

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : .07.2015

CORAM :

THE HON'BLE DR. JUSTICE S.TAMILVANAN

S.A.No.532 of 2011
M.P.Nos.1 and 2 of 2012

V.Karuppan Appellant/Plaintiff

vs.

1. G.Chandra Suseela
2. G.Balasundari
3. Vijaya Selvarani
4. G.Rathinakumar
5. G.Joice Latha Kumari
6. R.Prason Kumar
7. R.Prabath Kumar

..... Respondents/Defendants

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree, dated 22.12.2010 made in A.S.No.20 of 2010 on the file of the Sub-Court, Bhavani, confirming the order and decretal order, dated 31.03.2010 made in C.F.R.No.1030 of 2010 on the file of the Principal District Munsif, Bhavani.

For Appellant : Mr.V.Chandrakanthan

For respondents : Mr.N.Manokaran

J U D G M E N T

The second appeal has been preferred against the Judgment and Decree, dated 22.12.2010 made in A.S.No.20 of 2010 on the file of the Sub-Court, Bhavani, confirming the order and decretal order, dated 31.03.2010 made in C.F.R.No.1030 of 2010 on the file of the Principal District Munsif, Bhavani.

2. The appellant herein was the plaintiff before the trial court. The suit property was originally belonged to one Kaliammal, by virtue of a sale deed, dated 23.04.1937. On 07.04.1942, the said Kaliammal sold the property to one Abraham and in turn Abraham sold the property to one Onkaliammal. Subsequently, Onkaliammal had executed a Will, dated 20.04.1971 in favour of her sister Kolandaiammal, who sold some properties as house sites. The appellant / plaintiff is the only legal heir

of the Kolandaiammal and as such he is entitled for the suit property. The defendants, who have no right or title over the suit property have filed a suit in O.S.No.133 of 2004 and got exparte decree, based on the said decree, they filed Execution Petition and got an order for delivery of possession in E.A.No.33 of 2009. One Kirubamani, from whom the defendants alleged to have derived title to the suit properties had filed a suit in O.S.No.275 of 1983 for partition and separate possession against Kuzhandai ammal, the mother of the appellant and 17 others and subsequently the same was withdrawn. Again she filed a suit in O.S.No.133 of 2004 seeking declaration of title and recovery of possession of the property and in the said suit, Mrs.Kirupamani impleaded the appellant herein as one of the defendants. The said suit was decreed exparte on 07.04.2004 against the appellant herein. The appellant filed a petition, to set aside the exparte decree with the delay and the same was dismissed and confirmed by this Court. The appellant herein filed an unnumbered suit in CFR No.1030 of 2010 before the Principal District Munsif, Bhavani. The said Kirubamani died on 01.01.2010 and hence, her legal heirs were added as defendants in the plaint. The legal heirs of Kirubamani have also filed a case before the Sub-Court, Bhavani in O.S.No.20 of 2010. The appellant / plaintiff filed a petition in I.A.No.94 of 2010 to implead himself in the above suit in O.S.No.20 of 2010, which was pending. The respondents / defendants are attempting to interfere with the peaceful possession and enjoyment of the plaintiff over the suit property and hence, the present suit was filed, seeking to declare the title of the appellant / plaintiff over the suit property and for consequential injunction.

3. The Principal District Munsif, Bhavani, received the plaint in C.F.R.1030 / 2010 and after considering the pleadings and the arguments advanced, has not inclined to register the plaint on file, but rejected the same. Aggrieved over the same, the appellant / plaintiff preferred A.S.No.20 of 2010. The Sub-Court, Bhavani, confirmed the order and decretal order passed by the trial Court and dismissed the appeal. Challenging the same, the appellant / plaintiff has come forward with this Second Appeal.

4. This Second Appeal is admitted, based on the following Substantial Questions of Law :

"(1) Whether the rejection of plaint by the lower court, on the ground that the cause of action is not clear is not contrary to the provision under Or.7 Rule 11(a) CPC?

(2) Whether the Decree passed in O.S.No.133 of 2004, without adjudicating the issue amounts to a decree, as contemplated under Section 2(2) CPC is correct ?"

