

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.04.2019

PRONOUNCED ON : 23.05.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.501 of 2013

and

MP.No.1 of 2013

1. Motilal

2. Jawaharlal

... Appellants/Defendants

Vs.

1. B.K.Babu Sahib

2. B.Shanawas

3. M.Y.Luthfiya Tabasum (minor)

4. M.Y.Omeraa Tabasum (minor)

(Minor Plaintiffs 3 and 4 are rep
by their next friend/father

N.Mohammed Yasin)

... Respondents/Plaintiffs

PRAYER : Second Appeal filed under Section 100 R/W Order XLII of C.P.C., against the judgment and decree dated 01.04.2013 made in A.S.No.29 of 2012 on the file of the Subordinate Judge, Thiruvannamalai thereby reversing the Order of the Principal District Munsif, Thiruvannamalai, dated 11.04.2012 made in the un-numbered O.S.No.NIL of 2010, wherein the Trial Court rejected the plaint at un-numbered stage itself by holding that the plaint is not maintainable.

For Appellants : Mr.N.Jothi

for M/s.B.Lenin Balu

For Respondents : Mr.R.Rajarajan

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JUDGMENT

This second appeal has been filed by the defendants against the judgment and decree passed by the Sub Judge, Thiruvannamalai in A.S.No.29 of 2012 dated 01.04.2013 reversing the order passed by the Principal District Munsif, Thiruvannamalai dated 11.04.2012 made in the un-numbered suit, wherein the plaint has been rejected.

2. The respondents had filed a suit on the file of the Principal District Munsif, Thiruvannamalai to declare that the decree in O.S.No.368 of 2000 on the file of the Principal Sub Judge, Thiruvannamalai dated 05.09.2001 is null and void and in-operative and not binding on them as against the provisions of law; to restrain the defendants, their men, etc by means of permanent injunction from claiming any right under the said impugned decree; to restrain the defendants, their men, agents etc by means of permanent injunction from interfering with the exclusive possession and enjoyment of the plaintiffs 3 and 4 over the suit property. The learned Principal District Munsif, Thiruvannamalai by the Order dated 11.04.2012 had rejected the plaint. Aggrieved by the same, the plaintiff's had filed an appeal in A.S.No.29 of 2012 on the file of the Principal Sub-Judge, Thiruvannamalai. The learned Principal Sub-Judge, Thiruvannamalai by the judgment dated 01.04.2013 had allowed the said appeal and set aside the order passed by the Trial Court and directed the plaintiffs to re-present the plaint within 30 days from the date of receipt of copy of the judgment and on such re-presentation, the Trial Court has to take the case on file and dispose of the same in accordance with law. Feeling, aggrieved, the defendants have filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the Trial Court.

4. The averments made in the plaint are in brief as follows:

(a) The first plaintiff is the father of the second plaintiff and the plaintiffs 3 and 4 are the children of the second plaintiff. Since the first plaintiff is not having any male issues, he brought up the defendants who are his nephews born to his predeceased brother Basha. The first plaintiff had purchased the suit property under the registered sale deed dated 09.08.1964 for valuable consideration of Rs.1,10,000/- from one R.V.R.Kannaih Naidu and his family and from the date of the said purchase, the first plaintiff had been in exclusive possession and enjoyment of the same. While so, the defendants being the brother's sons of the first plaintiff, requested the first plaintiff to accommodate both of them for their upcoming their business for which the first plaintiff obliged, to facilitate the same, in the partition suit filed by both of them before the Principal Sub Judge, Thiruvannamalai in O.S.No.368 of 2000 against the first plaintiff and his only daughter, the second plaintiff herein, the first plaintiff gave consent for allotment of the northern portion of the suit property to the defendants and the southern portion to the first plaintiff for enabling the defendants to have financial status in the business circle and colourable transaction with no intention to give effect to it. The said transaction is a colourable transaction is evident

from the fact that the concept of joint family is unknown and as the entire suit property was purchased by the first plaintiff out of his own funds, he was the absolute owner of the suit property in which the defendants have no right. Though, the second plaintiff has no right over the suit property, she was also impleaded as a party. Since the said decree has not been registered, it will not confer any right over the suit property to the defendants.

