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CRP No.2880 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.10.2024

DELIVERED ON:25.10.2024

CORAM:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

CRP No.2880 of 2019
and CMP No.18759 of 2019

E.Narasimhulu Naidu

... Petitioner

Vs

- 1.E.Munusamy
- 2.D.Chandrasekar
- 3.The District Collector,
Thiruvallur District.
4. The Thasildar,
Taluk Office,
Pallipattu.
5. K.Subramaniam
6. Venkatesulu
7. The Sub Registrar for Documents of Registration,
R.K.Pet, Pallipattu Taluk,
Thiruvallur District.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against dismissal of reject of the plaint petition in



CRP No.2880 of 2019

I.A.No.401 of 2017 in O.S.No.94 of 2016 dated 22.02.2019 passed by the learned District Munsif cum Judicial Magistrate, Pallipattu.

For Petitioner : Mr.L.Ramu

For Respondents : Mr.K.V.Ananthakrushnan
For R.1
Mr.V.Ramesh
Govt.Advocate
For R.3, R.4 and R.7
RR.2 and 6 – Served – NA
R.5 – dismissed vide Court
Order dated 02.08.2023.

ORDER

The first defendant in the suit in O.S.No.94 of 2016, filed for declaration and permanent injunction, aggrieved by the dismissal of his application in I.A.No.401 of 2017, to reject the plaint under Order 7 Rule 11 of Civil Procedure Code is the revision petitioner herein.

2. I have heard Mr.L.Ramu, learned counsel for the revision petitioner, Mr.K.V.Ananthakrushnan, learned counsel for the first respondent and Mr.V.Ramesh, learned Government Advocate for the respondents 3, 4 and 7.



CRP No.2880 of 2019

WEB COPY

3. Learned counsel for the revision petitioner would attack the findings of the trial Court, dismissing the application for rejection of plaint, on the ground that the plaintiff has sought to re-agitate settled issues which culminated in a compromise decree in O.S.No.77 of 2007. Learned counsel would further submit that the revision petitioner was not only a party to the compromise decree in the suit, but also chose to execute the said decree by filing Execution Petition. Therefore, the first respondent/plaintiff could not have filed yet another suit in respect of the very same property and cause of action. Learned counsel further submits that the suit is barred by limitation and also on the ground of *res judicata*. Further, according to the learned counsel for the revision petitioner, the trial court, without appreciating the facts and circumstances of the case, proceeded to dismiss the application, seeking rejection of the plaint. Learned counsel would invite my attention to Section 11 of the Civil Procedure Code in this regard. He would, therefore, pray for the revision being allowed.

4. Per contra, Mr.K.V.Ananthakrushnan, learned counsel for the first



CRP No.2880 of 2019

respondent/plaintiff would submit that no doubt, there was a compromise memo, followed by a decree in O.S.No.77 of 2007, on the file of District Munsif Court, Pallipattu. In order to give effect to the terms of compromise, the first respondent/plaintiff also initiated execution proceedings. However, it was the revision petitioner/1st defendant, who, thereafter, chose to file an appeal in A.S.No.60 of 2013, before Sub Court, Tiruttani, challenging the compromise decree in O.S.No.77 of 2007 and therefore, since the compromise decree could not be given effect to, the first respondent/plaintiff has chosen to initiate a fresh suit. Therefore, according to the learned counsel for the first respondent/plaintiff, the suit was very much maintainable and cannot be dismissed in limine on the ground of *res judicata* or on the ground of limitation and these are all the issues that have to be tested only after the parties lead evidence before the trial Court.

5. I have carefully considered the rival submissions advanced by the learned Counsel for the revision petitioner as well as the learned counsel for the respondents and I have gone through the impugned order of the trial Court, dismissing the application to reject the plaint.



CRP No.2880 of 2019

WEB COPY

6. No doubt, there has been a compromise memo arrived at between the parties, which also culminated into a decree in O.S.No.77 of 2007 as early as on 15.02.2010. It is an admitted fact that the first respondent/plaintiff in the present proceedings, filed E.P.12 of 2012 to give effect to the compromise terms. However, it is the revision petitioner/first defendant, who did not want to proceed on the basis of compromise memo and also chose to file an appeal in A.S.No.60 of 2013 on the file of Sub Court, Tiruttani. Therefore, it is clear that both the parties have not acted upon to the compromise terms and since the first respondent/plaintiff has not been unable to get any relief, he has chosen to give up the compromise decree and instead, chosen to file a fresh suit.

7. The questions as to whether the parties have not intended to act on the terms of the compromise and the reasons for the same, cannot be decided in an application under Order VII Rule 11 of Civil Procedure Court. The trial Court has rightly appreciated the facts prevailing in the present case and found that the application for rejection of plaint cannot be allowed, holding



CRP No.2880 of 2019

that the suit was barred by *resjudicata*, without the parties going for trial.

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8. I do not find any justifiable ground to interfere with the well reasoned order of the trial Court, dismissing the application, seeking rejection of the plaint.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.10.2024

Index:Yes/No
Speaking order/Non-speaking order
sr

To

The District Munsif, Pallipattu.



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CRP No.2880 of 2019

P.B.BALAJI,J.,

sr

Pre-Delivery Order in CRP No.2880 of 2019

25-10-2024