trial proceeded. The Plaintiffs were examined. Based on the evidence of



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Plaintiffs and the document relied by the Plaintiffs in support of the contention in the plaint, the ex-parte decree was granted on 23.03.1990 in O.S.No.612 of 1989. After passing of the ex-parte decree, the four Defendants in O.S.No.612 of 1989 did not file any Petition to set aside the ex-parte decree or file any Appeal against the ex-parte decree. The same had attained finality. While so, the 4th Defendant in O.S.No.612 of 1989 had filed the suit in O.S.No.71 of 2014 against the Plaintiffs in O.S.No.612 of 1989, who were the Defendants in O.S.No.71 of 2014. After receipt of summons, the Revision Petitioner herein as Defendant in O.S.No.71 of 2014 had entered appearance and filed written statement, disputing the averments in the plaint. It is specifically stated that there was an ex-parte decree granted in their favour in the earlier suit in O.S.No.612 of 1989. Therefore, the suit in O.S.No.71 of 2014 is nothing but an abuse of the process of Court, it is barred by *res judicata* and also barred by limitation.

4.After filing of the written statement, the Defendant had filed Petition under Order VII, Rule 11 of CPC, seeking to reject the plaint. In the said Petition, after filing of the counter, the learned Principal Subordinate Judge, Tindivanam, conducted enquiry. After due enquiry, the



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learned Principal Subordinate Judge, Tindivanam, dismissed the Petition.

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5. Aggrieved by the same, the Defendant in O.S.No.71 of 2014 on the file of the learned Principal Subordinate Judge, Tindivanam, had approached this Court filed Civil Revision Petitions in C.R.P.No.1190 of 2018 and C.R.P.No.411 of 2019, to reject the plaint and also to vacate the injunction. The learned Judge of this Court had disposed of these Civil Revision Petitions by a common order dated 04.06.2019. In the concluding portion of the order passed by the learned Single Judge of this Court, there was a specific direction to the learned Principal Subordinate Judge, Tindivanam, to consider the preliminary issue regarding maintainability of the suit and dispose of the suit accordingly. In the light of the above direction issued by this Court in C.R.P.No.1190 of 2018 and C.R.P.No.411 of 2019 by a common order dated 04.06.2019, the learned Principal Subordinate Judge, Tindivanam, had heard the preliminary issue regarding maintainability of the suit and rejected the contention of the Defendant in O.S.No.71 of 2014 stating that the Defendants in O.S.No.612 of 1989 had not furnished documents. It is the specific case of the Revision Petitioner that there was an ex-parte decree earlier between the same parties and also



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filed certified copies of the earlier proceedings along with the written statement. However, the learned Principal Subordinate Judge, Tindivanam, failed to consider the same and rejected the contention.

6. Aggrieved by the same, the Defendant in O.S.No.71 of 2014 had approached this Court by filing the present Civil Revision Petition in C.R.P.No.1302 of 2020. Therefore, the Revision Petitioner seeks to set aside the order passed by the learned Principal Subordinate Judge, Tindivanam, in O.S.No.71 of 2014 dated 11.11.2019, preliminary issue regarding maintainability of the suit and allow this Civil Revision Petition.

7. Mr. S. Saranraj, learned Counsel for the Respondent submitted his arguments.

8. The Respondent herein as Plaintiff filed the suit in O.S.No.71 of 2014 before the learned Principal Subordinate Judge, Tindivanam, seeking the relief of declaration of title to the suit property and for permanent injunction against the Defendant. The suit already was settled by the husband of the Plaintiff by executing a settlement deed. The Defendant in



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O.S.No.71 of 2014 attempted to dispossess the Plaintiff. After entering appearance in the suit, the Defendant had filed written statement claiming that the suit is barred by the principles of *res judicata* as the earlier suit filed by the Defendant against the husband of the Plaintiff in O.S.No.612 of 1989 was decreed ex-parte. Therefore, the judgment and decree passed in O.S.No.612 of 1989 had attained finality. After filing of the written statement, the Defendant in O.S.No.71 of 2014 filed a Petition under Order VII, Rule 11 of CPC, seeking to reject the plaint on the ground that the suit is barred by *res judicata*. After due enquiry, the Petition filed by the Defendant in O.S.No.71 of 2014 under Order VII, Rule 11 of CPC was dismissed. Also, the Defendant in O.S.No.71 of 2014 filed a Petition to vacate the injunction granted by the learned Principal Subordinate Judge, Tindivanam, in O.S.No.71 of 2014 at the initial stage, both Petitions were dismissed. Aggrieved by the same, the Defendant in O.S.No.71 of 2014 had filed C.R.P.Nos.1190 of 2018 & 411 of 2019.

