



WEB COPY



C.R.P. No. 4342 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2024

CORAM

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 4342 of 2022
and
C.M.P. No. 22890 of 2022

Sivakumar

... Petitioner / Defendant / Petitioner

Vs.

1. S.Kaveri

2. S.Sasikala

3. S.Velmurugan

... Respondents / Plaintiffs / Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the fair and decreetal order dated 31.10.2022 in I.A. No. 2 of 2021 in O.S. No. 141 of 2020 on the file of the Principal District Munsif Court, Kancheepuram.

For Petitioner : Mr. R.Mubarak Basha

For Respondents : Mr. V.Kamala Kumar



C.R.P. No. 4342 of 2022

ORDER

This Civil Revision Petition has been preferred as against the order dated 31.10.2022 passed in I.A. No. 2 of 2021 in O.S. No. 141 of 2020 on the file of the Principal District Munsif Court, Kancheepuram wherein, the petitioner herein has filed petition before the Trial Court to reject the plaint and the same was dismissed.

2. The petitioner is the defendant in the main suit and the respondents herein have filed the suit for the relief of permanent injunction and for mandatory injunction. In the said suit, the defendant has filed written statement and also filed an application to reject the plaint by alleging that as per the plaint averments the original owner of the property was one Shanmuga Mudaliar and the present plaintiffs are the legal heirs of the said Shanmuga Mudaliar. Already the said Shanmuga Mudaliar filed a suit in O.S. No. 95 of 2000 on the file of this Court on the very same set of facts and causes of action against the petitioner for declaration of his title to this plaint schedule property and for consequential relief of injunction. In that suit, the petitioner had raised a defence that his northern mother wall of Door No. 23A, T.S. No. 492/1 shown as ABCD in the rough sketch belongs to the petitioner with the inclusion of the said northern wall. He is entitled only to north south 22' feet



WEB COPY

on the road side for his door no. 22. According to the written statement filed in the said suit, the defendant is the absolute owner of the property in ABCD northern side wall. Thereafter, the said suit was dismissed for default on 09.12.2002. Now the legal heirs of the said Shanmuga Mudaliar have filed the present suit for the relief of permanent injunction and mandatory injunction. Therefore, the present suit is barred by law. There is no cause of action for the suit. Further the suit is barred by Order II Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC' for short) and also barred under the principle of *res judicata*. Therefore, the plaint is liable to be struck off and also liable to be rejected, but the Trial Court dismissed the petition.

3. Before the Trial Court, the petitioner also produced documents as Exs.P1 to P8. After hearing both sides, the Trial Court dismissed the petition.

4. The learned counsel appearing for the petitioner would contend that the petitioner is the defendant in the main suit and the respondents herein have filed the suit before the Trial Court for the relief of permanent injunction and for mandatory injunction in respect of the suit property. Already the plaintiffs' father viz., Shanmuga Mudaliar has filed a suit in O.S. No. 95 of 2000 on the file of the Principal District Munsif Court, Kancheepuram for



declaration of title to the same property and the same was dismissed for default. Now, the legal heirs of the said Shanmuga Mudaliar viz., the respondents/plaintiffs have filed the present suit for the same property for the relief of permanent injunction and mandatory injunction. Therefore, the suit is barred by law. The Trial Court has failed to consider the same and dismissed the petition. Therefore, the order passed by the Trial Court is liable to be set aside.

5. The learned counsel appearing for the respondents would contend that the respondents/plaintiffs have filed the suit for the relief of permanent injunction and for mandatory injunction in respect of the suit property. The petitioner/defendant has taken plea that already the plaintiffs' father has filed a suit in O.S. No. 95 of 2000 in respect of the very same property, and thereafter, it was dismissed for default and thereby, this suit is barred by law and hit by Order II Rule 2 of the CPC. But, the said defence has to be pleaded in the written statement and it needs elaborate trial. At this stage, the Court has to see the plaint and the documents annexed with plaint and the documents filed by the petitioner cannot be looked into while dealing with the application under Order VII Rule 11 of the CPC. Therefore, the Trial Court, after elaborate discussion, dismissed the petition by holding that there is a



cause of action for the said suit and the plea barred by limitation cannot be decided at this stage and it can only be decided after full fledged trial. Therefore, the order passed by the Trial Court is in order and the present Civil Revision Petition is liable to be dismissed.

6. This Court heard both sides and perused the materials available on record.

7. The petitioner being the defendant has filed the petition before the Trial Court to reject the plaint on the ground that already the father of the respondents/plaintiffs has filed suit in O.S. No. 95 of 2000 for the relief of declaration and permanent injunction and the same was dismissed for default on 09.12.2002. Now, the respondents/plaintiffs have filed the present suit for the very same property for the relief of permanent injunction and mandatory injunction. Therefore, the suit is barred by law and there is no cause of action for the suit.

8. It is well settled law that while dealing with the petition under Order VII Rule 11 of the CPC, the Court has to see the plaint and the documents annexed with the plaint and cannot see the documents filed by other side to



C.R.P. No. 4342 of 2024

decide the case. As per the plaint, there is no ground to reject the plaint. The grounds raised by the petitioner are all nothing but defence which has to be raised in the main suit and not at this stage of deciding the petition filed under Order VII Rule 11 of the CPC. The Trial Court also in this context, after elaborate discussion, correctly held that the available materials are not sufficient to reject the plaint and the suit has to be decided after full trial. Therefore, the order passed by the Trial Court is in order and the present Civil Revision Petition is liable to be dismissed. However, the petitioner is at liberty to raise his objections by way of defence and the same can be decided by the Trial Court as preliminary issue. In view of the aforesaid discussion, this Civil Revision Petition has no merits and deserves to be dismissed.

9. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

16.07.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
pal



C.R.P. No. 4342 of 2022

To

WEB COPY

The Principal District Munsif Court,
Kancheepuram.



WEB COPY



C.R.P. No. 4342 of 2022

P.DHANABAL, J.,

pal

C.R.P. No. 4342 of 2022

16.07.2024