

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.957 of 2019

and

C.M.P(MD) No.5416 of 2019

Annakodi ... Petitioner/Petitioner/Defendant

-vs-

Sekar ... Respondent/Respondent/ Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 11.09.2018 passed in I.A.No.452 of 2018 in O.S.No.268 of 2014 on the file of the Additional District Munsif, Thirumangalam.

For Petitioner : Mr.N.Vallinayagam
For Respondent : No appearance

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, to set aside the order dated 11.09.2018 passed in I.A.No.452 of 2018 in O.S.No.268 of 2014 on the file of the Additional District Munsif, Thirumangalam.

2. The petitioner herein is the defendant and the respondent herein is the plaintiff before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The brief facts which give rise to the instant Civil Revision Petition is that the plaintiff has filed the suit for permanent injunction in respect of the suit property. Wherein, the defendant has moved an application under Order 7 Rule 11 of C.P.C to reject the plaint on the ground of *res judicata*, as the plaintiff has already filed a suit in O.S.No.37 of 2008 seeking similar relief against this defendant in respect of very same property.

5. The learned counsel appearing for the petitioner would also relied upon the judgment of this Court reported in **2008 3 MLJ 821 (M.Somasundaram and another vs. District Collector cum Accommodation Controller, Chennai and others)** and would contend that the re-litigation is abuse of process of Court. Therefore, the plaint in O.S.No.268 of 2014 has to be struck off from the file of the District Munsif Court, Thirumangalam.

6. There is no representation on behalf of the respondent and the notice sent to the respondent has been returned with an endorsement as “not known”. However, in view of the pendency of the matter, this Court is inclined to dispose of the Civil Revision Petition in the absence of the respondent.

7. From the submission of the learned counsel for the petitioner, the instant suit is hit by principle of *res judicata*, in view of the order passed in O.S.No.37 of 2008. However, on perusal of the plaint in O.S.No.268 of 2014, this Court could not find any material so as to bring the defence of *res judicata*.

8. It is a settled principle of law that, whenever an application being considered under Order 7 Rule 11 of C.P.C any external document other than the plaint document could be seen, and the same is not within the frame work of Order 7 Rule 11 of C.P.C. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court reported in **(2023) 3 MLJ 200 (Prem Kishore vs. Brahm Prakash)**. Paragraph No.33 is as follows:

“33. On a perusal of the above authorities,

the guiding principles for deciding an application under Order 7 Rule 11(d) of the CPC can be summarized as follows:-

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the

‘previous suit’, such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused.

9. In our case, in order to prove the defence of *res judicata*, the petitioner did not produce any decree. However, he relied upon the plaint in O.S.No.37 of 2008, which is not form part of the plaint document. Therefore, when a situation has arisen to see the document which is other than the plaint document, it can't be gone into under Order 7 Rule 11 of C.P.C. The plain reading of the plaint do not disclose any facts for *res judicata*. Therefore, the findings of the Court below in dismissing the application under Order 7 Rule 11 of C.P.C., does not require any interference.

10. In the result, this Civil Revision Petition is **dismissed**. Considering the pendency of the case since 2014, this Court deems it appropriate to give a direction to the Court below for an early disposal.

11. The Court below is directed to dispose of the suit in O.S.No.268 of 2014 as expeditiously as possible, preferably within a period of six months

from the date of receipt of the copy of this order. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

05.09.2023

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

To
1. The Additional District Munsif,
Thirumangalam.

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C.KUMARAPPAN,J.

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