



SA. No.582 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

SA. No. 582 of 2024
& CMP No. 18351 of 2024

K.Balraj

... Appellant

Vs.

S.K.Venkatesan

..Respondent

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, against the Judgement and decree dated 25.04.2024 made in AS No. 7 of 2021, on the file of the learned Additional District Judge (FTC), Aarani, Thiruvannamalai setting aside the judgment and decree dated 20.04.2021 in OS No. 33 of 2005, on the file of the Subordinate Judge, Aarani, Thiruvannamalai.

For Appellant : Mr.P.Dinesh Kumar

For Respondent : Mr.R.Natarajan



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JUDGMENT

This Second appeal has been filed against the Judgement and decree dated 25.04.2024 made in AS No. 7 of 2021, on the file of the learned Additional District Judge (FTC), Aarani, Thiruvannamalai setting aside the judgment and decree dated 20.04.2021 in OS No. 33 of 2005, on the file of the Subordinate Judge, Aarani, Thiruvannamalai.

2. Originally suit in O.S No. 33 of 2005 was filed by the respondent herein/plaintiff against the appellant herein/defendant claiming half share in the suit property. The plaintiff claiming that suit property was jointly purchased by the plaintiff and the defendant through a registered sale deed dated 31.10.1979 from one Patchaiappa Mudaliar and his son. While so, one M.E.Shanmugham, got a money decree in OS No. 423 of 1989 against the defendant, the said decree holder attached the schedule mentioned property in OEP No. 127 of 1994. Against which this plaintiff filed OEA No. 91 of 1999 claiming half interest under Order 21 Rule 58 of CPC but his claim was dismissed by the Court holding that entire property belonged to the judgement debtor/Balraj. Against which, the plaintiff preferred an appeal in



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CMA No. Nil/2001, but there was delay so he filed to excuse the delay. But the same was dismissed. After disposal of the said claim petition the defendant possessed the original document of the suit property, he was not handed over the document to him on the other hand he caused trouble to enjoy the property. At the instance of panchyatars, panchayat was convened and the defendant affirmed the half interest of plaintiff in the schedule mentioned property. That was recorded in writing on 12.03.2004 signed both by plaintiff and defendant. Thereafter, as per the terms of Panchyata Muculika plaintiff is residing in the Eastern portion of the suit property. But, the defendant claimed share in house causing trouble. Therefore, the suit filed for claiming partition directing to hand over half share in the suit property.

3. The defendant through written statement admitted the relationship between the parties and also admits the earlier EP proceedings but denied the alleged Panchayat Muculika said to be claimed between them. He submits that suit property purchased through sale deed dated 31.10.1979 in the name of the plaintiff and the defendant at that time plaintiff was studying SSLC and his father Kuppusamy Mudaliar were doing Ragi business out of income derived from the business he and his brother



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purchased the property as joint family property, after demise of this father Kuppusamy Mudaliar, the plaintiff and the defendant were jointly running the family business, some years later there was RCOP was filed by the landlord of the shop to vacate the family business where they conducted. Thereafter, in the year 1996 joint family business came to an end, at that time plaintiff demanded to settle his share in the joint family business and joint family arrangement was held among them, in which, the plaintiff was given up his right in the house in favour of the defendant. Thereafter, the defendants took absolute ownership of the suit house. However, the plaintiff reside as tenant in the portion of the suit property and agreed to pay rent of Rs.250 per month same also not been complied. So the defendant proceeded with RCOP. Against the defendant, one Shanumgam filed suit for recovery of money in OS No. 423 of 1989, before the Munsif Court Arni, and same was decreed and he filed to execute the decree filed EP. No. 127 of 1994 wherein the plaintiff filed OEA No. 91 of 1999 under Order 21 Rule 58 claiming half share in the suit property as a judgement debtor this defendant also contested the said application. Accordingly, it was dismissed on merit. The defendant is a absolute owner of the property. Therefore, the plaintiff has no right to file the present suit. Since there was delay in filing



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the CMA defendant also submits that alleged panchayat Muculika is to be proved by the plaintiff and its genuineness thereby he disputed the alleged panchayat Muculika relied by the plaintiff dated 12.03.2004 as per the findings claim application under Order 21 Rule 58 OEA No. 91 of 1999 claim made by the plaintiff also barred by principle of Resjudicata as dismissed.