(b) The defendants 1 and 2 realizing that the aforesaid decree will not confer any right on them, they made a request with the first plaintiff to avail loan from the State Bank of India in the name of them. Accordingly, the first plaintiff for the sake of defendants borrowed a sum of Rs.30,00,000/- and for himself Rs.10,00,000/-, at the first instance from the State Bank of Thiruvannamalai by creating equitable mortgage for Rs.40,00,000/- on 05.07.2006. Subsequently, as the defendants requested the first plaintiff to borrow a further sum of Rs.6,00,000/-, the first plaintiff borrowed the said amount on 02.11.2006 by executing another equitable mortgage in favour of the same bank. Thereafter, the first plaintiff also obtained another loan of Rs.10,00,000/- from the same State Bank of India on 08.01.2011 by creating another equitable mortgage. The aforesaid facts also would show that the compromise decree in O.S.No.368 of 2000 dated 05.09.2001 did not come into force. The fact remains so, taking advantage of the aforesaid invalid decree, the defendants claimed right over the northern portion of the suit property. Hence, the first plaintiff had sent a notice to the defendants on 07.04.2010 calling upon them to acknowledge the title of the first plaintiff over the suit property and marked a copy of the said notice to the registering authorities. After receipt of the said notice, the defendants had sent reply notice with false averments on 05.05.2010. Hence, the first plaintiff had sent a rejoinder for which the defendants had sent a false reply on 09.07.2010. The first plaintiff was asserting the right of his ownership over the suit property has voluntarily settled the entire suit property to the knowledge of the defendants in favour of his grand daughters (plaintiffs 3 and 4) under a registered settlement deed dated 04.05.2010 and also delivered the possession of the suit property to them. In view of the false claim made by the defendants, the plaintiffs are obliged to file the present suit to declare that the decree passed in O.S.No.368 of 2010 on the file of the Principal Sub Judge, Thiruvannamalai dated 05.09.2001 is null and void and for permanent injunction to restrain the defendants from claiming any right under the said decree.

5. The learned Principal District Munsif, after considering the plaint averments and the documents filed along

with the plaint found that the plaintiffs and the defendants in O.S.No.360 of 2000 on the file of the Principal Sub Judge, Thiruvannamalai had filed a joint compromise memo in IA.No.490 of 2001 and the said petition has been allowed and subsequently a compromise final decree was passed and in the final decree, northern 1/2 share was allotted to the plaintiffs therein and the southern 1/2 share was allotted to the defendants therein and possession of respective shares also taken by the parties and hence the present plaintiffs are estopped from questioning the validity of the said decree. Accordingly, she rejected the plaint. She further found that the suit is barred by limitation. Aggrieved by the same, the plaintiffs had filed an appeal in A.S.No.29 of 2012 on the file of the Sub-Judge, Thiruvannamalai. The learned Principal Sub Judge had allowed the said appeal and set aside the order passed by the Trial Court and directed the plaintiffs to re-present the plaint within thirty days from the date of receipt of copy of the said judgment and on such representation, the Trial Court has to take the case on file and proceed in accordance with law. Feeling aggrieved, the defendants have filed the present second appeal.

6. This Court at the time of admitting the second appeal has formulated the following substantial questions of law:

1) Whether the suit is barred in view of the provisions of Order 23 Rule 3(A) of CPC?

2) Whether the plaintiffs are estopped from challenging the compromise decree?

3) Whether the findings of the First Appellate Court in reversing the order of the Trial Court by holding that the question of limitation in respect of the suit can be decided only at the final disposal is correct?

