



C.R.P(MD)No.373 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.02.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.373 of 2023

and

C.M.P(MD)No.1817 of 2023

Parameswari

... Petitioner/Petitioner/
3rd Defendant

Vs.

1.P.Kaliappan

... Respondent/Respondent/
Plaintiff

2.The State of Tamil Nadu,
Represented by the District Collector,
Collector's Office Buildings,
Madurai.

3.The Commissioner,
Tirumangalam Municipality,
Municipal Office,
Tirumangalam.

... Respondents/Respondents/
Defendants 1 & 2

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 04.11.2022 passed in I.A. No.130 of 2021 in O.S.No.486 of 2013 on the file of the Principal District Munsif Court, Thirumangalam by allowing this Civil Revision Petition.



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C.R.P(MD)No.373 of 2023

For Petitioner : Mr.V.Meenakshi Sundaram

ORDER

The present revision petition has been filed to strike off the plaint in O.S.No.486 of 2013 pending on the file of the Principal District Munsif Court, Thirumangalam.

2. The 3rd defendant in the said suit had filed I.A.No.130 of 2021 for rejection of plaint. According to the learned counsel appearing for the revision petitioner, the issue relating to the present suit pathway was already decided in O.S.No.131 of 2000 on the file of District Munsif Court, Thirumangalam. In the said suit, it was decided that the width of the pathway is only 8 feet and only the parties who are residing on either side of the pathway are entitled to the said pathway. The present plaintiff is not entitled to use the said pathway. In view of the judgment and decree in O.S.No.131 of 2000, the present suit is barred under the principles of *res judicata*. However, the learned trial Judge has dismissed the said application on the ground that the issue of *res judicata* is a mixed question of law and fact and it is a triable issue. Challenging the same, the present revision petition has been filed by the 3rd defendant.



C.R.P(MD)No.373 of 2023

3. The learned counsel appearing for the petitioner has pointed out that the plaintiff had filed an amendment application to amend the prayer and the schedule of property in I.A.No.300 of 2020 which was allowed on 04.11.2022. However, the 3rd defendant was not given any opportunity to file an additional written statement. Therefore, it is the case of the petitioner that originally only 3 issues were framed relating to the declaration of title and the consequential reliefs. He further contended that in view of the amendment of the plaint, the issues that were already framed have to be re-framed.

4. I have carefully considered the submissions made on the side of the petitioner.

5. As rightly pointed out by the learned trial Judge, the ground of *res judicata* is a mixed question of law and fact and the same cannot be decided under Order 7 Rule 11 application and it is a matter of trial. However, if the 3rd defendant is aggrieved over the non-framing of an issue relating to *res judicata*, he is at liberty to file a proper application before the Court.



C.R.P(MD)No.373 of 2023

WEB COPY

6. With the said liberty, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

15.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Principal District Munsif Court,
Thirumangalam.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.373 of 2023

R.VIJAYAKUMAR ,J.

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Order made in
C.R.P(MD)No.373 of 2023

15.02.2023