4. Further, he would filed another additional written statement stating that in the year 1996 partition was entered between the plaintiff and the defendant, wherein, the defendant was allotted with suit house and plaintiff was allotted with the business. Therefore, he claimed absolute ownership of the suit property based on the earlier partition.

5. Considering the oral and documentary evidence adduced by the parties, the Trial Court framed four issues and the foremost issue is whether the defendant is absolute owner of the property as per the findings given in the claim application EA No. 9 of 1999 in EP No. 12 of 1994 in OS No. 423 of 1989. The Trial Court held that in earlier claim application the plaintiff claimed his right and half share. On hearing both sides, including the objection of the defendant the said application was dismissed. Therefore, already in respect of plaintiff's right was declined in the claim application.



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Therefore, the subsequent suit as such is not maintainable. On the other hand, he is entitle to file appeal but he failed to prefer appeal. The Trial judge also held that findings given by the execution Court in claim application based on that plaintiff has no right in the property. Accordingly, the defendant is deemed to be a absolute owner of the property and the findings rendered in EA is attained finality in respect of right of the plaintiff. Therefore, present suit as such is not maintainable barred by resjudicata. Accordingly, suit was dismissed.

6. Challenging the said findings, the plaintiff preferred an appeal, after considering the oral and documentary evidence, the first appellate Court held that earlier partition pleaded by the defendant not been proved and his evidence in the earlier proceedings is contrary to each other. Furthermore, the first appellate Court gave a findings that the claim made by the plaintiff in the said claim application is only against the third party after disposal he come forward with the present suit for partition against his own brother. Therefore, findings in the claim proceedings is against the third party. Further, the Trial Judge also held that the suit is not barred by resjudicata and also plaintiff has proved the Ex.A2/permanent arrangement document that he is entitled to half share in the suit property accordingly



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appeal was allowed and set aside the findings of the Trial judge by allotting half share to the plaintiff. Challenging the same the present appeal was filed by the defendant.

7. The learned counsel for the appellant prayed to allow this appeal on the following grounds.

i. The learned judge ought to have dismissed the first appeal by considering the fact that the issues raised in the claim of the respondent is clearly hit by the principles of res-judicata as the rights of the parties were already crystallized under Ex.A8 and Ex.B4.

ii. The learned judge ought to have seen that the plaintiff had not established any satisfactory case of fraud in obtaining judgement which was marked as Ex.A8, in the absence of any pleading and satisfactory and cogent evidence to such plead, the learned judge ought to have rejected the plaint.

iii. The learned judge ought to have considered the clear categorical admission of PW1 in his evidence that it is the defendant had discharged the decree amount due to Shanmugam and thus the finding of the learned judge Ex.A8 was obtained by playing fraud is clearly erroneous and liable to be set aside.



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iv. The learned judge ought to have seen that the plaintiff in the said

E.P.had filed the claim statement and led evidence by before the competitive court of jurisdiction and thus the finding to the contra are erroneous and liable to be set aside.

v. The learned judge ought to have seen that even assuming without admitting that Ex.A2 had came into force still the same cannot be received in evidence, in view of the fact that a bare perusal of Ex.A2 would go to demonstrate that a right of the parties over an immovable property is created under Ex.A2 and thus the same is required to be registered under Section 17 (1) of the Registration Act and the effect of non - registration would have its adverse impact as enumerated under Section 49 of the Registration Act.

vi. The learned judge failed to see that both parties and the properties in the present suit and E.P are one and the same and hence the learned judge ought to have held that the finding made in Ex.A8 clearly bars the plaintiff to file the present suit on the very same pleadings.

vii. The learned judge ought to have considered the order passed in execution proceedings Ex.A8 as a decree under Order XXI Rule 58(4) and only appeal is maintainable against such a decree.

viii. The learned judge erred in holding that Ex.A2 is a valid



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document even when it was an unregistered document and the same was not proved by sufficient evidence.

8. This Court admitted the appeal with the following substantial questions of law:

1. Whether the first appellate court is right in allowing the appeal when the suit is barred under Section 11 of CPC since the subject matter of the present suit and the prior suit is between the same parties and the issue in both the suits are direct and substantially the same ?