4) Whether the non compliance of the Rule 84 of Civil Rules of Practice entail the First Appellate Court to reverse the well considered judicial order of the Trial Court?

7. Heard Mr.N.Jothi for B.Lenin Balu, the learned counsel for the appellants and Mr.Rajarajan, the learned counsel for the respondents.

8. Substantial Questions of Law 1 to 4:

The learned Counsel for the appellants has submitted that the First Appellate Court erred in reversing the well considered order of the Trial Court. He further submitted that

the First Appellate Court failed to consider that both the parties filed a joint compromise petition in I.A.No.490 of 2001 in O.S.No.368 of 2000 requesting the court to pass a compromise final decree in the suit and considering the said application, the learned Principal Sub-Judge, Thiruvannamalai had allowed the said application and passed a final decree in O.S.No.368 of 2000 on 05.09.2001 allotting the northern portion of the suit property to the plaintiff therein (defendants herein) and the southern portion to the first defendant therein (first plaintiff herein) and on the same day, the parties have taken possession of their respective shares and hence the said decree acted upon. He further submitted that it is not the case of the plaintiffs that the said compromise was not valid on account of any fraud, mis-representation or undue influence or coerciveness and hence the said compromise is not lawful. He further submitted that it is not the case of the plaintiff that the said compromise is void or voidable under the Indian Contract Act, 1872. He further submitted that in view of the provisions of Order 23 Rule 3 (A) CPC, no suit shall lie to set aside a decree on the ground that the compromise on which the decree passed is not lawful. He further submitted that the compromise decree was passed on 05.09.2001 and questioning the said decree, the plaintiffs have filed the present suit, in the year 2010 i.e., after nine years and hence the suit is barred by limitation. He further submitted that as per Section 3 of the Limitation Act, it is the duty of the Court whether the suit has been filed within limitation or not and hence the findings of the First Appellate Court that the Trial Court should not have decided the question of limitation at the initial state is not proper. He further submitted that Rule 84 of Civil Rules of Practice insists that the list of exhibits filed and witnesses examined shall be annexed to the judgment but in this case, no witnesses examined, no exhibits marked and judgment also not passed and that being so, the question of non compliance of Rule 84 of Civil Rules of Practice does not arise, but the first appellate court misconstrued the said provision and held that the non compliance of the said Rule by the Trial Court is fatal. He further submitted that since the plaintiffs 1 and 2 herein being the defendants in O.S.No.368 of 2000 voluntarily gave consent for passing a compromise decree, they are estopped from questioning the said decree. He further submitted that after nine years, questioning the said compromise decree, the plaintiffs have filed the present suit and the same is clear abuse of process of law and hence the learned District Munsif had rightly rejected the plaint, but the First Appellate Court erred in reversing the well considered order of the learned District Munsif and hence he requests to allow the second appeal and set aside the judgment and decree passed by the First Appellate Court and restore the order passed by the learned District Munsif, Thiruvannamalai.

9. The learned counsel for the appellants in support of his contentions relied upon the following decisions:

- i) Pushpa Devi Bhagat (Dead) through LR.Sadhna Rai (SMT) Vs. Rajinder Singh and Others (2006) 5 SCC 566
- ii) P.T.Thomas Vs. Thomas Job- (2005) 6 SCC 478
- iii) Rama Narang Vs. Ramesh Narang and another (2006) 11 SCC 114
- iv) R.Rajanna Vs. S.R.Venkataswamy and Others (2014) 15 SCC 471.

