



CRP.No.2795 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.No.2795 of 2022
and CMP.No.15041 of 2022

1.Arumugam
2.Kolandhavel
3.Duraisamy
4.Nallasivam

... Petitioners/Petitioners/Defendants

Vs

1.Kalliannan
2.Paravel

....Respondents / Respondents / Plaintiffs

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the decretal order dated 16.06.2022 passed in I.A.No.1 of 2019 in O.S.No.155 of 2018 by the learned District Munsif, Paramathi, and allow this civil revision petition.

For Petitioners : Mr.S.Kaarthick
for Mr.V.B.Jeyachandran

For Respondents : No Appearance



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ORDER

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The civil revision petition arises against the order in I.A.No.1 of 2019 in O.S.No.155 of 2018 on the file of the District Munsif Court, Paramathi. The revision petitioners herein are the defendants in O.S.No.155 of 2018.

2. The suit in O.S.No.155 of 2018 is laid for permanent injunction restraining the defendants/revision petitioners from laying any pipeline over the suit pathway denoted 'A' 'B' & 'C' in the plaint. Pending the suit, the defendants have taken out an application under Order VII Rule 11. According to them, between the very same parties, a suit for mandatory and permanent injunction had been laid in O.S.No.144/2005, which was dismissed and taken on appeal in A.S.No.50 of 2018 before the Sub Court, Paramathi. The appeal also met with a similar fate and consequently, this suit is barred by *res judicata*. On the basis of these documents, the defendants have taken out an application in I.A.No.1 of 2019 under Order VII Rule 11 CPC for rejection of the plaint. The said application was dismissed, against which the present revision is filed.

3. Heard Mr.S.Karthick for Mr.V.B.Jeyachandran, for the revision



petitioners. The respondents though served, have not entered appearance.

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4. Mr.S.Kaarthick would vehemently submit that previously the very same issue had been brought before the Court in O.S.No.144/2005, and the same was dismissed and the appeal also confirmed the decree made in O.S.No.144/2005. After having lost the litigation in O.S.No.144/2005, the plaintiffs have laid a fresh round of litigation in O.S.No.155 of 2018. He would plea that *res judicata* bars the second suit and therefore, the plaint should be rejected.

5. I have gone through the records, in particular, the order impugned in the revision. Rejection of plaint must fall within four corners of Order VII Rule 11 CPC. *Res judicata* is a defence that is taken by the defendant in order to defeat the claim of the plaintiff. *Res judicata* by its very nature requires the filing of pleadings, issues, as well as the judgment and decree of the previous proceedings. This requires oral and documentary evidence. See: ***Syed Mohd.Salie Labbai (dead) By L.Rs and Others Vs Mohd.Hanifa (dead) by L.Rs and Others*** [(1976) 4 SCC780]. If evidence is required to be recorded, then it will certainly not fall under any of the categories of Order



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To
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1.The District Munsif
Paramathi.

2.The Section Officer
VR Section
High Court, Madras.



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V.LAKSHMINARAYANAN,J.

ds

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