

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Smt.Aneesa.A, Munsiff

Friday, the 24th day of May, 2024/3rd Jaishtha, 1946.

IA.6/2024 in ORIGINAL SUIT.447/2023

(Filed on 21.03.2024)

Petitioner/Defendant: Kavitha Dev, aged 38 years,
W/o Jayakumar,
Sadhupurathu House,
Komalloor muri,
Chunakkara Village,
Mavelikara, Alappuzha District.

(By Advs.N.Raphy Raj & Athira Raj.A)

Respondent/Plaintiff: Sudharma.N @
Sudhakadampad, aged 58 years,
W/o. Ashokan,
Dhakshina, House No.14,
N.C.C.Road, Sree Bhadra Nagar,
Peroorkada P.O,
Thiruvananthapuram.
Pin 695005.

(By Advs .A.Shajahan & G.Saji)

This petition is filed Under Order 7 and Rule 11(d) of the Civil Procedure Code 1908 and coming on for final hearing on 24.05.2024 and

the court on the same day passed the following.

ORDER

This is an order in a petition filed under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 for rejection of the plaint.

2. The gist of averments in the petition are as follows:- The petitioner is the 1st defendant in the suit and the 2nd defendant is her husband. The aforesaid suit is filed by the plaintiff for permanent prohibitory injunction restraining the defendants from molesting the possession of plaintiff over the plaint schedule property and also restraining the defendants not to demolish the structures and constructions in the plaint schedule property. In paragraph Nos. 8,9 and 10 of the plaint explicitly, vividly and categorically, the plaintiff admitted that there is a concluded decree and judgment with respect to the subject-matter in the present suit in favour of the defendants. The plaintiff also produced the judgment in O.S.No. 187/2019 on the file of the Munsiff's Court, Mavelikara as Japta No. 3 along with the plaint. From the judgment produced along with the plaint, it is understood that the 1st defendant herein laid a suit for declaration declaring the clause in the partition deed No. 2242/92 of Nooranad Sub Registrar's Office enabling the plaintiff to collect usufructs from

the plaint schedule property as null and void and also seek mandatory injunction to surrender the vacant possession of the property and permanent prohibitory injunction restraining the defendants therein from molesting the possession. After conducting exhaustive trial and appreciation of law and facts in its proper perspective, the Munsiff's Court Mavelikara decreed the suit as prayed for. So, the said judgment produced from the side of the defendants become the part of pleadings as contemplated under Order VI Rule 1 of the C.P.C. There is a concluded decree and judgment with respect to the subject-matter in this suit in favour of defendants/ respondents. On a meticulous scanning of documents and pleadings, it is clear that the suit is hit by res judicata and constructive res judicata. Here, in this case the res judicata become a pure question of law based on admitted facts. So, the plaint is liable to be rejected under Order VII Rule 11 of the C.P.C. Thus, this petition.

3. The respondents/ plaintiffs filed objection contending inter alia as follows:- The petition is not maintainable either in law or on facts. All the averments in the affidavit filed along with the petition which are not specifically admitted are fabricated and hence denied.

O.S.No. 187/2019 of the Munsiff's Court, Mavelikara was decreed ex parte and respondents herein filed a petition to set aside the above said ex parte decree and judgment before the Munsiff's Court, Mavelikara and it is pending for disposal. The petitioner has suppressed some material facts. As per the decree in O.S.No. 187/2019 of Munsiff's Court Mavelikara, the petitioner has not filed any execution petition to evict the respondent herein as per law. The decree and judgment in O.S.No. 187/2019 of Munsiff's Court Mavelikara is not a concluded one and is pending for reconsideration. The contention of res judicata and constructive res judicata is not applicable in this case. Thus, the provisions of Order VII Rule 11 of the C.P.C will not be attracted in this case. On all these grounds, the respondents sought to dismiss the petition with costs.

4. The following points are formulated for consideration: -
 1. Whether the plaint is liable to be rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 ?
 2. What shall be the order as to reliefs and costs ?
5. Heard both sides.
6. **Point No.1** :- Here, according to the petitioner, there is a

concluded decree and judgment with respect to the subject-matter in this suit in favour of the petitioner, on perusal of the copy of judgment in O.S.No. 187/2019 and on the scanning of documents and pleadings, it is clear that the suit is hit by res judicata and constructive res judicata. But, according to the respondents, the decree and judgment in O.S.No. 187/2019 of Munsiff's Court Mavelikara is not a concluded one as it is an ex parte decree and it is pending for reconsideration. The contention of the learned counsel for the respondent could not be taken into consideration as it is already settled that even an ex parte decree is also a conclusive decree. The petitioner sought rejection of plaint on the ground of res judicata and constructive res judicata. According to the learned counsel for the petitioner, there is no need to file a written statement to consider the plea of res judicata and it can be considered at any time. But, in **Jamia Masjid v. R.V. Rudrappa (since dead) by Lrs. and others reported in [AIR 2021 SC 4523]**, a three judge bench of the Hon'ble Supreme Court held that "*Issues that arise in a subsequent suit may either be question of fact or law or mixed question of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of plea*

of res judicata if there arises a new fact which has to be proved. However, the plea of res judicata may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it.” Here, from the facts of the present case, it can be understood that a trial is needed for determination of the question of res judicata. Thus, the contention of the learned counsel for the petitioner could not be taken into consideration. This petition can only be treated as a premature one and it cannot be considered at this time. Therefore, I am not inclined to allow this petition. Thus, point No. 1 is found against the petitioner.

7. **Point No. 2**:- In view of my discussions and findings on point No. 1, the petition is liable to be dismissed.

In the result, the petition stands dismissed. Considering the relationship between the parties, no order as to costs.

(Dictated to the confidential assistant, transcribed and typed by her, corrected and pronounced by me in open court on 24th day of May, 2024.)

Sd/-
ANEESA.A
MUNSIFF

APPENDIX:

Nil.

Sd/-MUNSIFF

// True Copy //

Typed by: Shafeek
Compd by:

MUNSIFF

Order in IA.6/24 in OS.447/23
Dated.24/05/2024