10. Per Contra, the learned counsel for the respondents/plaintiffs has submitted that as per the sale deed dated 09.08.1964, the first plaintiff is the absolute owner of the suit properties. He further submitted that since the parties are muslims, the concept of joint family is unknown to Mohammedan law and hence the defendants are not having any right in the suit properties. He further submitted that since the defendants are the sons of the deceased brother of the first plaintiff and he is not having any male issue, he brought up the defendants. He further submitted that since the defendants requested the first plaintiff to accommodate them for their upcoming in the business, the first plaintiff obliged the same and in order to give a status in the business circle, the first plaintiff had agreed to pass a compromise decree in O.S.No.368 of 2000. He further submitted that even passing of such a compromise decree, the first plaintiff alone has been dealing with the suit properties by creating equitable mortgage with the State Bank of India, Thiruvannamalai and hence, the said decree was not at all acted upon. He further submitted that since the defendants are not having right in the suit properties and only for the first time through the said compromise decree, a right was created in favour of the defendants, as per Section 17 of the Registration Act, the said decree ought to have been registered but the said decree has not been registered and hence no right passed on to the defendants through the said compromise decree and therefore, the said decree is not enforceable. He further submitted that the Court had straight away passed a compromise final decree and the same has not been engrossed on the non-judicial stamp papers and hence on that ground also the said decree is not enforceable. He further submitted that since the plaintiffs 3 and 4 are not parties in O.S.No.368 of 2000, the said compromise decree will not bind upon them. He further submitted that the question of limitation is a mixed question of fact and law and hence the learned District Munsif should not have rejected the plaint before giving opportunity to the plaintiffs to adduce evidence in support of their case. He further submitted that taking into consideration of the aforesaid facts, the First Appellate Court had rightly set aside the order passed by the learned District Munsif and gave a

direction to number the suit and proceed in accordance with law and in the said factual findings, this Court cannot interfere and hence he prayed to dismiss the second appeal.

11. The learned counsel for the respondents/plaintiffs, in support of his contentions relied upon the following decisions:

- i) Bhoop Singh Vs. Ram Singh Major and others - (1995) 5 SCC 709
- ii) Bimal Kumar and another Vs. Shakuntala Debi and Others- (2012) 3 SCC 548
- iii) Siddalingeshwar and Others Vs. Virupasgouda and Others - AIR 2003 KANT 407
- iv) Arul Nayagam and another Vs. Y. Subba Rao and others in O.S.A Nos. 246 to 248 of 2011 on the file of this Court dated 13.09.2011
- v) Smt. Suraj Kumari Vs. District Judge, Mirzapur and Others AIR 1991 (Allahabad) 75.

12. Order 7 Rule 11 of CPC says under what circumstances, the plaint shall be rejected which reads thus:

" Rejection of Plaint : The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9;"

13. A perusal of Order 7 Rule 11 of CPC makes it clear that for deciding the issue whether the plaint has to be rejected, only the plaint averments have to be taken into consideration. The Trial Court can invoke the provisions of

Order 7 Rule 11 of CPC at any stage of the suit either before numbering the suit or after numbering the suit.

14. In T.Arivandandam Vs. T.V. Sathya pal and another - AIR 1977 SC 2421, the Hon'ble Supreme Court has observed that 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 Order 7 Rule 11 CPC 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 Chapter X CPC. The Hon'ble Supreme Court further held that an activist judge is the answer to irresponsible law suits. The Trial Court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage.

15. In this case, the plaintiffs 1 and 2 are parties in the earlier suit i.e., in O.S.No.368 of 2000. In the said suit, they voluntarily entered into a compromise with the plaintiffs therein (defendants herein) and based on the said compromise, a final decree was passed directing that the plaintiffs therein shall take northern $\frac{1}{2}$ share of the suit property and the first defendant therein (the first plaintiff herein) shall take southern $\frac{1}{2}$ share in the suit property. According to the plaintiffs, the said transaction is only a colourable transaction. In such a case, they should have immediately approached the concerned court and file a petition to set aside the said decree but they have not chosen to do so.

16. In Pushpa Devi Bhagat (Dead) through LR.Sadhna Rai (SMT) Vs. Rajinder Singh and Others (cited supra) the Hon'ble Supreme Court has held that once the parties signed in the compromise petition, agreeing to pass a decree based on the said compromise, the said decree bind upon them.

