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C.R.P.(PD).No.3048 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2024

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.3048 of 2024
and C.M.P.No.16386 of 2024

Kamatchi (died)

- 1.C.Sivasamy
- 2.Yasodha
- 3.S.Govindhan
- 4.S.Venkatesh

... Petitioners/Petitioners/Defendants

-Versus-

- 1.Sellappan
- 2.Venkatesan
- 3.Nagaraj

... Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.04.2024 made in I.A.No.4 of 2021 in O.S.No.87 of 2021 passed by the learned I Additional District Munsif, Salem.

For the Petitioners : Mr.P.Dinesh Kumar

ORDER

This Civil Revision Petition arises against the order of the learned 1st Additional District Munsif, Salem in I.A.No.4 of 2021 in O.S.No.87 of 2021.



C.R.P.(PD).No.3048 of 2024

2. The suit in O.S.No.87 of 2021 has been filed by the plaintiffs seeking

the following reliefs,

a. restraining the defendants and their men from in any manner interfering with the peaceful possession and enjoyment of the 1st item of the suit property of the plaintiffs;

b. restraining the defendants and their men from putting up construction in any manner in the 2nd item of the suit property;

c. restraining the defendants and their men from interfering while bringing pipe & wire line for water supply and electricity connection through 2 item of the suit property.

3. The case of the plaintiffs is that the larger portion of the 1st item of the schedule property belonged to one Mariammal. She executed a gift deed and the beneficiaries of the gift deed converted the property into layouts. On 09.04.1973, the suit property was sold in favour of Lakshmi Ammal. Lakshmi Ammal having taken the possession of the property, put up a construction over the same. She passed away in the year 2000 and the plaintiffs succeeded to the estate.



4. According to them, the defendants herein were interfering with the peaceful possession and enjoyment of the property in 2nd item and also presented the plaint in O.S.No.480 of 2013 on the file of the 1st Additional District Munsif, Salem, for permanent injunction. The said suit also ended in a decree in favour of the defendants on 31.10.2014. The plaintiffs will further plead that on the strength of the decree, the defendants seek to interfere with the possession of the plaintiffs. Hence the suit in O.S.No.87 of 2021.

5. On entering appearance, the defendants have filed an application for rejection of plaint. Pending the application, the 1st defendant passed away and the Civil Revision Petitioners were brought on record.

6. The case of the deceased 1st defendant which has been adopted by the Civil Revision Petitioners is that the defendant having succeeded in O.S.No.480 of 2013, the present suit is barred by *res judicata*. Since the suit is barred by *res judicata*, the defendants wanted the suit to be rejected.

7. After receipt of the counter from the plaintiffs, the Court below came to the conclusion that the suit is not barred. It is also held that both the suits,



C.R.P.(PD).No.3048 of 2024

viz., the present suit as well as the previous suit in O.S.No.480 of 2013 do not arise out of the same cause of action. Hence, the learned I Additional District Munsif, Salem, dismissed the application. Against which, the present Civil Revision Petition has been filed.

8. Heard, Mr.P.Dinesh Kumar, learned counsel for the petitioners.

9. Mr.P.Dinesh Kumar, would point out that there are two items of properties in the present suit, whereas in the previous suit, there was one item alone, viz., pathway. The Court below had granted permanent injunction, after being satisfied that the pathway belongs to the 2nd plaintiff therein. Therefore, he would plead that apart from *res judicata*, the suit is also an abuse of process of law.

10. I have carefully considered the submissions.

11. The plea of *res judicata* is a mixed question of law & fact. It is an injunction directed against the Court not to try an issue, which has already been heard and finally decided. If there is a change in cause of action, the principles



C.R.P.(PD).No.3048 of 2024

of Order II Rule 2 will not apply, but, if the issue has already been considered by the Court in the previous litigation, then, the issue certainly will operate as *res judicata*. Further, to prove the plea of *res judicata*, the pleadings and issues will have to be filed. See, ***Syed Mohd. Salie Labbai (dead) by L.R's and Ors. Vs. Mohd. Hanifa (dead) by L.R's and Ors.***, (AIR 1976 SC 1569). This requires evidence. Hence, Order VII Rule 11 is inapplicable. Keeping these principles in mind, now, let me approach the revision before me.

12. A reading of the plaint discloses two items of the property. Of the two items, the plea of the defendants is only confined to the 2nd item. In so far as 1st item is concerned, the plaintiffs have come forward with the plea that they are in possession of the property, by virtue of the purchase made by their predecessor in title – Tmt.Lakshmiammal. Therefore, even assuming that the plaint is going to be hit by *res judicata* with respect to the 2nd item, the 1st item still would have to go for trial. It is trite that the plaint cannot be rejected in part. See, ***Geetha and Ors. Vs. Nanjundaswamy and Ors.***, (2023 SCC OnLine SC 1407).

13. If I were to accept the plea of Mr.Dinesh Kumar, then I will be



C.R.P.(PD).No.3048 of 2024

rejecting the plaint, with respect to the 2nd item, but it will continue to be on the file of the Court with respect to the 1st item. Such dissection of the plaint is impermissible under Order VII Rule 11 of Civil Procedure Code. Therefore, I am not in a position to interfere with the order of the learned 1st Additional District Munsif, Salem, in I.A.No.4 of 2021 in O.S.No.87 of 2021 dated 24.04.2024. If the defendants feel that the proceedings are abuse of the process of law, then the remedy is not under Order VII Rule 11 of CPC, but only under Order VI Rule 16 of CPC.

14. With the above observations, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

06.08.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
Speaking / Non Speaking Order

To
The I Additional District Munsif, Salem.



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C.R.P.(PD).No.3048 of 2024

V.LAKSHMINARAYANAN, J.,
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C.R.P.(PD).No.3048 of 2024



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C.R.P.(PD).No.3048 of 2024

06.08.2024