



C.R.P.(PD).No. 307 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 307 of 2024

&

C.M.P.No.1422 of 2024

M.Mathan Raj

...Petitioner

Vs.

1.Y.Venkateshwaralu

2.T.Arunmozhi

3.N.Mani

4.B.Krishnamoorthy

5.T.Ravi

...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order dated 29.11.2023 passed in I.A.No.3 of 2023 in O.S.No.20 of 2023 by the District Munsif Court, Chengalpattu.



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For Petitioner : Mr. R.Gokulakrishnan

For Respondents : Mr. G.V.Sridharan
1 to 4.

ORDER

This Civil Revision Petition arises at the instance of the 1st defendant.

2. O.S.No.20 of 2023 is a suit for permanent injunction restraining the defendants, their men, etc., from putting up a compound wall by encroaching the suit schedule property. The suit has totally 4 items, individually described. The plaintiffs claim that the property was purchased by the 1st plaintiff on 20.02.2006, the 2nd plaintiff purchased the property on 07.02.2007, the 3rd plaintiff purchased the property on 03.07.1990 and the 4th plaintiff purchased the property on 13.06.2007.



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3. It is the plea of the plaintiffs that prior to their purchase, the property had been owned by one Lakshmipatty, who had developed the property by creating an approved layout under the name and style of “*Sri Vinayaka Nagar*”. After having developed the layout, he had sold away the specified portions of the layout to the plaintiffs by way of aforesaid sale deeds. The plaintiffs would further plead that the defendants have no right, title or interest over the suit property.

4. According to the plaintiffs, the 2nd defendant is a Politician who attempted to encroach into the plots in the approved layout. Therefore, the plaintiffs lodged a Police complaint with the Jurisdictional Police Station, namely, Venkatamangalam Police Station. The Police refused to take action, since the 2nd defendant is an influential person. The plaint proceeds, being left with no other alternative, the plaintiffs have come forward with the suit for permanent injunction.



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5. On being served with the summons, the 1st defendant took out an application for rejection of the plaint.

6. According to him, the subject matter of the suit had already been dealt with by the Court on two occasions, namely,

(i) His mother, Tmt. Nesamani had presented the suit in O.S.No.430 of 1989 on the file of the District Munsif, Chengalpattu.

and ;

(ii) Mariappan, the father of the 1st defendant filed a suit for declaration of title and injunction in O.S.No.3 of 2002 on the file of the District Munsif, Chengalpattu.

7. The 1st defendant would plead that the first suit ended in a decree in favour of his mother on 29.01.1991 and the second suit was decreed in favour of his father on 18.06.2007. Therefore, the 1st defendant would plead that the present suit is a classic case of re-



litigation and also hit by principles of *res judicata*. On these pleas, he would move an application for rejection of plaint. This application was received in I.A.No.3 of 2023 by the learned District Munsif, Chengalpattu.

8. The learned District Munsif, Chengalpattu, issued notice to the respondents / plaintiffs. The plaintiffs filed a detailed counter pleading that the application under Order VII Rule 11 of the Code of Civil Procedure is not maintainable since the averments made in the affidavit filed in support of the rejection of the plaint application have to be proved only at the time of trial. They would also plead that the said Lakshmipatty had developed the property as early as in the year 1989 in L.P/DTCP.No.682/1989 and had sold away the property on the specified extents to the plaintiffs.

9. The plaintiffs would also plead that a Writ Petition had been filed in W.P.No.8078 of 2013 for a direction to the Tasildar, Guduvancherry, to identify and survey the property. They would plead



that the 1st defendant is aware of the purchase of the property by the plaintiffs. They added the defendant filed an application for rejection of the plaint, in order to grab the property which had been purchased by the plaintiffs. On these ground the plaintiffs sought for dismissal of the rejection application.

10. The learned Trial Judge, after hearing the parties, came to the conclusion that the matter have to be proved only at the time of trial. Therefore, dismissed the application for rejection of the plaint on 29.11.2013. Hence, the revision.