17. In P.T.Thomas Vs. Thomas Job (cited supra) the Hon'ble Supreme Court has held that the judgment by consent or default is as effective as the contested judgment and the principle of estoppel will apply.

18. In Rama Narang Vs. Ramesh Narang and another (cited supra) the Hon'ble Supreme Court in Paragraph No.23 has observed as follows:

" 23. The question which was before the Court in Babu Ram Gupta case was limited to the issue whether the appellant had given any undertaking to the Court, either expressly or impliedly, which he had violated. In other words it was limited to the second category of cases

mentioned under Section 2(b) of the Act. The Court was not called upon to decide whether there was any contumacious conduct as envisaged by the first category of cases under that section. The observations made in that regard, are strictly speaking, obiter. The Court was not called upon to consider nor did it construe the language of Section 2 (b) of the Act. If we were to accept the observations of the Court as an enunciation of the law, it would run contrary to the express language of the statute. As we have earlier noted, the section itself provides that wilful violation of any order or decree, etc would tantamount to contempt. A Compromise decree is as much a decree as a decree passed on adjudication. It is not as has been wrongly held by the Calcutta High Court in Nisha Kanto Roy Chowdhury merely an agreement between the parties. In passing the decree by consent, the Court adds its mandate to the consent. A consent decree is composed of both a command and a contract. The Bombay High Court's view in Bajranglal Gangadhar Khemka correctly represents the law that a consent decree is a contract with the imprimatur of the court. "Imprimatur" means "authorized" or "approved". In other words by passing a decree in terms of a consent order the court authorises and approves the course of action consented to. Moreover, the provisions of Order 23 Rule 3 of the Code of Civil Procedure require the court to pass a decree in accordance with the consent terms only when it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement".

19. From the aforesaid decision, it is clear that a compromise decree is as much a decree as a decree passed on adjudication. It is also clear that a consent decree is composed of both a command and a contract and it is also clear that by passing a decree in terms of consent order, the court authorises and approves the course of action consented to. Therefore, the said decree is executable under the Code of Civil Procedure.

20. In R.Rajanna Vs. S.R.Venkataswamy and Others (cited supra) the Hon'ble Supreme Court in Paragraph Nos.11 and 12 has held as follows:

" 11. It is manifest from a plain reading of the above that in terms of the proviso to Order 23 Rule 3 where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the

parties, the Court before whom such question is raised, shall decide the same. What is important is that in terms of explanation to Order 23 Rule 3, the agreement or compromise shall not be deemed to be lawful within the meaning of the said Rule is the same is void or voidable under the Contract Act, 1872. It follows that in every case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or compromise is lawful has to be determined by the court concerned. What is lawful will in turn depend upon whether the allegations suggest any infirmity in the compromise and the decree that would make the same void or voidable under the Contract Act. More importantly, Order 23 Rule 3-A clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. This implies that no sooner a question relating to lawfulness of the agreement or compromise is raised before the Court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone who can examine and determine that question. The Court cannot direct the parties to file a separate suit on the subject for no such suit will lie in view of the provisions of Order 23 Rule 3-A CPC. That is precisely what has happened in the case at hand. When the appellant filed OS.No.5326 of 2005 to challenge the validity of the compromise decree, the court before whom the suit came up rejected the plaint under Order 7 Rule 11 CPC on the application made by the respondents holding that such a suit was barred by the provisions of Order 23 Rule 3-A CPC. Having thus got the plaint rejected, the defendants (respondents herein) could hardly be heard to argue that the plaintiff (appellant herein) ought to pursue his remedy against the compromise decree in pursuance of OS.No.5326 of 2005 and if the plaint in the suit has been rejected to pursue his remedy against such rejection before a higher court.

