

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.3392 of 2015

and

M.P.No.1 of 2015

1.Rajeswari

2.Shanthi

3.Vijaya

4.Sudhakaranchettiar

.. Respondents 1 to 4/Defendants 2 to 4/
Revision Petitioners

Vs.

1.S.Rajendran

2.S.Selvaraj

.. Petitioners/Plaintiffs/Respondents 1 & 2

3.K.Vijayakumar

.. 5th Respondent/5th Defendant/3rd Respondent

(Third respondent is given up)

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 17.10.2014 made in I.A.No.793 of 2013 in O.S.No.211 of 2010 on the file of the Subordinate Court, Mettur.

For Petitioners : Mr.D.Shivakumaran

For Respondent : Ms.R.Meenal

ORDER

Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondents.

2. The revision petitioners have come forward with the present Civil Revision Petition challenging the impugned order dated 17.10.2014 made in I.A.No.793 of 2013 in O.S.No.211 of 2010, wherein the application filed under Section 45 of the Indian Evidence Act came to be allowed.

3. The learned counsel appearing for the revision petitioners would submit that the respondents 1 and 2 herein as plaintiff has filed the suit for specific performance on the basis of the sale agreement dated 27.05.1982. The suit was originally filed in O.S.No.284 of 1996 on the file of the District Munsif Court, Mettur. Subsequently, it was transferred to the file of the District Munsif Court, Omalur and re-

numbered as O.S.No.900 of 1996. Again in the year 2009, the case was transferred to the file of the Fast Track court-II, Salem and re-numbered as O.S.No.51 of 2009. Thereafter, for want of pecuniary jurisdiction, the case is transferred to the file of Subordinate Court, Mettur and renumbered as O.S.No.211 of 2010 and it is pending. The defendants filed their written statement on 23.10.1997, when the suit was pending on the file of the District Munsif Court, Omalur, wherein it was pleaded that the suit agreement is a forged document. In the mean while, the respondents 1 and 2 herein filed an application in I.A.No.680 of 2006 before the learned District Munsif Court, Omalur to send the documents for expert opinion. However, the said application was dismissed as not pressed with liberty to file fresh application.

4. Thereafter, on 31.08.2009, when the suit was pending on the file of the Fast Track Court No.2, Salem, the respondents 1 and 2 herein filed another application in I.A.No.934 of 2009 to send the documents for expert opinion. The said application was dismissed on merits on 01.03.2010, against which the petitioners therein viz., the respondents 1 and 2 did not prefer any appeal. However, the respondents 1 and 2 have filed another application in I.A.No.793 of 2013 on the file of the Subordinate Court, Mettur seeking the very

same relief.

5. The Trial court without considering the fact that the application in I.A.No.793 of 2013 is hit by res judicata had allowed the same on 17.10.2014 and thus, the learned counsel for the revision petitioners prayed for setting aside the same. To substantiate his contention, the learned counsel for the revision petitioners relied upon the decision reported in ***AIR 1960 (SC) 941, Satyadhyan Ghosal v. Deorajin Debi*** and prayed for allowing of the Civil Revision Petition.

6. Resisting the same, the learned counsel appearing for the respondents would submit that the second application filed in I.A.No.793 of 2013 for the very same relief is not hit by res judicata. To substantiate her contention, the learned counsel for the respondents relied upon the decision reported in ***2007 (4) CTC 57, Kalaiselvan v. Velusamy***. The learned counsel would further contend that the Trial Court has given convincing reason for allowing the application in I.A.No.793 of 2013 and hence, she prayed for dismissal of the Civil Revision Petition.

7. Considered the rival submissions made by both sides and

perused the typed set of papers.

8. It is pertinent to note that the alleged sale has taken place on 27.05.1982 and the suit was originally filed in O.S.No.284 of 1996 on the file of the District Munsif Court, Mettur, after a period of 14 years. At this juncture, it is also pertinent to note that the plaintiffs filed another suit in O.S.No.885 of 1996 for bare injunction. While so, the suit in O.S.No.284 of 1996 on the file of the District Munsif Court, Mettur was transferred to the file of the District Munsif Court, Omalur and re-numbered as O.S.No.900 of 1996. Subsequently, in the year 2009, the case was transferred to the file of the Fast Track court-II, Salem and re-numbered as O.S.No.51 of 2009 and finally, for want of pecuniary jurisdiction, the case was transferred to the file of Subordinate Court, Mettur and renumbered as O.S.No.211 of 2010. It is also admitted by both sides that when the case was pending on the file of the District Munsif Court, Omalur, the respondents 1 and 2 herein had filed an application in I.A.No.680 of 2006 to send the documents for expert opinion and the said application was dismissed as not pressed with liberty to file fresh application. Thereafter, when the matter was pending on the file of the Fast Track No.2, Salem, the respondents 1 and 2 herein had filed an application in I.A.No.934 of

2009 and the same was dismissed on merits, against which admittedly no appeal has been preferred.