9.Both Civil Revision Petitions were taken up for disposal by this Court and disposed of by a common order dated 04.06.2019. In the concluding portion of the order passed by the learned Single Judge of this



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Court, there was a specific direction to the learned Principal Subordinate Judge, Tindivanam, to consider the preliminary issues regarding maintainability of the suit and dispose of the suit accordingly.

10. Therefore, after framing of issues, the learned Principal Subordinate Judge, Tindivanam, had raised preliminary issues regarding maintainability of the suit and also Bars the institution of the suit on the point of *res judicata*. Both issues were taken up together, the learned Principal Subordinate Judge, Tindivanam, had dismissed the contention raised by learned Counsel for the Defendant regarding preliminary issues by order dated 11.11.2019 stating that there was no suppression of fact by the Plaintiff herein. The claim of *res judicata* can be decided as it is a mixed question of fact and law, it cannot be decided on the basis of the pleadings alone. Aggrieved by the same, the Defendant had preferred the above Civil Revision Petition.

11. The order passed by the learned Principal Subordinate Judge, Tindivanam, rejecting the points raised by the Defendant in O.S.No.71 of 2014 that the question of *res judicata* cannot be decided based on



pleadings and it is a well-reasoned order that does not warrant any interference by this Court under Article 227 of the Constitution of India.

12.The learned Counsel for the Respondent relied on the following rulings:-

- a) In the case of *Sathyanath & Another Vs. Sarojamani* reported in *2022 Live Law (SC) 458*.
- b) In the case of *The Jamia Masjid Vs. Sri K.V.Rudrappa (Since Dead) By Lrs. & Ors.* reported in Live Law in *Civil Appeal No.10946 of 2014*.

13.In the case of *The Jamia Masjid Vs. Sri K.V.Rudrappa (Since Dead) By Lrs. & Ors.* reported in Live Law in *Civil Appeal No.10946 of 2014* in which in the conclusion it is held as follows:-

“(i) Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of res judicata if there arises a new fact which has to be proved. However, the plea of res judicata may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it;”



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14.Further, the learned Counsel for the Respondent submits that earlier suit was decreed ex-parte. It is not based on merit, issues were not framed and only, if the earlier suit is disposed of on merits. After issues had been framed to consider *res judicata* there had to be pleadings by one party ascertaining the right and other party disputing the same in their pleadings. Therefore, issues had to be framed and the issues ought to have been answered in the earlier suit. In this case, O.S.No.612 of 1989 issues were not answered. Therefore, the claim of *res judicata* cannot be pressed into service in this case.

15.The written statement filed in O.S.No.71 of 2014, the Revision Petitioner herein as Defendant had clearly stated that written statement was not filed by the Defendant in the earlier suit in O.S.No.612 of 1989 and therefore, the suit was decreed ex-parte by the learned District Munsif, Tindivanam. The Defendant in O.S.No.612 of 1989 and also had not filed any Petition to set aside the ex-parte decree had not filed any Appeal challenging the ex-parte decree. Therefore, the said decree had attained finality. The said contention cannot at all be accepted as *res judicata* as per the explanation to *res judicata* under Section 11 of CPC. Therefore, the



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learned Counsel for the Respondent submitted that the order rejecting the claim of *res judicata* by the learned Principal Subordinate Judge, Tindivanam, dated 11.11.2019, is a well-reasoned order that does not warrant any interference by this Court under Article 227 of the Constitution of India.

16. Point for consideration:

Whether the order passed by the learned Principal Subordinate Judge, Tindivanam, rejecting the claim of res judicata to be considered in preliminary issues and to take it along with other issues framed in the suit in the trial for disposal of the entire suit in O.S.No.71 of 2014 as per Order XIV, Rule 2 of CPC dated 11.11.2019 is to be set aside by this Court exercise its discretion under Article 227 of the Constitution of India?

17. On consideration of the rival submissions, on perusal of the order passed by the learned Principal Subordinate Judge, Tindivanam, dated 11.11.2019 and the rulings cited by the learned Counsel for the Respondent is as follows:-



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a) In the case of ***Sathyanath & Another Vs. Sarojamani*** reported in ***2022 Live Law (SC) 458***.

b) In the case of ***The Jamia Masjid Vs. Sri K.V.Rudrappa (Since Dead) By Lrs. & Ors.*** reported in Live Law in ***Civil Appeal No.10946 of 2014***.

It is observed that the reported rulings cited by the learned Counsel for the Respondent that preliminary issues is to be confined only regarding jurisdiction of the Court or any law that Bars the institution of the suit. Here, the claim of the *res judicata* was raised in the written statement by the Defendant in O.S.No.71 of 2014. It is clearly stated in the written statement that earlier suit instituted by the Defendant against the husband of the Plaintiff and other relatives of the husband in O.S.No.612 of 1989 before the learned District Munsif, Tindivanam, the Defendant did not file any written statement and the suit was decreed ex-parte.