12. The upshot of the above discussion is that the High Court fell in a palpable error in directing the plaintiff to take recourse to the remedy by way of a separate suit. The High Court in the process remained oblivious of the provisions of Order 23 Rules 3 and 3-A CPC as also orders passed by the City Civil Court rejecting the plaint in which the trial court had not only placed reliance upon Order 23 Rule 3-A but also the decision of the Court in Pushpa Devi case holding that a separate suit was not maintainable and that the

only remedy available to the aggrieved party was to approach the Court which had passed the compromise decree. The following passage from the decision of Pushpa Devi Case is, in this regard, apposite (SCC P 576 para 17)

17... Therefore the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the Court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21.08.2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27.08.2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code".

We may also refer to the decision of this Court in Banwari Lal Vs. Chando Devi where also this Court had observed: (SCC p.588 para 13)

" 13. As such a party challenging a compromise can file a petition under Proviso to Order 23 Rule 3, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Order 43 Rule 1-A of the Code"

21. From the aforesaid decision, it is clear that as per the proviso to Order 23 Rule 3 of CPC where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the Court before which such question is raised, shall decide the same. What is important is that in terms of explanation to Order 23 Rule 3 of CPC, the agreement or compromise shall not be deemed to be lawful within the meaning of the said Rule is the same is void or voidable under the Contract Act, 1872. It is also clear that in every case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or compromise is lawful has to be determined by the court concerned. Further, it is clear that Order 23 Rule 3-A CPC clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. Further it is clear that the question relating to lawfulness of the agreement or compromise is raised before the Court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone can examine and determine that question. The Court cannot direct the parties to file a separate suit on the subject as no such suit will lie in view of the provisions of Order 23 Rule 3-A CPC. Therefore, in view of the aforesaid decision of the Hon'ble Supreme Court, the plaint has to be rejected. So, the Trial Court has rightly rejected the plaint.

22. In Bhoop Singh Vs. Ram Singh Major and others (cited supra) the Hon'ble Supreme Court in Paragraph No.13 has held as follows:

" In other words, the Court must enquire whether a document has recorded unqualified and unconditional words of present demise of right, title and interest in the property and included the essential terms of the same; if the document, including a compromise memo, extinguishes the rights of one and seeks to confer right, title or interest in praesenti in favour of the other relating to immovable property of the value of Rs.100 and upwards, the document or record or compromise memo shall be compulsorily registered" .

23. From the aforesaid decision, it is clear that if a compromise memo, extinguishes the rights of one and seeks to confer right, title or interest in praesenti in favour of the other relating to immovable property of the value of Rs.100 and upwards, the document or record or compromise memo shall be compulsorily registered. In this case, according to the plaintiffs, only through compromise decree passed in O.S.No.368 of 2000, right, title and interest over the suit property was created in favour of the defendants 1 and 2 and hence the said

compromise decree should have compulsorily registered. The question as to whether the said decree is compulsorily registerable will arise only when the party seeks to enforce the said decree. In this case, the defendants have not filed any execution petition seeking to enforce the compromise decree. Further, the plaintiffs also have not filed a suit to declare their title over the suit properties on the ground that the said compromise decree was not registered and hence no rights or title or interest transferred to the defendants. Whereas this suit has been filed to declare the said compromise decree is null and void not and binding upon the plaintiffs. As already pointed out that this kind of suit will not lie in view of the specific bar created under Order 23 Rule 3A of CPC. Therefore, the aforesaid decision will not help the plaintiffs.

24. In Bimal Kumar and another Vs. Shakuntala Debi and Others (cited supra) in a suit for partition a compromise final decree was passed. Subsequently, legal representatives of one of the parties had filed a fresh partition suit and the said suit was dismissed. As against which an appeal was filed and the same was dismissed for want of prosecution. At this juncture, the respondents therein filed an execution petition seeking execution of the compromise decree passed in the earlier suit. An objection was raised by the appellant that the execution proceedings were barred by limitation. Under the said circumstances, the Hon'ble Supreme Court has held that the compromise decree had a status of the final decree and it is capable of execution immediately but execution petition was filed after expiry of the limitation and hence the execution petition is liable to be dismissed. Whereas, in this case, no such execution petition has been filed and therefore the aforesaid decision will not help the plaintiffs.

