



C.R.P.(MD).No.2065 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2065 of 2018

and

C.M.P(MD) No.9149 of 2018

St. Assisi Higher Secondary School,
Represented by its Correspondent,
Pavoor Chathiram,
Kulasekarapatti Village,
Thenkasi Taluk.

... Petitioner/Defendant No.6

-VS-

1. P.Joseph Micheal
2. J.Salet Arul Irudhayaraj
3. J.Suresh Lehoree
4. A.Sahaya Mary
5. S.Mariappan
6. P.Santhana Mariappan
7. K.Subbaiah
8. K.Ramalingam

... Respondents 1 to 8/Plaintiffs

9. The Sub-Registrar,
Office of the Sub Registrar,
Pavoorchathiram,
Kallorani Village,
Tenkasi Taluk.

10. The District Registrar (Admin)
Office of the District Registrar,
Near RTO Office,
Madurai Road, Tenkasi.



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11. The Deputy Inspector General of Registration,
District Collectorate,
Tirunelveli District.

12. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai – 28.

13. The Government of Tamil Nadu,
Represented by its District Collector,
Tirunelveli. ... Respondents 1 to 5/Defendants 1 to 5

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.192 of 2018 on the file of the Principal District Munsif, Thenkasi.

For Petitioner : Mr.S.Meenakshi Sundaram
Senior Counsel

For Respondents : Mr.D.Srinivasaraghavan
For R1 to R5, R7 and R8
: Mr.M.Senthil Ayyanar
Government Advocate
For R-9 to R-13
: No appearance – for R6

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.192 of 2018 on the file of the Principal District Munsif, Thenkasi.



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2. The petitioner herein is the 6th defendant. The respondents 1 to 8 herein are the plaintiffs, and the respondents 9 to 13 are the defendants 1 to 5 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 short facts which give rise to the instant Civil Revision Petition are that the respondents 1 to 8/plaintiffs have filed the suit in O.S.No.192 of 2018 before the Principal District Munsif Court, Tenkasi for the relief of permanent injunction not to register the sale deed stands in the name of the petitioner herein, and not to disturb the peaceful possession.

5. The learned Senior Counsel appearing for the petitioner drew the attention of this Court in respect of the plaint, and would submit that the respondents herein derived title from one Chandra, who is the daughter of Arunachala Nadar, and that the said Chandra has already filed a suit for declaration declaring her right in respect of the very same property against the predecessor in title of the petitioner Mr.Draviyam in O.S.No.363 of 2011 and



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also sought for the relief of possession. It appears from the records, that on 18.01.2017, the suit was dismissed rejecting the claim of the respondents herein. In the meanwhile, there was certain sale deeds in the name of the respondents herein dated 02.07.2012, 06.06.2012, 19.07.2012 and 17.10.2013. It is not in dispute that the suit property of the suit in O.S.No.192 of 2018 and the suit property in O.S.No.363 of 2011 are one and the same.

6. The learned Senior Counsel appearing for the petitioner would submit that when in the earlier suit, the predecessor in title of the respondent namely one Ms.Chandra title was disbelieved, and that when she lost the suit through the above title suits, she cannot give a better title to the respondents herein. The learned Senior Counsel would submit that, the suit filed by the respondents herein is hit by the principle of *res judicata* and would also come within the definition of re-litigation. It is the submission of the learned Senior Counsel that such re-litigation gives right to file an application directly before this Court to strike off the plaint.

