



C.R.P.(PD)No.2599 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2599 of 2023
and C.M.P.No.16075 of 2023

R.Nagaraj

.. Petitioner

Vs.

1. J.Palaniammal

2.J.Uvasri

3.J.Kalidass

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against the fair and decretal order dated 02.06.2022 made in I.A.No.464 of 2021 in O.S.No.143 of 2021 on the file of the Principal District Munsif Court, Tiruppur.



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For Petitioner : Mr.Balaji Thirumoorthy

For Respondents : Mrs.P.Kavitha for Caveators

ORDER

The civil revision petition challenges an order of dismissal dated 02.06.2022 in an application filed for rejection of plaint.

2. The revisionist is the 5th defendant. The respondents are the plaintiffs. O.S.No.143 of 2021 has been presented for declaration and for consequential reliefs. In this suit, soon after service of summons, an application in I.A.No.464 of 2021 was taken out for rejection of plaint. The said application was dismissed, against which, the present revision has been filed.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents/caveators. I have carefully perused the records.



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4. The following three arguments were placed before me by the learned counsel for the petitioner:

- (i) The suit is barred under Order II Rule 2 of C.P.C.
- (ii) The suit is barred by limitation.
- (iii) The suit is hit by Order IX Rule 9 of C.P.C.

5. The test for bar under Order IX Rule 9 of C.P.C. is that the cause of action in both the suits must be one and the same. In so far as Order II Rule 2 of C.P.C. is concerned, all the reliefs should have been sought for and if some reliefs are not sought for, without the leave of the Court, then a subsequent suit with respect to the left out portion, is barred.

6. Reading of the plaint shows that both the suits are based on different causes of action. Whether the cause of action is one and the same requires filing of the pleadings in the former suit before the Court trying the latter suit. In an application for rejection of plaint all that the Court is concerned with is the reading of the plaint alone and the



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documents filed therein. The defence taken by the defendant, even if it is sterling in character, cannot be looked into because an application under Order VII Rule 11 of C.P.C. is one in demurrer. In a plea in demurrer, the averments made in the plaint are taken to be true and on that basis, it has to be decided whether the plaint is to be rejected.

7. The plaintiffs have given reasons in the plaint to show that the cause of action in O.S.No.139 of 2016 on the file of the learned Principal District Munsif, Tiruppur, is different from the suit in O.S.No.143 of 2021 on the file of the Principal District Munsif Court, Tiruppur. I am bound by the plaint, when I deal with an application under Order VII Rule 11 of C.P.C.. The explanation stating that the cause of action are different in both the suits would bind me. Therefore, I reject the arguments that the Court has to look into the plaint in O.S.No.139 of 2016 as well as the suit in O.S.No.143 of 2021 at the stage of Order VII Rule 11 of C.P.C. and come to a conclusion that they are one and the same.



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8. Furthermore, even if a different prayer is sought for, it will not be covered under Order II Rule 2 of C.P.C. which is the present situation. Therefore, both the arguments under Order IX Rule 9 of C.P.C. and Order II Rule 2 of C.P.C. do not appeal to me.

9. On the next plea of limitation, limitation is a mixed question of law and fact. Unless and until the reading of the plaint persuades me that the suit is barred by limitation, the plea of limitation for the purpose of Order VII Rule 11 of C.P.C. cannot be entertained. There is no such averment that the plaint to hold that the suit is barred by limitation. Therefore, I am not inclined to accept any of these three grounds that have been raised by the petitioner.

10. Nonetheless, it is open to the petitioner/5th defendant to file a written statement raising the plea, which has been raised in an application under Order VII Rule 11 of C.P.C. The trial Court is requested to frame appropriate issues with respect to the limitation as well as Order IX Rule



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9 of C.P.C. and Order II Rule 2 of C.P.C. and consider them at the time of final disposal.

11. With the above observations, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

The Principal District Munsif, Tiruppur.



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V.LAKSHMINARAYANAN,J.

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