



C.R.P(MD)No.2344 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.07.2023**

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THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.2344 of 2018
and
C.M.P(MD)No.10402 of 2018

SP.D.Karuppaiah

...Petitioner/Petitioner/
Defendant No.1

Vs.

1.S.Nirmala

...1st Respondent/
1st Respondent/Plaintiff

2.The Commissioner,
Karaikudi Municipality,
Karaikudi.

3.The Hereditary Trustee,
Arulmigu Suyamprakeshwarar Temple,
Iluppakudi,
Karaikudi Taluk,
Sinangangai District.

...Respondents 2 and 3/
Respondents 2 and 3/
Defendants 2 and 3

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 12.09.2018 made in I.A.No.235 of 2017 in O.S.No.103 of 2016 on the file of the Additional District Munsif, Karaikudi.



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For Petitioner : Mr.S.Rajasekar
For R1 : Mr.R.Sundar Srinivasan
For R2 : Mr.D.Venkatesan
For R3 : No Appearance

ORDER

This civil revision petition has been filed against the order passed by the Additional District Munsif, Karaikudi in I.A.No.235 of 2017 in O.S.No.103 of 2016, dated 12.09.2018.

2. The petitioner herein is the first defendant before the Trial Court.

3. According to the petitioner, the suit was filed by the first respondent for the relief of declaration to declare the tax assessment, ந.க.எண்.2562/09/அ4, dated 23.03.2010 as null and void and for cancellation of the said assessment in respect of the suit property bearing Door No.5/4 Town Survey No.415 Part in Muthuramalingadevar 4th Street, Karaikudi Town.



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4. During the pendency of the suit, the petitioner has filed an application under Order 7 Rule 11 of C.P.C., on the ground that the suit is liable to be rejected on the ground of suppression of facts, *res judicata* and on the ground of insufficient cause of action. For which the petitioner submitted that the first respondent herein has already filed a suit in O.S.No.86 of 2006 in respect of the very same property, which has been dismissed on 14.11.2007. Against the dismissal of the suit, when the respondent filed an appeal in A.S.No.5 of 2008, a decree was reversed and injunction was granted in favour of the respondents herein. Against which, the petitioner has filed a second appeal in S.A.No.1183 of 2011 before this Court and the same is pending.

5. In view of the earlier suit in O.S.No.86 of 2006, the present suit is hit by the principle of *res judicata*. In this regard, this Court would like to refer the judgment of the Hon'ble Supreme Court in the case of ***Prem Kishore and others Vs Brahm Prakash and others (Civil Appeal No. 1948 of 2013)*** reported in ***(2023) 3 MLJ 200***. The relevant portion of the order reads as under:

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.*

6. As per the ratio of the above judgment, in order to decide the plea of *res judicata*, the earlier plaint and the judgment and the decree has to be perused along with the plaint of the present suit. Such procedure is alien to the provision under Order 7 Rule 11 of C.P.C. While considering Order 7 Rule 11 of C.P.C., the Court would only see the present plaint to arrive at the finding for the existence of grounds whether the suit is barred in law or not. Further, in respect of other ground, such as suppression of fact, Order 7 Rule 11 of C.P.C., did not mandate for rejection of plaint under the ground of suppression of fact.

7. Further, the yet another ground urged by the learned counsel for the petitioner is that there is no sufficient cause of action, which is also not mandated under Order 7 Rule 11 of C.P.C. and what Order 7 Rule 11



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of C.P.C., expects for rejection of plaint is "no cause of action". Even according to the averment in the plaint, there is some cause of action. However, according to the petitioner, it is insufficient to them. The grounds which has been raised by the petitioner would not be adjudicated within the frame work of Order 7 Rule 11 of C.P.C.

8. At this juncture, the learned counsel for the petitioner would submit that the first respondent herein has filed an application for the restoration of suit in O.S.No.86 of 2006. Therefore, the learned Trial Judge is directed to dispose of the said application according to law. In the event of allowing the application, the learned Trial Judge is directed to dispose of the suit as expeditiously as possible preferably within a period 6 months from the date of receipt of copy of this order.

9. In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

28.07.2023

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

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- 1.The Additional District Munsif,
Karaikudi.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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