5. Substantial Questions of Law 1 & 2 :

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It is an admitted fact that Late Kirubamani filed a suit in O.S.No.133 of 2004 on the file of the Principal District

Munsif, Bhavani, seeking declaration of title and recovery of possession of the property, wherein the appellant herein was one of the defendants. The suit was decreed exparte by the Principal District Munsif Court on 07.04.2004 against the appellant herein and other defendants in the suit. Subsequently, the appellant filed a petition to set aside the exparte decree, under Order IX Rule 13 CPC along with a petition, to condone the delay in filing the petition to set aside the exparte decree. However, the application filed under Section 5 of Limitation Act, to condone the delay was dismissed. Aggrieved by which, the appellant preferred revision. Confirming the order passed by the Court below, the same was also dismissed by this Court. Hence, it is not in dispute that the exparte decree obtained by late Kirubamani has reached its finality. The contesting respondents herein are the legal heirs of the said Kirubamani. Subsequently, the appellant filed an unnumbered suit in CFR No.1030 of 2010 before the Principal District Munsif Court, Bhavani, seeking declaration of title over the property and also challenging the exparte decree obtained by late Kirubamani in O.S.No.133 of 2004 as illegal.

6. The Principal District Munsif, Bhavani, rejected the plaint as not maintainable, in view of the fact that the appellant / plaintiff in the unnumbered suit was party to the suit in O.S.No.133 of 2004 and the exparte decree passed against the appellant and others reached finality, after dismissal of the revision preferred by the appellant herein.

7. Learned District Munsif has given a finding that Kirubamani died on 01.01.2010, however, the appellant filed the unnumbered suit in CFR No.1030 of 2010 only on 23.03.2010, after the death of Kirubamani. As the suit was filed against the dead person, it was not maintainable. Subsequently, legal representatives of Kirubamani were impleaded. The Court further found that apart from filing the suit against a dead person, there was suppression of material fact, in view of not disclosing the pendency of Execution Petition in E.P.No.33 of 2005 in O.S.No.133 of 2004 by the appellant / plaintiff, though the appellant herein was a party to the Execution Proceeding. The trial Court further held that the property stated in the plaint relating to CFR No.1030 of 2010 and the property found in E.P.No.33 of 2005 are one and the same. It is not in dispute that though exparte decree was passed in favour of Kirubamani in the suit in O.S.No.133 of 2004, which was taken up to the Hon'ble Supreme Court in Special Leave to Appeal Civil No.19302 of 2009 and dismissed by the Supreme Court on 17.08.2009, the appellant had initiated second round of litigation, by way of filing the unnumbered suit in respect of the property.

8. In view of the suppression of material facts and the exparte decree passed in O.S.No.133 of 2004 reached its finality upto the Hon'ble Supreme Court and also the unnumbered suit filed against the dead person on 23.03.2010, the trial Court found that there was no legal cause of action to maintain the suit and accordingly, rejected the plaint under Order 7 Rule 11 of the Code of Civil Procedure. Aggrieved by which, the

appellant preferred appeal before the Sub-Court in A.S.No.20 of 2010. However, confirming the order passed by the learned District Munsif, the appeal was also dismissed by the said appellate court.

9. In this second appeal, the appellant has raised a plea that rejection of plaint by the Lower Court, on the ground of no clear cause of action, is contrary to the provisions under Order 7 Rule 11 (a) of the Code of Civil Procedure. The decree passed in the suit in O.S.No.133 of 2004 has reached its finality and the appellant has been a party suffered the decree, however, he has challenged the decree by way of filing a separate suit.

10. It is crystal clear that the plaint shall be rejected under Order 7 Rule 11 (a) of the Code of Civil Procedure, where the plaint does not disclose cause of action for filing the suit. It cannot be disputed that cause of action referred to in the said provision of law is only a legal cause of action to maintain a suit. In the instant case, admittedly, late Kirubamani, through whom the respondents claim right as her legal heirs had filed the suit in O.S.No.133 of 2004 and the appellant herein was one of the defendants, the said suit, which was decreed exparte. However, the appellant had not filed any petition under Order IX Rule 13 of the Code of Civil Procedure, to set aside the exparte decree in time. However, he filed an unnumbered petition along with an application under Section 5 of Limitation Act, however, that was dismissed on merits. Aggrieved by which, the appellant preferred a revision. Confirming the order passed by the trial Court, the revision preferred by the appellant was also admittedly dismissed by this Court. It is not in dispute that the decree passed in O.S.No.133 of 2004 reached finality up to the Hon'ble Apex Court, since the Special Leave Petition preferred by the appellant herein was admittedly dismissed. As found by the trial court, it is an undisputed fact that on 23.03.2010, when the unnumbered CFR was filed, the defendant Kirubamani was not alive, as she died on 01.01.2010 itself, hence, the suit had been filed against a dead person and further, pursuant to the decree passed in O.S.No.133 of 2004, Execution Petition was filed in E.P.No.33 of 2005 and that was also suppressed by the appellant herein, as found by the trial court.

