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S.A.No.695 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25 / 10 / 2024

JUDGMENT PRONOUNCED ON : 22 / 01 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.695 OF 2018
AND
CMP NO.6353 OF 2020

1.Arulmigu Anangkottai Shir Poottu
Muniappan Thiru Kovil
Rep. By its Poosari - G.Venkataraman
S/o.Govindsamy
No.117/237, Ayyanthirumaligai,
Salem – 636 008.

2.G.Venkataraman

3.R.Sundarrajan

4.K.Palanisamy

5.R.K.Balu

6.K.Pandian

7.E.Senthilkumar

... Appellants/Appellants /
Plaintiffs

Vs.

1.The State of Tamil Nadu
Rep. By the District Collector
Collector Office, Collectorate,
Salem – 636 001.



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2.The Tahsildar

Salem Taluk,
Tahsildar Office Building,
Salem Central Co-operative Bank Backside,
Cherry Road, Salem – 7.

3.The Village Administrative Officer

No.52, Village Administrative Office,
Saradha College Road,
Near Hasthampatti Water Tank,
Hasthampatti, Salem – 7.

4.The Executive Engineer

Public Works Department
Construction and Maintenance,
Cherry Road, Salem – 7.

...Respondents/Respondents /
Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated August 21, 2018 made in A.S.No.43 of 2015 on the file of the I Additional Subordinate Judge, Salem, confirming the Judgment and Decree dated March 18, 2015 made in C.F.R.No.3788 of 2015 in O.S.No. [unnumbered] / 2015 on the file of the Principal District Munsif at Salem.

For Appellants : Mr.G.Ethirajulu
for Mr.K.Balu

For Respondents

1 to 4 : Mrs.R.Anitha
Special Government Pleader



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JUDGMENT

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This Second Appeal is directed against the Judgment and Decree dated August 21, 2018 passed in A.S.No.43 of 2015 by the 'I Additional Subordinate Court, Salem' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated March 18, 2015 passed in C.F.R.No.3788 of 2015 in O.S.No. [Unnumbered] / 2015 by the 'Principal District Munsif Court at Salem' ['Trial Court' for brevity] was confirmed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFFS' CASE

3. The Suit Property is a Government land in which 'Arulmigu Alangkottai Shri Poottu Muniappan Temple' (hereinafter referred to as 'Suit Temple') is situated. The Suit Temple is located in the North-Western portion of the bungalow of the Principal District Judge, Salem. The plaintiffs 2 to 7, with the help of residents of Ayyanthirumaligai, Pallakkadu constructed an asbestos shed and installed one *Kavalkaran* Statue and one Horse Statue in the Suit Temple 15 years



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ago. They have also erected a water tank in the Suit Temple. The Suit Temple is more than 100 years old. The 2nd plaintiff is the *Poosari* of the Suit Temple who has been performing *poojas* every day. Public at large numbers are worshipping the Suit Temple every day. Every year, in the month of Aadi, festival is being celebrated in a great manner by the devotees and villagers. Aadi month festival is celebrated in the Suit Temple with immense devotion and enthusiasm by the villagers and devotees. The plaintiffs are managing the affairs of the Suit Temple for all these years without any hindrance.

3.1. While so, on February 13, 2015 the defendants threatened the 2nd plaintiff to remove the Statues from the Suit Property, failing which, they would remove the Statues by force. Hence, the plaintiffs filed the Suit, in a representative capacity for themselves as well as on behalf of the villagers, seeking permanent injunction restraining the defendants from evicting the plaintiffs from the Suit Property without due process of law, and permanent injunction not to demolish the Statues and other constructions put up in the Suit Property without due process of law.



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TRIAL COURT

4. Initially, the plaint was filed on March 11, 2015 and the same was returned. Thereafter, it was represented before the Trial Court on the very next day. The Trial Court, after perusing the plaint, came to the conclusion that the plaintiffs have suppressed the Decree and Judgment passed in O.S.No.1165 of 2010 dealing with the very same subject matter. The said Suit was filed in a representative capacity and the same was dismissed on March 25, 2013. No appeal has been preferred against the dismissal of the said Suit and the same has attained finality. Though the learned Counsel [who appeared before the Trial Court for the plaintiffs] sought time to circulate relevant decisions of this Court for taking the Suit on file, on the next day, it was represented that the plaintiffs are going to not press the Suit, and there was no appearance / representation on the plaintiffs' side thereafter. Hence, the Trial Court rejected the plaint stating that the plaintiffs have suppressed the Decree and Judgment passed in O.S.No.1165 of 2010 which deal with the subject matter of the present Suit and hence, the present Suit is barred by principles of *res judicata*.



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FIRST APPELLATE COURT

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5. Feeling aggrieved, the plaintiffs preferred an appeal in A.S.No.43 of 2015 before the First Appellate Court. The First Appellate Court, after hearing both sides, concurred with the Trial Court's Judgment and Decree and dismissed the appeal by observing that the Suit is an abuse of process of Court.

