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CRP.No.4229 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP.No.4229 of 2024
and C.M.P.No.23457 of 2024

1.Arunachalam @ Umesh
2.Prakash
3.Sakthivel .. Petitioners

Versus

A.Madhan Prakash .. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the docket order dated 04.10.2024 passed in unnumbered I.A.no.... of 2024 in O.S.No.788 of 2015 on the file of the I Additional District Munsif Court, Salem.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.S.Ilamvaludhi

ORDER

This civil revision petition arises against the order of return made by the learned I Additional District Munsif, Salem in unnumbered Interlocutory application (CR19.No.10872) in O.S.No.788 of 2015 dated 04.10.2024.



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2. I.A.SR10872 of 2024 was filed by the defendants seeking to examine the Village Administrative Officer of Annathanapatti Village and Surveyor, Salem South Corporation, to give evidence with respect to the suit properties and submit a report.

3. O.S.No.788 of 2015 is a suit for a bare injunction at the instance of the respondent herein. In the said proceedings, an Advocate Commissioner was appointed to inspect the suit properties and submit a report. The Advocate Commissioner visited the suit properties and submitted a report. At that time, he was assisted by VAO, Annathanapatti village and Surveyor of Salem Taluk.

4. Feeling aggrieved over the report of the Advocate Commissioner, the defendants had summoned the Advocate Commissioner to the witness box and cross examined him in detail. Thereafter, they took out an application for summoning the VAO and the Surveyor to come before the Court and to depose on their reports. This application was numbered as I.A.No.4 of 2022. The said application was dismissed by the learned I Additional District Munsif at Salem on the ground that no reasons have



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been given in the affidavit filed in support of the said application.

5. Aggrieved by the same, a revision was preferred to this Court in CRP(PD).No.3317 of 2022, whereby the order of the learned I Additional District Munsif holding that no reasons had been given in support of the application came to be confirmed. However, this court had made it clear that in case the petitioners want the examination of witnesses, they have to state as to the reasons why they have to be summoned and as to how their evidence are relevant for the purpose of the case. Hence, the petitioners filed I.A.SR10872 of 2024 giving reasons in the affidavit to summon the VAO and the Surveyor.

6. The learned I Additional District Munsif rejected the application, at the unnumbered stage, holding that it is barred by principles of *res judicata*. Hence this revision to strike of the return and for a direction to the learned I Additional District Munsif to number and pass order on the merits.

7. I issued notice in the civil revision petition on 25.10.2024.

Mr.S.Ilamvaludhi has entered appearance for the sole respondent.



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8. I have heard Mr.R.Nalliyappan and Mr.S.Ilamvaludhi for the respective parties.

9. The narration of the aforesaid facts shows that I.A.No.4 of 2024 was not dismissed on merits, but on the ground, no reasons had been adduced in the petition. Paragraph 9 of the order passed in CRP(PD).No.3317 of 2022 also confirmed the said order that no reasons had been adduced. Now adducing reasons, the petitioners filed an affidavit and petition.

10. It is fundamental that in order for *res judicata* to apply, the matter must have been **heard and finally decided**. I.A.No.4 of 2022 was dismissed on the ground of maintainability for lack of reasons, in support of affidavit. At no point of time, the learned I Additional District Munsif had given any reason on merits of the case explaining why the application does not deserve acceptance. In case, the court had given reasons to reject the application, and thereafter, a fresh application was filed, obviously it would be barred by



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11. When the matter was not heard and finally decided, the basic requirement of Section 11 of the Code of Civil Procedure is not satisfied. That being the case, the return made by the learned I Additional District Munsif cannot be sustained. Accordingly the return dated 04.10.2024 is set aside.

12. The learned I Additional District Munsif shall consider the application on its merits and dispose of the same. Prior to disposing the same, he shall receive a counter from the respondent/plaintiff. He shall hear both parties and thereafter, pass a reasoned order. It is made clear that the learned Judge is not entitled to re-look at the issue of *res judicata*, for the reasons aforesaid.

13. With the above observations, the civil revision petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

25.10.2024

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no



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Note: Registry is directed to return the impugned return order to the learned counsel for the petitioner, after obtaining necessary endorsement and copies.



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V.LAKSHMINARAYANAN, J.

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To

The I Additional District Munsif Court, Salem.

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