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C.R.P.(PD)No.2769 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2769 of 2023
and C.M.P.No.17118 of 2023

1. S.Thangaraj

K.K.Balasubramaniam (died)

2. R.Selvam

3.L.Madeswaran

4.P.Anbazhagan

.. Petitioners

Vs.

1. N.Palanivel

2. B.Balamurugan

3. A.Ponnusamy

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 04.01.2023 made in I.A.No.3 of 2021 in O.S.No.125 of 2017 on the file of the Principal District Munsif Court, Tiruchengode.

For Petitioners : Mr. R.Marudhachalamurthy



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ORDER

Heard Mr.R.Marudhachalamurthy, learned counsel for the petitioners. I have carefully gone through the entire records.

2. The revision arises against an order passed by the learned Principal District Munsif at Tiruchengode in I.A.No.3 of 2021 in O.S.No.125 of 2017.

3. The suit in O.S.No.125 of 2017 is for declaration and for injunction that the plaintiffs are the administrators of the suit temple. In the said suit, an application in I.A.No.3 of 2021 was filed under Order VII Rule 11(d) of the Code of Civil Procedure.

4. The claim of the petitioners/defendants is that the suit is barred by virtue of the provisions of Sections 63 & 64 of the HR and CE Act. The learned District Munsif at Tiruchengode has given a finding that the suit is not barred by virtue of the fact that the temple itself is not the one



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covered under the HR and CE Act. This position has been admitted by the revision petitioners/defendants in the written statement. When the Act does not apply to the temple, the question of it being a bar for the presentation of the suit does not arise. Therefore, it is not a ground to reject the plaint, because all that the Court sees at the time of rejection of the plaint is the reading of the plaint alone and the documents filed along with it. The defence taken by the defendants is absolutely irrelevant for the purpose of an application under Order VII Rule 11 of C.P.C. Therefore, the learned trial Judge has rightly decided that the suit is not barred.

5. The claim of the defendants is that other suit had already been presented by the plaintiffs/respondents in O.S.No.60 of 2015 on the file of the District Munsif Court, Tiruchengode and it operates as *resjudicata*. Even on that ground, Mr.R.Marudhachalamurthy would want me to reject the plaint. The rejection of the plaint on the ground of *resjudicata* is unknown. Resjudicata is a mixed question of law and fact



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and it has to be gone into only at the time of trial.

6. Reserving the right of the petitioners to raise the objections on the bar of the suit as well as a plea of resjudicata, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

14.08.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
kj

To

The Principal District Munsif
Tiruchengode.

V.LAKSHMINARAYANAN,J.

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