11. I heard Mr. R.Gokulakrishnan, for the civil revision petitioner and Mr. G.V.Sridharan for the respondents.

12. Mr. R.Gokulakrishnan would state that in the light of the Judgement in O.S.No.3 of 2002 dated 18.06.2007 and A.S.No.67 of 1990 dated 29.01.1991, the present suit is hopelessly barred by the principles of *res judicata*. He would further submit that since the title



of his father and mother, namely, Mariappan and Nesamani, have already been upheld by the Court, the present suit is an abuse of process of law. He would rely upon the Judgements of the Supreme Court in *Ishwar Dutt Vs. Land Acquisition Collector and another - 2005 (7) SCC 190*, *Saroja Vs. Chinnusamy (Dead) by Lrs and another - 2007 (8) SCC 329* and *Dr.Subramanian Swamy Vs. State of Tamil Nadu and others - 2014 (5) SCC 75*, to buttress his arguments.

13. Per contra, Mr.G.V.Sridharan, would submit that these arguments can only be gone into at the time of Trial and prayed for confirmation of the order.

14. I have carefully considered the arguments of the either side.

15. The civil revision petitioner has challenged the order passed in the rejection of plaint application. The law governs this plea is that a Court must read the plaint to find out if it is barred by any one of the clauses under Order VII Rule 11 of the Code of Civil Procedure, at the



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time of dealing with the application for rejection of the plaint. The Court is not concerned with the defense that is raised by the defendant or *whether the suit will finally go in favour of the plaintiff or the defendant.*

16. A reading of the plaint shows that the plaintiffs claim possession of the property by virtue of the aforesaid sale in their favour. The previous litigation between the 1st defendant's predecessors in title and the plaintiff's predecessors in title has not been pleaded anywhere. Apart from that, it is seen that the 3rd plaintiff had purchased the property on 03.07.1990 and the suit had been filed by Mariappan and Lakshmipatty, the original developer in the year 2002.

17. Mr. Gokulakrishnan is correct that the plaintiffs 1, 2 and 4 have purchased the properties after the Judgement and Decree in O.S.No.3 of 2002. Therefore, at best if the 1st defendant proves that the subject matter of the property involved in the present proceedings is covered by the subject matter in the previous suits, he could raise the



plea against those plaintiffs. However, the 3rd plaintiff having purchased the property on 03.07.1990 would be entitled to independently plead that the decree is not binding on him. This is a triable issue. Where there are triable issues, the plea of rejection of the plaint cannot be entertained. Furthermore, the plaint cannot be rejected in part.

18. In addition, the plea of *res judicata* is a mixed question of law and facts. It is the duty of the person pleading *res judicata* to enter witness box and mark the pleadings, issues and Judgements that is the subject matter of the previous proceedings, in the subsequent proceedings. This is because Section 11 of the Code of Civil Procedure is an injunction against the Court not to deal with the issues which are already been dealt with by the another Court of competent Jurisdiction on previous occasions. It is always open to the 1st defendant to comply with these requirements and get the suit dismissed.



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19. However, I am not inclined to reject the plaint on a plea of *res judicata*, especially when the identity of the property has been disputed in paragraph no.3 of the plaint. The suit has been filed on the basis of square feet measurements, whereas the decree that has been obtained in O.S.No.3 of 2002 and O.S.No.430 of 1989 are in acres. The Court would at the time of Trial would see whether the suit property in O.S.No.20 of 2023 is the same property that is covered in O.S.No.3 of 2002 and O.S.No.430 of 1989.

20. In the light of the above discussion I am not inclined to revise the order of the learned District Munsif, Chengalpattu. The requirements of Order VII Rule 11 of the Code of Civil Procedure have not been complied with in this case. Insofar as the Judgement and Decree that have been relied upon by Mr.Gokulakrishnan are concerned, all those were decided after the parties had entered the witness box and had given their evidence. The same cannot be applied in the case of rejection of the plaint.



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21. Accordingly, the civil Revision Petition is dismissed. It is open to the 1st defendant to file a detailed written statement taking a plea of *res judicata*. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

The District Munsif,
Chengalpattu.



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V.LAKSHMINARAYANAN, J.

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