



C.R.P.No.995 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.01.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.995 of 2021 &
C.M.P. No.8010 of 2021

Selvaraj ... Petitioner

Vs.

Perumal ... Respondent

Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the order dated 25.03.2021 made in I.A.No.49 of 2021 in O.S.No.88 of 2019 on the file of learned District Munsif cum Judicial Magistrate, Vikravandi.

For Petitioner : Mr.S.Janarthanan for
Mr.G.Mohanakrishnan

For Respondent : Served – Name Printed
No appearance

ORDER

The present Civil Revision Petition has been filed under Article 227 of Constitution of India to set aside the order dated 25.03.2021 made in I.A.No.49 of 2021 in O.S.No.88 of 2019 on the file of learned District Munsif cum Judicial Magistrate, Vikravandi.



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2. The brief facts of the case is as follows:-

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(i) The petitioner is the 1st defendant and the respondent is the 5th plaintiff in the suit in O.S.No.9 of 2014. The said suit was filed for passing a preliminary decree for partition and possession of the plaintiffs 1 to 7 therein to the respective shares of plaintiffs and 1st defendant and to appoint an advocate commissioner to divide the suit properties into 55/64 shares to the plaintiffs 1 to 7 and directing the defendants therein to put them in possession of their share. Upon considering the pleadings, written statement and Judgements, the trial court framed the points for consideration and declared that *the 1st plaintiff therein is entitled to 1/9th share and plaintiffs 2 to 7 therein are entitled to 9/64th shares respectively in Item Nos.1 to 4 and dismissed in respect of item nos.5 to 8 of suit properties.* on 22.09.2017. As against the same, the respondent, as a 5th appellant along with 2 to 6 plaintiffs in O.S.No.9 of 2014, preferred A.S.No.51 of 2017 as against the petitioner / 1st defendant and 2nd defendant in O.S.No.9 of 2014 and 7th plaintiff in O.S.No.9 of 2014. The Appeal Suit was partly decreed on 18.12.2019 by stating that in item Nos.5,7 and 8 properties, one Alamelu, who is the 1st appellant in A.S.No.51 of 2017 and 1st plaintiff in O.S.No.9 of 2014 would be entitled to 1/64 share and the plaintiffs 2 to 7 in O.S.No.9 of 2014 and appellants 2 to 6 and 3rd respondent in A.S.No.51 of 2017 are entitled to 9/64 share each and that the appeal suit was dismissed in respect of 6th item of suit schedule property.

(ii) The respondent herein preferred O.S.No.88 of 2019 as against



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the petitioner and the government officials to declare patta no.252 issued in favour the petitioner on 09.11.2019 as null and void and to grant permanent injunction restraining the petitioner from interfering with the plaintiff's peaceful possession and enjoyment over the suit 'B' schedule property. The written statement was also filed by the petitioner. While the matter is pending, I.A.No.49 of 2021 was filed by the petitioner to reject the plaint under Order 7 Rule 11 of CPC and the said petition was dismissed on 25.03.2021. Aggrieved against the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner would submit that the suit is hit by the principles of res judicata and the issues involved in the suit has already been decided in O.S.No.9 of 2014. Further, the suit property has been included as Item No. 6 in the O.S.No.9 of 2014 and it has been categorically decided that the said property is not an ancestral property and therefore, the same cannot be included for partition and even in Appeal , the respondent had given their right of appeal in respect of item No.6 of the suit property. Also, for cancellation of a patta standing in favour of any person, the aggrieved person is only entitled to file an appeal before the Revenue Divisional Officer, instead of exhausting his remedies, the



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respondent has filed the suit without any cause of action.

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4. Though notice to the sole respondent was served on 08.05.2021, and name has been printed in the cause list, there is no appearance for the respondent, either through learned counsel or in-person.

