



C.R.P.(MD)No.324 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :10.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.324 of 2023
and
C.M.P.(MD).No.1543 of 2023

K.Jagadeesan

... Petitioner

Vs.

1.S.Muruganantham

2.N.Sami Veerappa

3.N.Kumaraguru

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 22.11.2022 passed in I.A.No.1 of 2022 in O.S.No.128 of 2019, on the file of the District Munsif Cum Judicial Magistrate, Gandharvakottai.

For Petitioner :Mr.V.Meenakshi Sundaram



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ORDER

The third defendant in a suit for declaration of pathway rights and permanent injunction, is the revision petitioner herein. Pending the suit, the third defendant had filed I.A.No.1 of 2022 to reject the plaint on the ground that the same relief was sought for by the plaintiff in O.S.No. 539 of 1988, on the file of the Additional District Munsif Court, Pudukkottai and it was rejected and the same was confirmed in A.S.No. 72 of 1998. Hence, according to the third defendant, the present suit is barred by Res judicata. However, the learned trial judge has arrived at a finding that the plea of resjudicata is a mixed question of law and facts and hence, the same cannot be decided in an application filed under Order VII Rule 11 of Civil Procedure Code. Challenging the same, the present Civil Revision Petition has been filed.

2. There cannot be any dispute with regard to the proposition of law that the plea of Resjudicata is a mixed question of law and facts and it cannot be decided, either as a preliminary issue or can be considered within the parameters under Order VII Rule 11 of the Civil Procedure



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Code. However, the learned counsel appearing for the revision petitioner submits that the trial Court may be directed to frame an issue, in the light of the defence taken by the third defendant in paragraph No.17 of the written statement. While, confirming the order of dismissal of rejection of plaint, this Court, directs the trial Court to frame an issue relating to the plea of Res-judicata, as one of the issue to be tried along with the other issues during trial.

3. Considering the fact that the suit was filed before the District Munsif Court, Pudukkottai, in the year 2018 and later, it was re-numbered in the year 2019 before the District Munsif-Cum-Judicial Magistrate, Gandharvakottai, the learned District, Munsif, Gandharvakottai, is directed to dispose of the suit on or before 30.11.2023.



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4. With the above said observations, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.02.2023

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

To

1.District Munsif Cum Judicial Magistrate,
Gandharvakottai.

2.District Munsif-Cum-Judicial Magistrate,
Kumbakonam



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R.VIJAYAKUMAR ,J.

sbn

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and
C.M.P.(MD).No.1543 of 2023

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