9. Now the point to be decided is whether the order passed in I.A.No.934 of 2009 is hit by res judicata for filing fresh application for the very same relief?

At this juncture, it would be appropriate to consider the decision relied on by the learned counsel for the revision petitioners reported in **AIR 1960 (SC) 941, Satyadhyan Ghosal v. Deorajin Debi**, wherein at paragraphs 8 and 16, it was held as follows:

"8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again?"

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.....

16. It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order."

Thus, in the above decision it was held that the subsequent application filed for the very same relief is hit by res judicata.

10. On the other hand, the learned counsel for the respondent relied upon the decision reported in **2007 (4) CTC 57, Kalaiselvan v. Velusamy**. Much reliance was placed on paragraph 5 of the decision, wherein it was held as follows:

"5. The order of the learned Subordinate Judge dated 23.09.2004, made in I.A.No.141 of 2004, has been produced for perusal of the Court. In the operative portion of the said order, the learned Subordinate Judge has stated that the prayer for comparison of the document in question by an Expert cannot be allowed since the Interlocutory Application has been filed at the belated

stage that too after the evidence was closed. The learned Subordinate Judge has further stated that the disputed signature of the document can very well be compared by the Court itself with the admitted signature of the first defendant and therefore, appointing an Advocate Commissioner to take the document to the Expert is unnecessary. The learned Subordinate Judge has further stated that from the evidence of the witnesses and the circumstances of the case, it can be safely concluded, whether the disputed signature was made by the first respondent or not. On these three grounds, the learned Subordinate Judge has dismissed the Application. Of course, the first respondent should have preferred a Revision against the said order but the same has not been done. In the affidavit, filed in support of I.A.No.279 of 2005, the first respondent has explained the reasons for not preferring such a Revision challenging the order of the learned Subordinate Judge. He has specifically stated that he has obtained the certified copy of the said order with an intention to file revision, but before he could file a Revision, the Trial Was completed. There is some force in

the statement made by the first respondent in his affidavit. A perusal of the order of the learned Subordinate Judge would show that the order in I.A.No.141 of 2004 was delivered on 23.09.2004 and the suit was decreed on 30.09.2004, i.e., within seven days which includes two weekly holidays. Thus, the reasons stated in the affidavit for failure to file Revision, before the Suit was decreed, is not only reasonable but also acceptable."

But the above decision is not applicable to the facts of the present case because in the above decision it was specifically stated that after the application in I.A.No.141 of 2004 was dismissed, when the respondent was taking steps to prefer a revision, the Trial has been completed and so, the respondent is not in a position to challenge the order made in I.A.No.141 of 2004. Hence, an appeal was preferred. During the pendency of the appeal, an application was made in I.A.No.279 of 2005, which was dismissed on the ground that it was hit by res judicata and that has been set aside by this Court.

11. However, in the instant case, the application in I.A.No.934 of 2009 to send the documents for expert opinion was dismissed on merits on 01.03.2010, against which no appeal has been preferred.

However, after a period of three years, another application in I.A.No.793 of 2013 was filed seeking the very same relief. So, I am of the view that the application in I.A.No.793 of 2013 is barred by the principles of res judicata. Furthermore, in the order made in I.A.No.934 of 2009, it was specifically mentioned that the suit for specific performance has been filed after 14 years and the suit is pending for the past 13 years and after a total period of 27 years, they have filed the vexatious application. It was also further stated that the document has been proved in accordance with law by examining the attester of the document and dismissed the application. Thereafter, the present application in I.A.No.793 of 2013 was filed for the very same relief, after a period of 30 years from the date of sale agreement, that too after the death of the attester of the document.

12. In these circumstances, I am of the view that the Trial Court has committed an error in allowing the application made in I.A.No.793 of 2013, when no new cause of action arose for the respondents 1 and 2 to file a fresh application for the very same relief sought for in I.A.No.934 of 2009, that too without challenging the order made in I.A.No.934 of 2009. So, the impugned order made in I.A.No.793 of 2013 in O.S.No.211 of 2010 on the file of the Subordinate Court,

Mettur is unsustainable and is liable to be set aside and accordingly set aside. Consequently, the Civil Revision Petition is allowed.

13. In fine, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

15.12.2015

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To

The learned Subordinate Judge,
Mettur

R.MALA, J.

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