25. In Siddalingeshwar and Others Vs. Virupasgouda and Others (cited supra) a compromise decree was passed in O.S.No.60 of 1994 and subsequently another suit in O.S.No.176 of 1999 was filed seeking partition. In that suit, the defendants contended that in view of the provisions of Order 23 Rule 3A CPC, the subsequent suit is barred. Under the said facts and circumstances of the case, the Karnataka High Court held that in the earlier suit at the time of passing consent decree, the interest of minor children was not safeguarded. Further, the earlier suit was filed in a representative capacity and that being so, Order 23 Rule 3B of CPC should have been complied with before passing compromise decree, but in that case, the said provisions not followed and hence it was held that the earlier decree is not valid, but, in this case, according to the first plaintiff, he was the absolute owner of the suit properties as per the sale deed dated 09.08.1964 and hence the provisions of Order 23 Rule 3B of CPC will not apply to this case. Therefore,

the aforesaid decision also will not help the plaintiffs.

26. In Arul Nayagam and another Vs. Y.Subba Rao and others (cited supra) the respondents filed a suit in C.S.No.1042 of 2008 before this Court to declare the compromise decree dated 30.04.2001 in C.S.No.277 of 1999 is null and void. The defendants filed an application in A.No.5792 of 2009 to reject the said plaint alleging that the suit is barred under Order 23 Rule 3A of CPC. The learned Single Judge upon consideration of rival findings since several things happened after the compromise decree, the objections raised by the appellants had been fall in compromise order and accordingly dismissed the said application. As against the same, an appeal in O.S.A.Nos.246 to 248 of 2011 filed, the Hon'ble Division Bench has held that in view of the subsequent developments and non-performance of the obligations and rendering the compromise decree inoperative had given rise to fresh cause of action and therefore there is no force in the contentions that the respondents are trying to reagitate the same issues and accordingly dismissed the said appeals. The said appeals arose out of the interlocutory orders passed in the suit. Further, the facts and circumstances are totally different, hence, the aforesaid decisions will not help the plaintiffs.

27. In Smt. Suraj Kumari Vs. District Judge, Mirzapur and Others (cited supra) the Allahabad High Court has held that Order 23 Rule 3 A of CPC is not applicable to stranger to the compromise decree. It was further held that the relief sought by stranger to set aside the compromise decree, which affects his rights is not barred by the provisions of Order 23 Rule 3 A of CPC. In this case, though the plaintiffs 3 and 4 are not parties in the previous suit i.e., in O.S.No.368 of 2000, they claimed right only through the first plaintiff. Therefore, they cannot contend that they are the strangers to the compromise decree passed in O.S.No.368 of 2000. Therefore, the aforesaid decision will not help the plaintiffs.

28. It is also to be pointed out that the learned District Munsif had rejected the plaint without examining the witnesses and marking the documents as exhibits. Under the said circumstances, Rule 84 of Civil Rules of Practice will not apply. Therefore, the findings of the First Appellate Court that the order passed by the learned District Munsif is suffered for not annexing the list of witnesses and exhibits is contrary to law.

