



CRP No.4314 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

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1. D.Shanawaz
2. M/s.The Origin,
rep. by its Managing Partner, D.Shanawaz,
No.25, Old No.9, Shafee Mohammed Road,
Rutland Gate, Nungambakkam, Chennai 600 006. .. Petitioners

-VS-

J.Shafeeka .. Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 05.04.2024 passed in I.A.No.6 of 2024 in O.S.No.5857 of 2022 on the file of XXI Additional City Civil Court, Allikulam, Chennai.

For Petitioners : Mr.F.Rahman Sheriff

For Respondent : Mr.V.V.Giridhar

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ORDER

This civil revision petition arises against the order of XXI Additional City Civil Court, Allikulam, Chennai, in I.A.No.6 of 2024 in O.S.No.5857 of 2022 dated 05.04.2024. Defendants 1 and 2 are the revision petitioners.

2. O.S.No.5857 of 2022 is a suit for delivery of possession and for mesne profits. The case of the plaintiff is that she had entered into a lease agreement on 11.02.2013 with the third defendant. The third defendant had unauthorisedly put defendants 1 and 2 in possession of the property. The second defendant had initiated O.S.No.135 of 2019 seeking for the relief of permanent injunction, not to evict, except otherwise in accordance with law. The said suit had been dismissed for default. Simultaneously, the plaintiff had initiated R.C.O.P.No.290 of 2019, on the file of Small Causes Court at Chennai as against defendants 2 and 3. On 30.10.2019, the said proceedings were withdrawn by the plaintiff as settled out of Court. Subsequently, defendants 1 and 2 demolished a portion of the structure and put up an



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illegal construction without the consent of the plaintiff. The plaintiff after having knocked the doors of the police and finding no avail, presented the suit for the aforesaid reliefs.

3. The defendants were served with summons. They took out an application for rejection of plaint. The said application was numbered as I.A.No.6 of 2024. The plea of defendants 1 and 2 is that since R.C.O.P.No.290 of 2019 had been dismissed by the Court of Rent Controller, it operates as *res judicata* and hence, the plaintiff is disentitled to present this suit for recovery of possession. A detailed counter was filed by the plaintiff. The learned trial Judge, after considering the pleadings, came to a conclusion that the suit should remain on file and therefore, dismissed the petition under Order VII Rule 11. Aggrieved by the same, the present revision.

4. Heard Mr.Rahman Sheriff for the petitioners and Mr.Giridharan for Mr.Mohanakrishnan on behalf of the respondent.



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5. Mr.Rahman Sheriff, after narrating the facts of the case, points out that originally the respondent had filed R.C.O.P.No.290 of 2019 and this is an admitted fact as seen from the plaint. On account of the fact that the said proceedings had been dismissed, the present suit is barred by *res judicata*. He further draws my attention to paragraph 4 of his affidavit filed in support of Order VII Rule 11 and pleads that since R.C.O.P.No.290 of 2019 had been dismissed, on the same cause of action a suit cannot be presented.

6. Mr.Giridharan argues that *res judicata* does not apply to the facts of the case. He further points out that it is the subsequent act of defendants 1 and 2 illegally demolishing and unauthorisedly constructing over the suit property, which constrained the plaintiff to present the suit for recovery of possession.

7. I have carefully considered the submissions of both sides and have gone through the records.



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8. For the purpose of *res judicata* to apply, a Court of competent jurisdiction should have heard and finally decided the issue between the parties. Unless and until the said issue is framed and answered, the question of the said issue operating as *res judicata* on a subsequent proceedings will not arise. It is admitted that R.C.O.P.No.290 of 2019 never went for trial. It had been dismissed as settled out of court. Hence, Section 11 cannot be pressed into service by the defendants to get the present suit dismissed on the plea of *res judicata*. Apart from that, even if *res judicata* were to apply, it is the duty of the defendants, who took such a plea, to mark the plaint, written statement, issues and the judgment of the former Court before the latter Court to substantiate that the said issue had been gone into by Court previously and hence, the Court subsequently cannot try the said issue. If it requires evidence, Order VII Rule 11 will not operate.

9. With respect to the cause of action for the two proceedings, the cause of action for R.C.O.P. No.290 of 2019 was the wilful default that has been committed by the admitted tenant, the third defendant to the suit. The



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present cause of action is about unauthorised manner in which defendants 1 and 2 entered into the possession of the property and the manner in which they demolished and reconstructed the property. There being no similarity in the cause of action, I am not inclined to take a different view than that has been taken by the learned XXI Additional Judge, City Civil Court, Chennai.

Consequently, the civil revision petition is dismissed. The learned XXI Additional Judge, City Civil Court, Chennai, will take into consideration that pleadings are complete and the parties are now in the witness box and shall take all necessary steps to expedite the suit and dispose if of on or before 30.04.2025. No costs.

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Index : Yes/No
Neutral Citation : Yes/No

sra

To

The XXI Additional Judge,
City Civil Court, Allikulam, Chennai.

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V.LAKSHMINARAYANAN, J.

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