5. Heard the learned counsel for the petitioner and perused the documents placed on record.

6. It is not in dispute that the respondent, who is the 5th plaintiff has filed the suit in O.S.No.9 of 2014 for partition and possession of the plaintiffs 1 to 7 to the respective shares of plaintiffs and 1st defendant. Upon considering the pleadings, written statement and Judgements passed by the Hon'ble Apex Court and other Court, the trial court, on 22.09.2017, decreed the suit and passed a preliminary decree declaring that the 1st *plaintiff is entitled to 1/9th share and plaintiffs 2 to 7 are entitled to 9/64th shares respectively in Item Nos.1 to 4 and dismissed in respect of item nos.5 to 8 of suit properties.* As against the same, the respondent, as a 5th plaintiff along with other plaintiffs preferred A.S.No.51 of 2017 as against the petitioner / 1st defendant and others. The Appeal Suit was partly



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decreed on 18.12.2019 by stating that in item Nos.5,7 and 8 properties, the 1st respondent would be entitled to 1/64 share and the plaintiffs 2 to 7 are entitled to 9/64 share each and that the appeal suit was dismissed in respect of 6th item of suit schedule property, thereby partly allowed the O.S.No.9 of 2014. As against the same, it is reported that the Second Appeal is pending.

7. It is relevant to note that the respondent herein preferred O.S.No.88 of 2019 as against the petitioner and the government officials to declare patta no.252 issued in favour the petitioner on 09.11.2019 as null and void and to grant permanent injunction restraining the petitioner from interfering with the respondent's peaceful possession and enjoyment over the suit 'B' schedule property. The written statement was also filed by the petitioner. While the matter is pending, I.A.No.49 of 2021 was filed by the petitioner to reject the plaint under Order 7 Rule 11 of CPC and the said petition was dismissed on 25.03.2021.

8. On going through the order passed in I.A.No.49 of 2021 it is seen that before the trial court, *though “the respondent / plaintiff has endorsed in the appeal stating that the appellant is giving up the item no.6 of suit*



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property and the suit and appeal may be dismissed as against 6th item, since it does not belong to the joint family, as such, it is found that the issue regarding the present suit property has not been decided in the previously instituted suit, thereby stated that the present suit on hand bears a different cause of action, and the plea of the plaintiff / defendant that the suit is barred by res-judicata will not apply to the present case”, thereby the trial court dismissed the said I.A.

9. In this connection, it is worthwhile to refer the Judgment of the Hon'ble Supreme Court reported in Civil Appeal No. 4665 of 2021 arising out of SLP (C) No.3899 of 2021 [**Srihari Hanumandas Totala vs Hemant Vithal Kamat**] on 9 August, 2021 wherein among other things, the court referred to the earlier decisions including in **Saleem Bhai Vs. State of Maharashtra, Church of Christ Charitable Trust (supra)**, stated that

“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 averment. These principles have been reiterated in [Raptakos Brett & Co. Ltd. v. Ganesh Property](#), (1998) 7 SCC 184 and [Mayar \(H.K.\) Ltd. v. Vessel M.V. Fortune Express](#), (2006) 3 SCC 100.” 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 'previous 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."*

10. In the present case, a meaningful reading of the plaint in O.S.No.88 of 2019 makes it abundantly clear that the respondent prayed to declare the patta no.252 issued by the 2nd defendant therein in favour of the 1st defendant therein on 09.11.2019 as null and void in respect of 'B' schedule property; to grant permanent injunction restraining the 1st defendant, his men and agents or servants from interfering with the



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plaintiff's peaceful possession and enjoyment over the suit 'B' schedule property, the plaint, on the face of it, does not disclose any fact that may lead to the conclusion that it deserves to be rejected on the ground that it is barred by principles of res judicata. The Trial Court was correct in their approach in holding, that the issue regarding the present suit property has not been decided in the previously instituted suit. An application under Order 7 Rule 11 must be decided within the four corners of the plaint. The Trial court was correct in rejecting the application under order 7 Rule 11 of CPC.

11. In view of the above, this Court holds that the plaint is not liable to be rejected under Order 7 Rule 11 of CPC and affirm the findings of the Trial Court. However, it is made clear that this Court has not expressed any opinion on whether the subsequent suit is barred by the principles of res judicata and grants liberty to the petitioner to raise an issue of the maintainability of the suit before the learned District Munsif cum Judicial Magistrate, Vikravandi in O.S.No. 88 of 2019.



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In the result, the Civil Revision Petition is dismissed with the above observations. Consequently, connected miscellaneous petition is closed.

No costs.

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Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

To

The District Munsif cum Judicial Magistrate,
Vikravandi.



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V.BHAVANI SUBBAROYAN, J.,

ssd

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