7. In this regard, the learned Senior Counsel has relied upon the following four judgments:



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(i) 2009 (5) CTC 710 (*Tamil Nadu Handloom Weavers' Co-operative Society, representing by its Managing Director vs. S.R.Ejaz, represented by his Power Agent, Muralidhar T.Balani*)

(ii) 2010 (4) CTC 690 (*Southern and Rajamani Transport Private Limited, represented by its Director and 33 others vs. R.Srinivasan and others*)

(iii) 2021 (1) MLJ 688 (*V.S.P.Sivan and others vs. Balashanmugam and others*)

(iv) 2023 (4) MLJ 305 (*C.S.Balakrishnan and others vs. T.Amudan Antony and others*)

8. Per contra, the learned counsel appearing for the respondents would vehemently submit that the very suit in O.S.No.192 of 2018 was filed during the pendency of the earlier suit in O.S.No.363 of 2011, and that they sought for the relief of permanent injunction in respect of the different cause of action. Therefore, the judgment and decree of the earlier suit in O.S.No.363 of 2011 cannot be *res judicata*, and also cannot be construed the instant suit as re-litigation. In support of the defence, the learned counsel appearing for the respondents has relied upon the judgment of the Hon'ble Supreme Court in **2023 Live Law (SC) 261** in Civil Appeal No.10215 of 2011, dated 29.03.2023 (*Shivashankara and another vs. H.P. Vedavyasa Char*).



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9. This Court has given anxious consideration to the submissions of the learned counsels on either side.

10. In order to decide the issue, it is incumbent upon this Court to find out whether the principle of *res judicata* is applicable to the instant case or not. Hence in order to understand the issue, more lucidly are to have ready refence, Section 11 of C.P.C is extracted as follows:

*“11. **Res Judicata.**- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

11. According to Section 11 of C.P.C, in order to bring the earlier suit as the *res judicata* for the subsequent suit, the issue should be directly and



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substantially same issue, and that the suit should also between the same parties or against whom they or any of them claim, litigating under the same title. In this case, it is the submission of the learned Senior Counsel that in the subsequent suit in O.S.No.192 of 2018, the plaintiffs therein/respondents 1 to 8 herein are litigating right and title through the title of one Chandra, whereas, the said Chandra's title was rejected in O.S.No.363 of 2011.

12. This Court has perused the judgment of the earlier suit in O.S.No. 363 of 2011, wherein, the predecessor in title of the petitioner herein one Draviyam was added as the first defendant and ultimately, the suit was dismissed on 18.01.2017. Therefore, it is amply clear that Chandra's title was disbelieved by this Court as against Mr.Draviyam. Thus, she cannot have any right and title over the suit property. Though the sale deed was executed by Chandra during the pendency of the said suit, the same will not keep the respondents herein in any better position on the simple reason that they cannot take advantage of their own fault as they ventured upon to purchase the property during pendency of the suit.



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13. At this juncture, the learned Senior Counsel for the petitioner referred the judgment of this Court reported in **2010 (4) CTC 690 (Southern and Rajamani Transport Private Limited and 33 others vs. R.Srinivasan and others)**. The relevant paragraph No.32 is as follows:

32. It has already been assorted the circumstances under which [Article 227](#) of the Constitution of India can be invoked by a High Court. In the instant case, a grave injustice has been done to the revision petitioners/defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37 by way of impleading them as parties to Original Suit No. 3 of 2010, even though there is no nexus betwixt them and the first respondent/plaintiff. Of course it is true that an efficacious relief is available under Order 7 Rule 11 of the Code of Civil Procedure, 1908. But at the same time, since miscarriage of justice as well as injustice have been caused to the revision petitioners /defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37, their approach by way of filing the present civil revision petition to the High Court so as to ventilate their grievance is legally maintainable. Therefore, viewing from any angle, the entire argument advanced by the



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learned counsel appearing for the first respondent/plaintiff is sans merit, whereas the argument advanced by the learned Senior Counsel appearing for the revision petitioners /defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37 is really having subsisting force.

(Emphasis supplied by this Court)

14. The learned Senior Counsel for the petitioner also relied upon the judgment of this Court reported in **2021 1 MLJ 688 (V.S.P.Sivan and others vs. Balashanmugam and others)**. Paragraph Nos.16 to 18 are as follows:

16. The issue in the present suit has already been decided and reached finality. If at all there is any grievance for the appellants as to the above judgment, the only remedy available for them is to file an appeal against the said judgment. No re-litigation can be allowed by way of filing an another suit seeking to set aside the above judgment.

