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C.R.P. No.2349 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P. No.2349 of 2021
and C.M.P.No.17806 of 2021

1.P.Vadivelu

2.S.Kanniappa Naicker

.. Petitioners

vs.

Smt.Girija Balasubramaniam

.. Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order made in I.A.No.1 of 2019 in O.S.No.27 of 2011 dated 09.07.2021 against dismissal of the Rejection of Plaint petition filed by the petitioners.

For Petitioners : Mr.G.Parthasarathy

For Respondent : Mr.S.Saravanakumar

ORDER

The Civil Revision Petition arises against the order passed by the learned Subordinate Judge, Tiruttani in I.A.No.1 of 2019 in O.S.No.27 of 2011 dated 09.07.2021.



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2. The suit in O.S.No.27 of 2011 had been originally presented for Bare Injunction. An application for amendment was taken up for Declaration of title and it was allowed, against which, a revision was preferred before this Court in C.R.P.No.4204 of 2012. The said revision was allowed on 07.07.2017, restoring the suit back to its original position of being a suit only for Permanent Injunction.

3. The defendants took out an application, stating that the suit is barred by *res judicata* and for non-description of properties as required under Order 6 Rule 4 of C.P.C. The basis of *res judicata* is that, previously the defendants had filed O.S.No.1032 of 1987 on the file of the learned District Munsif Court, Tiruttani for Partition and that ended in a preliminary decree and a final decree was also passed on 16.12.2006. According to the revision petitioners, it is for the very same suit property that a fresh suit for permanent injunction has been filed by the 13th defendant, who had been subsequently impleaded in the final decree proceedings.

4. According to the learned counsel for the revision petitioners, this is an abuse of process of Court. The same issue is being litigated upon *ad*



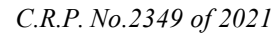
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nauseam and therefore, the plaint requires to be rejected. Apart from that, the learned counsel for the revision petitioners said that since there is non-description of properties, it shows that the plaintiff is not in possession and even on that score, the plaint has to be rejected.

5. The learned counsel for the respondent would state that either grounds did not fall within the scope of Order 7 Rule 11 of C.P.C and the plaint is not liable to be rejected.

6. Heard both sides and carefully perused the records.

7. The suit is one for Permanent Injunction. The plaintiff claims that she is in possession of the property. Whether she is in possession of the property or not is the matter, which has to be gone into only at the time of trial. Plea of *res judicata* and lack of pleadings are not the grounds to reject the plaint under Order 7 Rule 11 of C.P.C. The suit being one for Bare injunction, it necessarily has to go through the usual trial. However, the learned trial Judge has given a finding that the suit is not barred by *res judicata*. That is not the scope of Order 7 Rule 11 of C.P.C. At that stage, a court only takes the plaint to be true and decides



8. The learned counsel for the respondent brings to my notice that
g the pendency of the revision, suit should be proceeded further.
nce of the plaintiff & defendant was closed and it is now reserved
dgment.

9. The fact is that due to the pendency of the revision, the parties did not fully co-operate for the disposal is the matter for concern. That does not mean that the Court should proceed further and snuff out the rights of the defendants. This is especially so, when he projects the judgment and decree in his favour.

10. In the interest of justice and by consent of parties, evidence of P.W.1 is re-opened. P.W.1 shall be present in Court on 29.08.2023. On that day, the learned counsel for the Civil Revision Petitioners /



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defendants shall cross-examine P.W.1. The cross-examination shall commence on 29.08.2023 and completed it by 31.08.2023. He shall immediately commence his evidence on 04.09.2023 on the basis of the proof affidavit already filed.

11. The learned counsel for the respondent/plaintiff states that he shall cross-examine the defendants between 11.09.2023 and 15.09.2023. The evidence of both parties shall be closed on 18.09.2023. The trial Court is requested to pronounce the judgment after hearing the arguments on or before 13.10.2023.

12. With the above directions, the Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

03.08.2023

Index:Yes/No
Neutral Citation:Yes/No
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To
The Subordinate Judge, Tiruttani.



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V. LAKSHMINARAYANAN, J.

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