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CRP.No. 1073 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 1073 of 2021

and

CMP.No. 8469 of 2021

1. Devaraj
2. Manikandan
3. Amulu @ Amutha

.. Petitioners

Versus

1. Mohamed Hussain (Died)
2. Abdul Kapoor
3. Mujipur Rahman
4. Rashul Beevi
5. Ameerjohn Beevi

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 05.01.2021 passed in I.A.No. 115 of 2020 in O.S.No. 205 of 2020 on the file of District Munsif-cum-Judicial Magistrate Court, Cheyyur.

For Petitioners	: Mr. K. Govi Ganesan
For R1	: Died
For RR 2 to 5	: Mr. Thanigaivel

ORDER

This Civil Revision Petition has been filed by the revision petitioner seeking to set aside the fair and decretal order dated 05.01.2021 passed in



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I.A.No. 115 of 2020 in O.S.No. 205 of 2020 on the file of District Munsif-
cum-Judicial Magistrate Court, Cheyyur.

2. Heard both sides and perused the records.

3. On a perusal of the records, it reveals that the respondents/plaintiffs have filed the suit in O.S.No. 205 of 2020 for permanent injunction restraining the defendants from in any manner not to disturb the plaintiffs' peaceful possession and enjoyment of the suit property. During the pendency of the suit proceedings, the revision petitioners have filed I.A.No.115 of 2020 under Order VII Rule 11 of the Code of Civil Procedure, seeking to reject the plaint. After perusing the records, the trial Court dismissed the application by order dated 05.01.2021. Challenging the same, the petitioners have filed this Revision.

4. The contention of the petitioners is that the suit is not maintainable, as there is suppression of material facts and in this regard, they relied on a judgment of this Court in the case of **N. Perumal v. Vijayakumari**, reported in 2017 (1) CTC 517. There is no cause of action for the suit, as a portion of the suit property has already been sold. In fact,



the sold property is on the Southern side of the petitioner's property and the Northern side of the respondents' present property. The disputed portion of the property is between the property of the petitioners and the respondents' property and therefore, the respondents have no right over the property. Further, the petitioners had relied on Exs.P1 to Exs.P6 to substantiate the material facts suppressed and the lack of cause of action.

5. Per contra, the learned counsel for the respondents argued that the instant suit involves several issues which can be decided at the time of trial. The earlier suit was filed by different parties against different parties for different cause of action and relief and therefore, there is no bar in filing the instant suit. The instant suit arises from a new cause of action and therefore, there is no question of the suit being barred by res-judicata. Further, he has relied on Ex.R1 to substantiate that the petitioners had no *locus-standi* to file the petition, as he had already sold his portion of the property. The plaint documents in Ex.R2 to R8 would substantiate that there is proper cause of action for filing the instant suit. Therefore, the respondents pray to dismiss the above Revision.

6. On a perusal of the records, it reveals that the contention of the



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learned counsel for the respondents that the petitioners have sold their property and therefore, there is no locus-standi to file the instant petition and relied on Ex.R1, the sale deed, dated 12.06.2019 executed by the petitioners. It is also seen that the instant plaint has been filed on 24.10.2018 and the sale by the petitioners is after the petitioners have entered appearance in the suit and the instant application to reject the plaint was filed on 10.12.2018.

7. On a further perusal of the plaint, it is also seen that the respondents have alleged that the petitioners have trespassed into "A" schedule suit property and moved the survey stones which was resisted with great difficulties. Irrespective of the sale of the petitioners' property, there is a specific allegation against the petitioners regarding trespass and therefore, they are necessary and proper parties to the suit. Therefore, the petitioners have no locus-standi to file the instant petition and it does not arise at this stage. According to the respondents, the plaintiffs have deliberately concealed the filing of the earlier suit by *Umasalma Beevi* against the wife of the 1st petitioner and mother of the 2nd and 3rd petitioners and also the sale of a portion of the suit properties already in support of the same, the petitioners have relied on Ex.P1 to Ex.P8.