18.Under such circumstances, suppressing the earlier suit, the suit had been filed in O.S.No.71 of 2014 is attracted, that is barred by *res judicata* which is the contention of the Defendant in the written statement.



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19.If the earlier suit was disposed of after answering the issues the principles of *res judicata* is attracted. On perusal of the written statement, it is found that the earlier suit is not a contested suit to attract the provisions of *res judicata* issues ought to have been answered since the Defendant in the earlier suit's written statement when the suit was decreed ex-parte. Therefore, the claim of the Respondent is raised.

20.Section 11 of CPC, which reads as follows:

“Res judicata-

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

Explanation I.-- The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.-- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.--The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-- Any matter which might and ought to have been made ground of defence or attack in



such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.-- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

1[Explanation VII.-- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”

21. Here, the earlier suit was not disposed of answering the issues raised in the earlier suit. Issues were not framed as the Defendants failed to file written statement in the earlier suit.

22. Therefore, the contention of the learned Counsel for the Defendant before the Trial Court was rejected by the learned Principal Subordinate Judge, Tindivanam, claiming that merely based on pleadings,



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the Court is unable to arrive at the conclusion that the suit is barred by *res judicata*. Also, the learned Trial Judge had in the order, rejecting the raising of preliminary issues stating that only while answering all the issues to dispose of the suit, the points raised by the Defendant regarding *res judicata* also to be considered. Based on evidence as it is not strictly to be considered on legal propositions. The *res judicata* raised in this case is a mixed question of fact and law. Therefore, without recording evidence, the Court is unable to decide preliminary issues on the basis of pleadings alone. The said observation of the learned Principal District Munsif, Tindivanam, is found to be a well-reasoned order in the facts and circumstances of this case. Therefore, as rightly pointed out by the learned Counsel for the Respondent based on the rulings cited above by the learned Counsel for the Respondent, the well-reasoned order of the learned Principal Subordinate Judge, Tindivanam, rejecting the contention of *res judicata* merely on the basis of pleadings, does not warrant any interference by this Court under Article 227 of the Constitution of India. Also, in the reported rulings cited above by the learned Counsel for the Respondent stated that raising preliminary issues is not mandatory, it is left to the discretion of the Civil Court to dispose of the suit along with other



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issues after full trial. The preliminary issues can be raised only in circumstances that either the jurisdiction of the Court is barred or the institution of the suit is barred by any law in the statute. Here, in this case, those circumstances does not arise. Therefore, the learned Principal Subordinate Judge, Tindivanam, had refused to answer the preliminary issues. Only on the circumstances of the pleadings of the Plaintiff in the plaint and written statement of the Defendant stating it is relegated to the consideration of the trial in the suit to be answered on the basis of evidence adduced by both parties during trial and it can be answered along with other issues after conclusion of the trial. The said observation of the learned Principal Subordinate Judge, Tindivanam, is found acceptable in the peculiar facts and circumstances of this case. Therefore, in the light of the reported rulings, the submission of the learned Counsel for the Respondent is accepted and the submission of the learned Counsel for the Revision Petitioner is rejected. As claimed by the learned Counsel for the Respondent, the Civil Revision Petition has no merit and is to be dismissed.

23.The point for consideration is answered against the Revision Petitioner and in favour of the Respondent.



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24.The order passed by the learned Principal Subordinate Judge, Tindivanam, rejecting the claim of *res judicata* to be considered as preliminary issues. Further, in the order the learned Principal Subordinate Judge, Tindivanam, stating that it can be considered along with other issues framed in the suit in the trial for disposal of the entire suit as per Order XIV, Rule 2 of Civil Procedure Code. The order of the learned Principal Subordinate Judge, Tindivanam, rejecting the contention of the Defendant in the suit is well reasoned order which does not warrant any interference by this Court exercising the discretion under Article 227 of the Constitution of India. Therefore, the order passed by the learned Principal Subordinate Judge, Tindivanam, refusing to consider the preliminary issues based on pleadings alone and relegating the preliminary issues to be considered along with other issues in the conclusion of the trial after full trial is confirmed.

In the result, the **Civil Revision Petition stands dismissed**. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No

Speaking/Non-speaking order



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To

- 1.The Principal Subordinate Judge, Tindivanam.
- 2.The Principal District Munsif, Tindivanam,

SATHI KUMAR SUKUMARA KURUP, J.,



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**Order made in
C.R.P.No.1302 of 2020**

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