



C.R.P.(PD)(MD) No.722 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD) No.722 of 2020

and

C.M.P.(MD) No.4829 of 2020

K.V.Rajkumar

... Petitioner/Defendant

Vs.

O.M.P.Prabu

... Respondent/Plaintiff

Prayer: Petition filed under Article 227 of the Constitution of India to strike out the plaint in O.S.No.35 of 2020 on the file of the Court of the District Munsif, Uthamapalayam.

For Petitioner : Mr.R.Suriyanarayanan

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed under Article 227 of the Constitution of India to strike out the plaint in O.S.No.35 of 2020 on the file of the Court of the District Munsif, Uthamapalayam.



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2.1. The brief facts, that are relevant for the disposal of this civil revision petition, are as under:

2.2. The respondent herein filed the above said suit seeking permanent injunction in respect of the suit schedule property against the petitioner herein.

2.3. According to the learned counsel for the petitioner, the application filed under Order XXXIX Rules 1 and 2 seeking temporary injunction in the said suit, was dismissed by the learned trial Court in I.A.No. 232 of 2020 by order dated 15.07.2020 by recording a finding that the respondent herein filed the above suit by suppressing various material facts, but the learned trial Court, having dismissed the injunction application, failed to reject the plaint by striking off the same. Hence, the petitioner approached this Court by filing the present civil revision petition.

3. It is contended by the learned counsel for the petitioner that on an earlier occasion, there was a litigation in respect of the very same property,



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wherein the petitioner herein was declared as absolute owner of the suit property in O.S.No.71 of 1992 and O.S.No.105 of 2016 and in respect of the very same property, but the respondent herein initiated the present suit proceedings suppressing the proceedings that were already concluded between the parties on an earlier occasion.

4. This Court has carefully considered the submissions made by the learned counsel for the petitioner and also perused the material on record. If at all the contention raised by the petitioner is to be accepted, as it is, about the previous round of litigation wherein the petitioner claims to have been declared as the absolute owner, which is the subject matter of the present suit, the same may amount to *res judicata*, if the same is between the same parties or between the parties, who are claiming through the parties in the previous round of litigation in terms of Section 11 of the Code of Civil Procedure. If that be the case, the petitioner has an effective and efficacious remedy under Order VII Rule 11 of the Code of Civil Procedure, which he could have availed instead of filing this civil revision petition. This is not one such extraordinary case where the suit can be thrown out on the face of it, on



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perusal of the very contents of the plaint itself, nor the same is vexatious in nature. Hence, this Court is of the considered view that it is not a fit case to exercise jurisdiction of this Court under Article 227 of the Constitution of India and accordingly, this Civil Revision Petition is dismissed granting liberty to the petitioner to avail the remedy under Order VII Rule 11 of the Code of Civil Procedure. In case, if the petitioner files any such application, the same shall be considered on its own merits by the learned trial Court and be disposed of as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

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To

The District Munsif,
Uthamapalayam.



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MUMMINENI SUDHEER KUMAR, J.

ABR

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