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8. While so, the learned counsel for the petitioners have relied upon the judgment of this Court in the case of **N. Perumal v. Vijayakumari**, reported in **2017(1) CTC 517**, wherein, it has been held that, when the plaintiff has suppressed the sale of a portion of the land and filed the suit for the entire extent of land, then the plaint shall be rejected for lack of cause of action. It is also seen that the ratio in that judgment cannot be applied for the instant case, for the reason that the sale deed relied on by the petitioners in Ex.R-3 relate to the sale of a portion of the land in S.No.851/8 and Ex.R4 clearly states that the portion of land was sold is S.No. 851/8B. But, the instant suit has been filed seeking injunction for property in S.No.851/8A. If the suit "A" schedule property includes the portion of land already sold or not the same can be determined only after completion of trial and it is now quite premature to conclude the issue, as it involves mixed question of fact and law. However, this Court identified if the suppression of the facts was *mala-fide* for misleading the Court and obtained favourable orders. This Court finds that the sale of a portion of the land owned by Umsalma Beevi has been admitted by the respondents in their counter affidavit. This Court finds that the petitioners/defendants have not let in any other specific oral or documentary evidence to



substantiate that there is a *mala-fide* suppression of material facts.

Therefore, this Court is of the considered view that it is quite premature at this stage to conclude that the suppression is *mala-fide*, that too when the respondents/plaintiffs have approached this Court with unclean hands, which is unfortunate. In this regard, the Hon'ble Supreme Court in this Court held that the petitioner will not be entitled to the relief, if he/she comes to Court with unclean hands, as is evident from the following decisions:-

(i) 1993 (1) MLJ 26 = 1992 Writ L.R. 716 = MANU/TN/0337/1992 (Madras High Court) (V.Tamil Selvan Vs. The State of Tamil Nadu);

(ii) 1983 (3) SCC 333 = AIR 1983 SC 622 = MANU/SC/0054/1983 (Dr. Vijay Kumar Kathuria and Another Vs. State of Haryana and Others) and

(iii) 1994 (1) LW 21 (SC) = 1994 (1) SCC 1 = MANU/SC/0192/1994 (S.P. Chengalvaraya Naidu Vs. Jagannath).

9. Apart from that, another contention of the learned counsel for the defendant is that the plaint has to be rejected, as the suit is barred by the law of *res-judicata*. At this juncture, it would be relevant to place reliance on the judgment passed in **Srihari Hanumandas Totala v. Hemant Vithal Kamat** reported in **2021 SCC Online SC 565**, the Hon'ble



Supreme Court had issued guiding principles for deciding an application under Order 7 Rule 11 (d), which are as follows:-

"(i) To reject a plaint on the ground that the suit is barred by 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 the 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 (v) since an adjudication of the plea of res-judicata requires consideration of the pleading, issues and decision in the 'previous suit' such a plea will be beyond scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused"

10. In view of the above, it is evident that the question as to whether the instant suit is barred by *res-judicata*, is a matter of mixed question of law and facts, which has to be decided only at the time of trial. Therefore, the issue regarding the suit being barred by *res-judicata* is quite premature to be decided at this stage in the Revision. Hence, this Court finds that there is no illegality or irregularity in the impugned order passed by the Court below. There are no merits in this Revision and the same is



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liable to be dismissed.

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11. Accordingly, the Civil Revision Petition is dismissed. However, the trial Court is directed to dispose of the suit [O.S.No.205 of 2020] itself pending on the file of the District Munsif-Cum-Judicial Magistrate Court, Cheyyur, as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

01.02.2023

Index: Yes/no

Speaking order : Yes/No

Neutral citation : Yes/No

msm

To

1. District Munsif-Cum-Judicial Magistrate, Cheyyur.
2. The Section Officer, V.R.Section, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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