SECOND APPEAL

6. Feeling aggrieved by the Judgment and Decree of the First Appellate Court, the plaintiffs have preferred this Second Appeal, which was admitted on November 30, 2018 on the following substantial questions of law:

- “(1) Whether the judgment and decree of the Court below erred in rejecting the plaint under Order 7 Rule 11 of C.P.C for the reason that the suit is hit by Section 11 of C.P.C?”*
- “(2) Whether without numbering the Suit, Suit can be rejected by holding that the said Suit is abuse of process of law, frivolous and vexatious litigation?”*
- “(3) Whether Court below is correct in rejecting the plaint on merits before numbering the Suit without giving any opportunity to adduce evidence or to mark documents?”*



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ARGUMENTS

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7. Mr.G.Ethirajulu, learned Counsel for the appellants / plaintiffs would argue that the cause of action for the present Suit is different from that of the earlier Suit. Further, the Trial Court erred in rejecting the plaint without assigning Original Suit number, which is against the principles of natural justice, and the First Appellate Court failed to consider the said fact. Further, the Trial Court relied on the Judgment and Decree passed in O.S.No.1165 of 2010 without giving any opportunity to the plaintiffs; though the Judgment and Decree passed in O.S.No.1165 of 2010 reached finality, Trial Court ought to have heard the plaintiffs before coming to any conclusion on the basis of the said Judgment and Decree. Further the Trial Court erred in merely relying on the Judgment and Decree in O.S.No.1165 of 2010, which was passed behind the back of the plaintiffs, without considering the plaint in the present Suit and averments thereof. The First Appellate Court, without appreciating the facts, concurred with the findings of the Trial Court. In short, an opportunity should have been afforded to the plaintiffs to advance their arguments. Without hearing the plaintiffs, the plaint should not have been rejected. Accordingly, he prayed to allow the Second



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Appeal.

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8. In response, Mrs.R.Anitha, learned Special Government Pleader appearing for the respondents 1 to 4 would submit that the earlier Suit was filed in a representative capacity and the same was dismissed after full trial. The plaintiffs suppressed the said fact. Therefore, the present Suit is an abuse of process of law. The Trial Court as well as the First Appellate Court rightly decided the matter as per law and there is no warrant to interfere with the same. Admittedly, the Suit Temple is situated within the premises of the Principal District Judge's Bungalow and security aspects are involved in this case as well. The plaintiffs cannot claim right over the Government Land and seek injunction against the true owner. Accordingly, she prayed to dismiss the Second Appeal.

DISCUSSION

9. This Court has considered the submissions made on either side and perused the materials available on record.

10. When the plaint was presented by the plaintiffs, the Trial Court without assigning number, rejected the same. This Court is of the considered view that the procedure adopted by the Trial Court is not



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appreciable. If the Trial Court is of the view that the Suit is frivolous and not maintainable, the Trial Court ought to have numbered the plaint and posted it for hearing on its maintainability. After hearing the plaintiffs, if the Trial Court comes to the conclusion that the plaint is to be rejected, it can be done so. Without hearing the plaintiffs and without adhering to the principles of natural justice, the Trial Court should not have rejected the plaint. The First Appellate Court as well as the Trial Court failed to consider the said aspect.

11. In so far as the contention of abuse of process of law is concerned, it is apposite to mention here that the Hon'ble Supreme Court has laid down the duty of the Trial Court in considering the vexatious applications in its decision in ***Church of Christ Charitable Trust & Educational Charitable Society -vs- Ponniamman Educational Trust***, reported in **(2012) 8 SCC 706**. Relevant portion *i.e.*, Paragraph No.12 read thus:

"12. It is also useful to refer the judgment in T. Arivandandam vs. T.V. Satyapal & Anr., (1977) 4 SCC 467, wherein while considering the very same provision, i.e. Order VII Rule 11 and the duty of the trial Court in considering such application, this Court has reminded the trial Judges with the following observation:



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“5.The learned Munsif must remember that if on a meaningful – for formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them.....”

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code.”

12. From the above, it is crystal clear that the Trial Court has



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every power and right to nip a vexatious and meritless Suit in the bud. If the Trial Court is of the opinion that the plaint is frivolous, vexatious and meritless, it can very well reject the same. However, it ought to have done so after numbering the Suit and after hearing the plaintiffs on maintainability. Accordingly, the Substantial Questions of Law framed in this Second Appeal are answered against the respondents / defendants and in favour of the appellants / plaintiffs.

CONCLUSION

13. With the above observation, this Second Appeal is allowed and the Judgment and Decree passed by the Trial Court as well as the First Appellate Court are set aside. The Trial Court is directed to take the plaint on file, number the same, and post it for hearing on maintainability, and thereafter, pass orders on merits in accordance with law, untrammelled by the observations made by this Court, after affording an opportunity of hearing to the plaintiffs. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Speaking Order : Yes



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Neutral Citation : Yes
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To

- 1.The I Additional Subordinate Judge
Salem.
- 2.The Principal District Munsif
Salem.



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R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN

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