



C.R.P.(MD).No.1238 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on	18.07.2023
Pronounced on	20 .12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.1238 of 2023
and
C.M.P(MD)Nos.6049 and 8406 of 2023

S.Velu

... Revision Petitioner

Versus

1.Ramesh Babu

2.Arulappan

3.Arockiam

4.Inbaraj

5.Chelladurai

6.Koil

7.John Peter

8.Arockiam

... Respondents

Prayer : The Civil Revision Petition is filed under article 227 of



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Constitution of India, to set aside the fair and decretal order, dated 10.03.2023 in C.M.A.No.16 of 2022 on the file of Principal Subordinate Judge confirming the fair and decretal order, dated 05.07.2022 on the file of 1st Additional District Munsif Court, Tirunelveli.

For Revision Petitioner : Mr.K.Suresh Subramanian

For Respondents : Mr.N.Tamilmani for R1

: Mr.K.Manoharan for R2 to R8

ORDER

This Revision is preferred by the defendant in O.S.No.376 of 2015 for setting aside the order passed in C.M.A.No.16 of 2022, dated 10.03.2023 on the file of 1st Additional District Munsif Court, Tirunelveli.

2. According to the Revision Petitioner, the 1st Respondent/Plaintiff challenged the judgment and decree, dated 20.04.1998 passed in O.S.No.247 of 1995 on the file of learned Principal District Munsif, Tirunelveli was dismissed by this Court in S.A.No.559 of 2001, dated 11.07.2019 in respect of Survey No.72/3C. It is submitted that the above suit in O.S.No.247 of 1995 was filed for the relief of declaration and permanent injunction. The Lower Appellate Court failed to consider that the



judgment in O.S.No.247 of 1995 had reached its finality and no further appeal had been preferred by the 1st Respondent before the Hon'ble Supreme Court. The Trial Court failed to consider the stand taken by the Revision Petitioner that the present suit in O.S.No.376 of 2015 is barred by the Principles of *res judicata* in respect of the same property.

3. It is also submitted that the relief sought for in I.A.No.1 of 2022 in O.S.No.376 of 2015 is to stop further proceedings was under Section 151 of Code of Civil Procedure. The Trial Court held that the provision of law was not correctly mentioned in I.A.No.1 of 2022. It is further submitted that the Lower Appellate Court came to the conclusion that the order passed in Review Application No.71 of 2021 in S.A.No.559 of 2001 is not a bar in respect of O.S.No.376 of 2015. The Lower Appellate Court had erroneously found that the I.A.No.1 of 2022 is not maintainable for quoting wrong provision of law, which is erroneous.

4. It is submitted that the judgment and decree in S.A.No.559 of 2001 and the order passed in the Review Application No.71 of 2021 amounts to *res judicata* in respect to the property in Survey No.72/3C.



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Hence, it is prayed for setting aside the fair and decretal order, dated 10.03.2023 in C.M.A.No.16 of 2022 on the file of the learned Principal Subordinate Judge, Tirunelveli confirming the fair and decretal order, dated 05.07.2022 on the file of 1st Additional District Munsif Court, Tirunelveli.

5. The learned counsel appearing for the Revision Petitioner would submit that the fundamental policy of the law is that there must be finality to litigation. Multiplicity of litigation enures to the benefit, those who seek to delay the fruits of a decree reaching those to whom the decree is meant. The learned counsel would further contend that the duty of the Court while interpreting the provision of law is to give effect to the real meaning to the Statute coupled with legislative intent. When the words of the Statutes being clear, explicit and unambiguous, there is no scope to have recourse to extend external aid for their contention. Therefore, the Lower Appellate Court cannot reject the petition filed by the Revision Petitioner for quoting a wrong provision. To support his contention, he has relied upon the decision cases reported in the judgments of Hon'ble Supreme Court in ***Bhagwat Sharan (Dead) thr. L.Rs Vs. Purushottam and Others*** case reported in ***2020 (3) CTC 111*** and ***Asgar & Ors. Vs. Mohan Varma & Ors.*** case



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reported in ***Civil Appeal No.1500 of 2019*** and the judgments of this Court in ***Kaliyannan Vs. Sangeetha and Others*** case reported in ***2020 (5) CTC 689*** and ***Mrs.Sasikala Ramalingam and Another Vs. Sami Iyhia Nattar and Others*** case reported in ***2003 (1) CTC 389***.

6. On the other hand, the learned counsel appearing for the Respondents would submit that the suit in O.S.No.247 of 1995 was filed by the Plaintiff claiming 1/4th share in the suit property. However, the said suit was dismissed on technical ground. The 1st Respondent/1st Plaintiff was entitled to file a fresh suit in respect of the same property. The plaintiff is entitled to proceed with the present suit in O.S.No.376 of 2015, since no finality was reached in the earlier suit. The contention of the Revision Petitioner is that the present suit in O.S.No.376 of 2015 is barred by the Principles of *res judicata* is unsustainable. Hence, the Lower Appellate Court has rightly dismissed the application filed by the Revision Petitioner in I.A.No.1 of 2020. Therefore, no interference calls for.

7. Heard on both sides and perused the records.



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8. The Respondents/Plaintiffs filed the suit in O.S.No.376 of 2015 for declaration of title and permanent injunction. While so, the Revision Petitioner/defendant has filed the interlocutory application in I.A.No.1 of 2020 to stop further proceedings in the suit in O.S.No.376 of 2015 for the reason that the suit filed by the Plaintiff in O.S.No.247 of 1995 in respect of the same suit property was dismissed and the appeals preferred by the 1st Respondent/Plaintiff in A.S.No.44 of 1998 and the Second Appeal in S.A.No.559 of 2001 was also dismissed and therefore, the present suit for the same suit property is barred by Principles of *res judicata*. The Lower Appellate Court dismissed the above application by stating that the present suit is not barred under the Code.

9. However, in the Review Application, it is ordered that the 1st Respondent/Plaintiff is entitled to the entire property and he was given liberty to file a fresh suit. Therefore, the Plaintiff has filed the present suit in O.S.No.376 of 2015 only as per the observations made in the Review Application. It is rightly pointed out by the Lower Appellate Court if the above suit is barred by Principles of *res judicata*, the Revision Petitioner



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ought to have filed an application under Order 7 Rule 11 of Code of Civil Procedure praying for a rejection of plaint.

10. Therefore, the Trial Court has rightly dismissed the above application filed by the Revision Petitioner in I.A.No.1 of 2020 which calls for no inference.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

20.12.2023

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Index:Yes/No
Speaking Order : Yes/No



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K.GOVINDARAJAN THILAKAVADI,J.

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To

- 1.The 1st Additional District Munsif Court,
Tirunelveli.
- 2.The Principle Subordinate Judge,
Tirunelveli.

ORDER MADE IN

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and
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