29. It is also to be pointed out that as per Section 3 of the Limitation Act, the duty is cast upon the court to see whether the suit has been filed within limitation or not? So, even at the initial stage, the Court is having power to see whether the suit has been filed within the limitation or not,

but ignoring the said position of law, the First Appellate Court has held that the learned District Munsif should not have decided the question of limitation at the initial stage itself. As per the limitation Act, the suit for declaratory relief has to be filed within three years from the date of cause of action arises. In this case, the compromise decree was passed on 05.09.2001. Whereas, the present suit has been filed on 13.08.2010 i.e., after nearly nine years. So, it is clear that the suit is barred by limitation. Therefore, looking from any angle, the suit is not maintainable and taking into consideration of the aforesaid facts, the learned District Munsif has rightly rejected the plaint, but the First Appellate Court erroneously reversed the findings of the Trial Court. It is also to be pointed out that only in the case of returning the plaint, the court can direct the plaintiff to re-present the plaint whereas in this case the plaint was rejected but even without considering the said fact, the First Appellate Court directed the plaintiffs to re-present the plaint within thirty days from the date of receipt of copy of the judgment. It is not known how the plaintiffs can re-present the plaint when the same is already before the Court. Therefore, the said order also not in accordance with law.

30. For the aforesaid reasons, the substantial questions of law are answered in favour of the appellants/defendants. Therefore, the second appeal has to be allowed. Accordingly, the second appeal is allowed. No costs. The Judgment and decree passed by the First Appellate Court are set aside. The Order passed by the learned Principal District Munsif, Thiruvannamalai, in rejecting the plaint is restored. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Vv

To

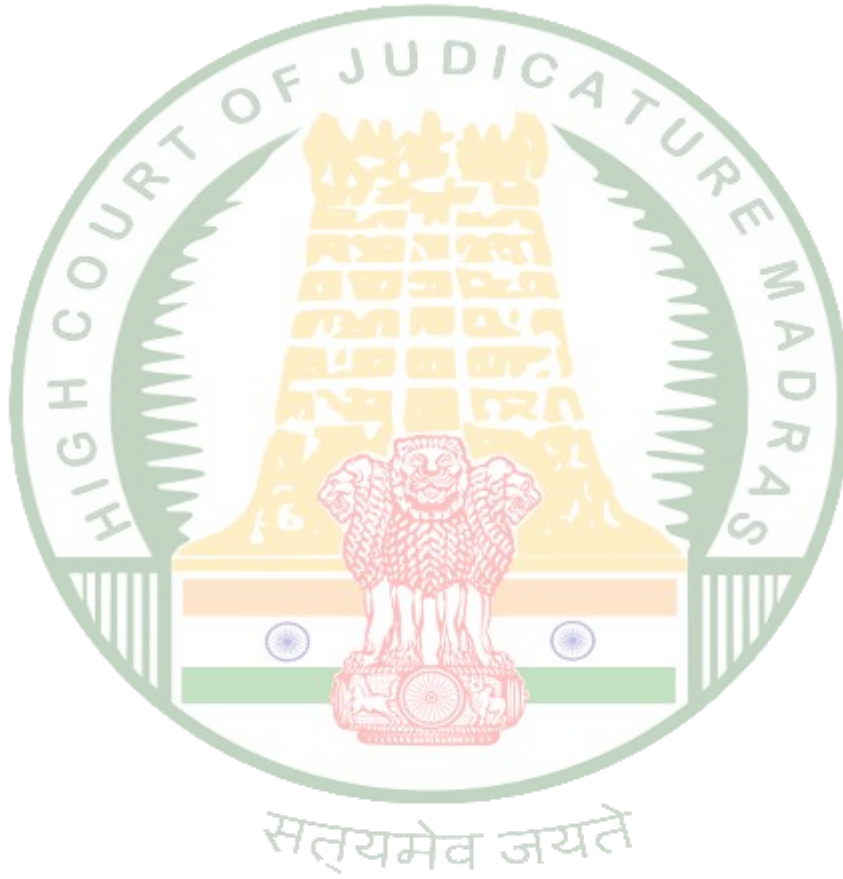
1. The Subordinate Judge,
Thiruvannamalai.
2. The Principal District Munsif,
Thiruvannamalai.

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3. The Section Officer, VR Section,
High Court, Madras.

S.A.No.501 of 2013
and
MP.No.1 of 2013

SR(CO)
GN(22/01/2020)



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