



CRP (MD) No.758 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	21.07.2023
Pronounced on	27.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.758 of 2023

and

CMP(MD)No.3559 of 2023

1.A.Parwathi

2.T.Rajasekaran

... Petitioners

Vs.

1.Sellapappu

2.Supash Santhiraposs

3.Rethinam

4.Arjunan

5.Thangamani

6.Selvarani

7.Indhirani

8.The Tashildar,
Tashildar Office,
Mannachanallur Post & Taluk,
Trichy District.

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9. The District Collector,
Collector Office,
Trichy District.

10. T. Balachandar

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 13.07.2017 made in I.A.No.510 of 2016 in O.S.No.425 of 2014 on the file of the District Munsif Court, Lalgudi and allow the above revision petition.

For Petitioners	: Mr.K.Vidya
For R1 to R7	: Mr.Raguvaran Gopalan
For R8 & R9	: Mr.R.Suriyananth Additional Government Pleader
For R10	: No appearance

ORDER

The above civil revision is filed against the order passed in I.A.No.510 of 2016 in O.S.No.425 of 2014, dated 13.07.2017, on the file of the District Munsif Court, Lalgudi.



2. The suit in O.S.No.425 of 2014 was filed by the plaintiffs for the relief of declaration and for mandatory injunction. During pendency of the suit, the defendants 1 and 2 filed the application in I.A.No.510 of 2016 under Order 7 Rule 11 CPC to reject the plaint. In the said petition, it is submitted that the plaintiffs filed the above suit for declaration and for mandatory injunction without any cause of action. The plaintiffs have already filed a suit in O.S.No.26 of 2013 for the same relief and the said suit was withdrawn without liberty to file a fresh suit. Hence, the plaintiffs are precluded from filing a fresh suit for the same cause of action. The decree and judgment passed in the former suit operates as *res judicata* and therefore, the present suit is not maintainable and liable to be rejected. On the other hand, the third respondent/plaintiff in the counter has stated that the decree and judgment passed in O.S.No.26 of 2013 do not operate as *res judicata* in filing the present suit. Moreover, the question of *res judicata* has to be decided only at the time of trial. The trial Court upon hearing the rival submissions made on either side, dismissed the above application, against which, the present civil revision petition is preferred.



3. The learned counsel appearing for the petitioners would submit that the trial Court failed to take note of the fact that the plaintiffs have filed the present suit in O.S.No.425 of 2014 by suppressing the earlier suit in O.S.No. 26 of 2013 which was withdrawn without any liberty to file a fresh suit. Hence, the present suit is barred by the principles of res judicata and moreover, the plaint can be rejected, if it is based on fraud and misrepresentation.

4. On the other hand, the learned counsel appearing for the respondents 1 to 7 would contend that Order 7 Rule 11 (d) of CPC provides that the plaint shall be rejected only where the suit appears from the statement in the plaint to be barred by any law. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements made in the plaint. Whether the suit is barred by any law, must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case. He would further submit that Section 11 of



CPC enunciates the rule of *res judicata*. Moreover, applying the principles of *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 that 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. Therefore, the plaint on the face of it, does not disclose any fact that may lead to the conclusion that it deserves to be rejected on the ground that it is barred by the principles of *res judicata*. The trial Court was correct in rejecting the application under Order 7 Rule 11 (d) CPC, which calls for no interference. To support his contention, he has relied upon the decision reported in **(2021) 8 S.C.R 387**.

5. Heard on both sides and records perused.



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7. For the above reasons, it is held that the plaint is not liable to be rejected under Order 7 Rule 11 (d) of CPC and the findings of the trial Court is confirmed. The learned District Munsif, Lalgudi, is directed to frame the issues in the suit in O.S.No.425 of 2014 in accordance with pleadings and dispose of the same within a period of four months from the date of receipt of a copy of this order. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2023

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

To

The District Munsif,
Lalgudi.



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Pre-delivery order made in
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