



C.R.P.(PD)No.4183 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4183 of 2024
and C.M.P.No.23225 of 2024

1. T.J.Eswari

2. T.J.Vijayalakshmi

3. Kalavathi Kumaresan

4. N.T.Sadatcharam

.. Petitioners

Vs

T.J.Ramakrishnan

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.11.2022 in I.A.No.9410 of 2018 in O.S.No.2176 of 2018 on the file of XIV Assistant Court (FAC), (I.C. XIII Assistant Judge), City Civil Court at Chennai.



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C.R.P.(PD)No.4183 of 2024

For Petitioners : Dr.C.Ravichandran
for Mr.S.D.Venkateswaran

ORDER

This civil revision petition arises against the order of the XIV Assistant City Civil Court at Chennai in I.A.No.9410 of 2018 in O.S.No.2176 of 2018 dated 22.11.2022.

2. The civil revision petitioners are the defendants in the suit.

O.S.No.2176 of 2018 was filed for the following reliefs:

“(a) Permanent injunction to restrain the Defendants 1 to 4 or their men, agents, servants, assigns or anybody claiming through them from making any means of encroachments or causing any violations over the plaintiff's rights in respect of the common amenities and areas available in the building of the suit property.

“(b) Permanent injunction to restrain the defendants 1 to 4 or their men, agents, servants, assigns or anybody claiming through them from in anyway preventing the plaintiff from restoring the pipe line connections for his flat portion to the 5 big concrete common water tanks in the suit property.”



C.R.P.(PD)No.4183 of 2024

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3. The parties are closely related. The cause of action for the suit is that the water supply to the plaintiff's flat was allegedly cut off by the defendants. The specific allegation is against the 1st and 4th defendants. The plaintiff alleges that when he attempted to get water supply restored, the 1st and 4th defendants prevented him from doing the same.

4. On being served with the summons, the defendants took out an application for rejection of the plaint. According to them, the suit in O.S.No.2176 of 2018 has the same cause of action as the previous suit in O.S.No.2089 of 2014 on the file of the XV Assistant City Civil Court at Chennai. The defendants pleaded that O.S.No.2089 of 2014 was compromised on 26.08.2015 and thereafter, an illusory cause of action has been created by the plaintiff to file the present suit (O.S.No.2176 of 2018). The specific plea was that there was no cause of action as the matter had been settled as per the memorandum of compromise that was entered into between the parties in O.S.No.2089 of 2014 and the issue is governed by the principles of resjudicata. The learned trial Judge received a counter from the plaintiff and proceeded to dismiss the application on 22.11.2022. Hence, the revision.



C.R.P.(PD)No.4183 of 2024

WEB COPY 5. Heard Dr.C.Ravichandran for Mr.S.D.Venkateswaran for the civil revision petitioners.

6. Dr.C.Ravichandran argues that the cause of action for the present suit is same as the cause of action in O.S.No.2089 of 2014 on the file of the XV Assistant City Civil Court at Chennai. He invites my attention to the award passed by the Lok Adalat on 11.09.2015 and states that as a compromise award had been passed by the Lok Adalat on 11.09.2015, the present suit is liable to be rejected. After recording the compromise memo that had been entered into by the plaintiff and the defendants, to file a fresh suit is an abuse of process of Court. He draws my attention to paragraph nos. 11 and 12 of the plaint in O.S.No.2176 of 2018 to argue that it is a classic case of re-litigation and does not deserve the benefit of trial.

7. I have carefully considered the submissions of Dr.C.Ravichandran.

8. A reading of the plaint goes to show that the plaintiff and the



C.R.P.(PD)No.4183 of 2024

defendants are occupants of separate apartments constructed over the suit schedule mentioned property. They have been having dispute from 2014 as regards the enjoyment of the common areas. Due to the close relationship between the parties, they had entered into a compromise on 26.08.2015 on the following terms:

“2. It is agreed and confirmed that all the parties have a common right to enjoy all the common areas including the gates, sump, open space available and parking space in the suit property.

3. None of the parties shall prevent any other parties from using the common areas including the gates, sump, open space and parking space available in the suit property.

4. None of the parties shall remove the gates or any structures or construct any new structure or walls in the suit property without the consent of all the co-owners of the suit property. ”

9. The plaint proceeds that after the compromise had been arrived at between the parties, the defendants had cut off the water supply which



C.R.P.(PD)No.4183 of 2024

was available to his flat from the Corporation of Chennai. In addition, the plaintiff states that the defendants have prevented the plaintiff from enjoying the water supply from “common five big water tanks” on 22.03.2018, when the plaintiff and his family members were absent from the suit property. This shows that the cause of action for the present suit commenced **after the compromise had been recorded in the year 2015.**

10. In matters relating to rejection of the plaint, I have to take the averments made in the plaint to be true. This is because it is a plea in demurrer. If the averments made in the plaint are taken to be true, then I have to accept that on 22.03.2018, the water supply to the plaintiff's apartment was cut off by the defendants. This cause of action being a new one, the plaintiff is always entitled to approach the Court in order to agitate the said issue.

11. With respect to the plea of resjudicata, it requires a party taking that plea to mark the plaint, written statement, issues and the judgment in the previous suit as exhibits to the subsequent suit. This is because under Section 11 of the Code of Civil Procedure, 1908, a Court



C.R.P.(PD)No.4183 of 2024

is barred from trying the same issue, which has already been tried by the

Court of competent jurisdiction, on an earlier occasion. The very terms of Section 11 and its application shows that it requires a written statement to be pleaded in the subsequent suit pleading resjudicata and evidence to be let in in order to substantiate the said plea. When there are triable issues, the issue of rejection of the plaint on the ground of resjudicata will not arise.

12. Since the cause of action in the present suit is subsequent to the one which had been settled by the parties in the year 2015, I cannot deem it to be illusory. Therefore, the order passed by the learned trial Judge does not require any interference.

13. At this stage, Dr.C.Ravichandran pleads that the parties are close relatives and in case the matter is referred to mediation, there is every possibility of settlement. The learned XIV Assistant Judge, City Civil Court at Chennai shall enquire with the parties if they are willing to refer the matter for mediation. In case they express their willingness, the learned trial Judge shall refer the parties for settling the matter through mediation considering that they are close relatives.



C.R.P.(PD)No.4183 of 2024

WEB COPY 14. The civil revision petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

18.10.2024

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

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To

XIV Assistant Court (FAC),
(I.C. XIII Assistant Judge),
City Civil Court at Chennai.



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C.R.P.(PD)No.4183 of 2024

V. LAKSHMINARAYANAN,J.

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C.R.P.(PD)No.4183 of 2024
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