2. Is the learned District Judge right in reversing the well considered judgment of the Trial Court by holding that the principles of Res-judicata will not apply to the present case holding that the Order under Ex.A8 is obtained by playing fraud in the absence of any pleading or satisfactory evidence on the plea of fraud ?

3. Is it permissible under law for the plaintiff, who pleaded a statement and led evidence supporting the pleadings and suffered an order before the court could be permitted to plead in the subsequent proceedings that the same is not binding upon him ?

9. Heard both sides.

10. The learned counsel for the appellant/defendant submits that the entire claim of the plaintiff is barred by resjudicata since plaintiff's half right over the suit property was declined by the executing Court in claim application in OEA No. 91 of 1999 in OEP No. 127 of 1994 in OS No. 423 of 1989. Further, original document was not produced by the plaintiff and without any evidence the first appellate court erroneously concluded that there was oral partition happened among family and his brothers.



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Considering the facts of the case, in earlier suit in OS No. 423 of 1989, one Shanmugam got decree against the defendant, in the said suit E.P was filed by him to brought the suit property in auction sale, in which, the plaintiff herein filed a claim petition but it was dismissed on 25.08.2000. Against which, the plaintiff preferred a CMA with I.A to condone the delay but the same was dismissed. As rightly pointed out by the first appellate Court, the said claim petition was filed against the third party in executing Court not against his own brother/respondent herein, which was not barred under Section 11 of CPC and the same was rightly appreciated the first appellate court which needs no interference.

11. P.W.3 deposed as follows in his cross examination:

வாதி வெங்கடேசன் வடதிசையிலும், பிரதிவாதி பால்ராஜ் தென் திசையிலும், வசித்து வருகிறார்கள். 2004ல் இருவருக்கும் ஒரு பிரச்சனை ஏற்பட்டது. பேச்சு வார்த்தை நடந்தது. கிழக்கு பக்கம் சிறியவருக்கும் மேற்குப்பக்கம் பெரியவருக்கும் என்று பேசினார்கள். இப்போது அதுபோல் பிரிக்க வேண்டாம் என்றும் கூறினார்கள். அது குறித்து எழுதிக்கொண்டார்கள். அதில் சாட்சிகளாக மணிமுதலியார், அரிதாஸ், தயாளன் கணேசன் மற்றும் நான் கையெழுத்து செய்தோம். மேற்படி நபர்களின் முன்னிலையில் தான் மேற்படி பஞ்சாயத்து நடைபெற்றது. 12.03.2004ல் நான் கையெப்பம் செய்துள்ளேன். என் கையெழுத்தும் அத் கிழே தேதியும் இடப்பட்டுள்ளது. அது வா.சா.ஆ.2 ஆவணம்தான். வா.சா.ஆ.2ஐ படித்துப் பார்த்துதான் வாதி மற்றும் பிரதிவாதியும் கையெழுத்து



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செய்தார்கள் அதன் பிறகுதான் நான் சாட்சி கையெழுத்து செய்தேன். அதனால் வஞ்சாயத்து நடந்தது

உண்மைதான்.

12. Further, plaintiff proved Ex.A2(no title assigned in Ex.A2) through P.W.2 and P.W.3, that there was panchayat held between the family members on the advice of the elders and in the result partition arrangement was executed. Accordingly, property was divided into two portions Northern portion was allotted to plaintiff, Southern portion was also allotted to defendant and also discharging loan of the said A.E. Shanmugam and settled their sister by contributing 2 1/2 sovereign jewel each by the plaintiff and the defendant and same also been proved by examining panchayatars. Considering the evidence of P.W.2 and P.W.3 as well as Ex.A2 the first appellate judge rightly concluded that both parties are entitled to half share in the suit property, which needs no interference. Accordingly, questions of law are answered.

13. In the result, the second appeal is dismissed. No Costs. Consequentially, pending petition(s), if any, is/are closed.

28.10.2024



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T.V.THAMILSELVI,J.

Pbl

To

1.The Section Officer,
V.R Section.

2. The Subordinate Judge, Aarani, Thiruvannamalai.

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