17. In this regard, it is relevant to refer the judgment in T.Arivanandam Vs. T.V.Satyapal reported in AIR 1977 SC 2421, wherein the Honourable Supreme Court has held as follows:-



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“Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes decrees with judicial seals brutum fulmen. The long arm of the law must throttle such, litigative caricatures if the confidence and credibility of the community in the judicature is to survive.”

18. In the judgment in K.K.Modi Vs. K.N.Modi reported in 1998-3- SCC-573, the Honourable Supreme Court has held as follows :-

“One of the examples cited as an abuse of the process of the Court is re-litigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to re- litigate the same issue which has already been tried and decided earlier against him. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. A proceeding being filed for collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the Court.”



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15. The learned Senior Counsel for the petitioner further relied upon the judgment of this Court reported in **(2023) 4 MLJ 305 (C.S.Balakrishnan and others vs. T.Amudan Antony and others)**. Paragraph No.25.1 is as follows:

“25.1 The doctrine of res judicata has always been understood as a mixed question of law and fact, and ordinarily when it is pleaded, trial is advised as an ideal option. The doctrine of res judicata is governed by five components:

(a) that the second suit must be between the same parties as in the first suit, or between those who claim under them;

(b) that it must be litigated under the same title as was in the earlier suit;

(c) that the issue in the second suit must have been directly and substantially in issue in the earlier suit, or to state it differently, indispensable for a decision in the former suit;

(d) that the said issue must have been decided by a court of competent jurisdiction in the former suit; and

(e) that such decision must have attained



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finality. Each of these aspects are rooted in facts, and they are tested on a plane of law on res judicata.

Of these five factors, (a), (b), (d) and (e) can be ascertained by a mere reading of the pleadings and the judgement in the former suit and the pleadings of the present suit, and this precisely what the Court does, with or without trial, when it enquires whether res judicata applies. And, where there is a dispute as to whether an issue in the present suit was directly and substantially in issue in a former suit, or, was it incidental and ancillary in issue, there may be a need for arguments, still what gets subjected to scrutiny again are the pleadings in the former suit, the decision on the issue in the former suit, and the pleadings and the reliefs sought in the second suit. When the pleadings and the judgements in the former suit and the pleadings of the present suit are made available, mere arguments on them is adequate to decide the issue. The trial, therefore, will involve no more than a formal admission of indisputable documents namely the pleadings and the final



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judgement in the earlier suit in evidence, and there is no need for an elaborate oral evidence, for an input of a witness on the legal effect of a finding in a former case is of the least consequence to the court. This can apply in equal force even if constructive res judicata is pleaded, since all that is required to be probed then will be, whether the plea taken in the second suit was available to a party in the first suit.”

From the harmonious reading of the above judgments, what emerges is that the “ingenuity” of the pleadings of the parties should not be permitted to have a re-litigation on the issue.

16. However, the learned counsel appearing for the respondents would invite the attention of this Court in respect of the judgment of the Hon'ble Supreme Court in **2023 Live Law (SC) 261** in Civil Appeal No.10215 of 2011, dated March 29, 2023 (***Shivshankara and another Vs.H.P.Vedavyasa Char***) and would submit that they are seeking a different relief in their subsequent suit. But the contention of the learned counsel for the respondents could not be accepted as their predecessor's in title and possession was



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disbelieved by the Court below in O.S.No.363 of 2011.

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17. Therefore, this Court is of the firm view that the instant suit in O.S.No.192 of 2018 would come within the definition of the re-litigation. Therefore, to meet the ends of justice, this Court is of the view that this is the fit case where the power under Article 227 of the Constitution of India could be exercised by allowing this petition.

18. In the result, this Civil Revision Petition stands **allowed**. The Court below is directed to strike off the plaint in O.S.No.192 of 2018 from the file of the Principal District Munsif, Thenkasi. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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