11. On the aforesaid facts and circumstances, Mr.V.Chandrakanthan, learned counsel appearing for the appellant relied on the following decisions :

1. S.Satnam Singh and Ors. v. Surender Kaur and anr, AIR 2009 SC 1089
2. Union of India v. Pramod Gupra (D) by LRs and ors, AIR 2005 SC 3708
3. Minor Murugan, etc v. Thirupathi Gounder and others, 2002-3-LW 54

12. However, the aforesaid decisions are not applicable to the facts and circumstances of the case, since the appellant

herein was a party to the suit in O.S.No.133 of 2004 and suffered a decree. The appellant had challenged the exparte decree, however, that reached finality upto the Supreme Court, subsequently, Execution Petition was also filed in E.P.No.33 of 2005. On the said circumstances, the appellant is not entitled to file a separate suit, challenging the order and decretal order passed in O.S.No.133 of 2004 and also the orders passed by Executing Court, since he has been party to the said earlier proceedings.

13. Mr.N.Manokaran, learned counsel appearing for the respondents relied on the following decisions, wherein the Hon'ble Surpeme Court has categorically held that there should be no abuse of process of law and Court :

1. Ramachandra Dagdu Sonavane v. Vithu Hira Mahar, (2009) 10 SCC 273

2. Saroja v. Chinnusamy, (2007) 8 SCC 329

3. S.P.Chengalvaraya Naidu v. Jagannath, 1994 (1) SCC 1

4. T.Arivandandam v. T.V.Satyapal, (1997) 4 SCC 467

14. In T.Arivandandam v. T.V.Satyapal reported in (1997) 4 SCC 467, the Hon'ble Apex Court has held as follows :

"5...From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful-not 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 Or. VII r. 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 court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them..."

15. In S.P.Chengalvaraya Naidu v. Jagannath, reported in 1994 (1) SCC 1, the Hon'ble Supreme Court has held as follows :

<https://hcservices.ecourts.gov.in/hcservices/> "5. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case

and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

16. The exparte order passed in O.S.No.133 of 2004 on 07.04.2004 has reached its finality, which is not in dispute. Hence, after the dismissal of SLP, it is not open to the appellant, who was a party to the suit in O.S.No.133 of 2004 to re-agitate the same, by way of filing the unnumbered suit in CFR No.1030 of 2010. Therefore, the Substantial Question of Law No.1 is answered against the appellant and in favour of the contesting respondents.

17. With regard to the second Substantial Question of Law, learned counsel for the appellant raised a point that all the issues were not adjudicated in the suit in O.S.No.133 of 2004 and therefore, as contemplated under Section 2(2) of the Code of Civil Procedure, the decree obtained in O.S.No.133 of 2004 could not be construed as a decree to be executed. After the decree, having been reached its finality upto the Hon'ble Apex Court, a party to the suit cannot re-agitate the same by way of filing a separate suit. It is well settled that as per Order 7 Rule 11(a) of the Code of Civil Procedure, plaint shall be rejected, when it does not disclose a legal cause of action.

18. The unnumbered suit relating to the second appeal was filed only on 23.03.2010, after the death of Kirubamani, the defendant in the suit, by way of raising cause of action against her. A copy of the plaint reads that the cause of action and the relief sought for is only against Kirubamani, a dead person. Having filed the suit against a dead person, the appellant cannot convert the suit against her legal heirs, as the alleged cause of action in the suit is only against the said dead person Kirubamani. As found by the Court below, even the Execution Proceeding and subsequent order passed in E.P were all suppressed by the appellant in the suit, though he was a party to the proceedings. The decree passed in O.S.No.133 of 2004 reached its finality up to the Hon'ble Supreme Court and subsequent orders were also passed in the Execution Proceeding, hence, the appellant is not entitled to file a separate a suit, challenging

the decree, as he was a party to the decree passed by trial Court, which is binding on him. Hence, the second substantial question of law is also answered against the appellant.

19. On the aforesaid circumstances, the Court is of the view that there is no error or infirmity in the order and decretal order, dated 31.03.2010 made in CFR No.1030 of 2010 on the file of the Principal District Munsif, Bhavani, which was confirmed by the appellate Court, by its Judgment and Decree, dated 22.12.2010 made in A.S.No.20 of 2010 on the file of the Sub-Court, Bhavani and accordingly, this Second Appeal is liable to be dismissed, on the ground that there is no substantial questions of law, as contemplated under Section 100 of the Code of Civil Procedure.

In the result, this Second Appeal is dismissed, however, there is no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

tsvn
To

1. The Sub-Court
Bhavani.

2. The Principal District Munsif
Bhavani.

3. The Record Keeper
VR Section, High Court, Madras.

+1 cc to Mr.N.Manokaran, Advocate, sr.36607

+1 cc to Mr.V.Chandrakanthan, Advocate, sr.36717

S.A.No.532 of 2011

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