

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	08.03.2019
Pronounced On	20.03.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.1454 of 2014
and
M.P.No.1 of 2014

Pandurangan

... Petitioner

Vs.

1.R.Jayarama Chettiar

2.Selvi

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 27.01.2014 in I.A.No.12 of 2010 in O.S.No.60 of 2009 on the file of District Munsif Cum Judicial Magistrate, Portonovo.

For Petitioner : Mr.T.Sezhian

For Respondents : Mr.D.Baskar for R1

R2 - given up

ORDER

The petitioner is aggrieved by the fair and decretal order dated 27.01.2014 passed in I.A.No.12 of 2010 in O.S.No.60 of 2009 passed by the District Munsif cum Judicial Magistrate Portonova.

2.By the impugned order the lower court has allowed the application filed by the first respondent seeking to reject the plaint on the ground of res judicata under Section 11 of CPC read with Order 9 Rule 13 of CPC.

3.The petitioner was a purchaser of the property from the second respondent herein after a preliminary decree was passed in O.S.No.298 of 1996 in respect of land which is the subject matter of the suit in O.S.No.60 of 2009. The petitioner filed O.S.No.60 of 2009 against the respondents for the following relief:

"To pass an order in favour of plaintiff and as against the defendants a decree declaring plaintiff's absolute title to the suit property, and for consequential permanent injunction restraining the 1st defendant from in any manner interfering with plaintiff's possession and enjoyment of the suit property, for costs of the suit and for such further and other relief."

4. In the plaint, the petitioner has pleaded that the preliminary decree in O.S.No.298 of 1996 was not binding on him as it was collusive decree. Therefore, he was not precluded for filing a fresh suit for declaring his rights over the property.

5. The first respondent filed the above application stating that the suit was barred under law and therefore is liable to be dismissed. The petitioner on the other hand stated that he was not a party to the said suit and that since the preliminary decree was obtained by the first respondent by exercising fraud on the Court, it is not binding. It was further submitted that the purchase of land by him was not hit by the doctrine of lis pendens for the same reason and therefore there was no bar on the court to decide the dispute.

6. The court below concluded that the defences raised by the petitioner in the said application were untenable as the purchase has been made after a preliminary decree was passed in O.S.No.298 of 1996 and since the petitioner was claiming title to the property through the second respondent who was a party to O.S.No.298 of 1996. Aggrieved by the order the petitioner has filed the present Civil Revision Petition.

7. Heard the learned counsel for the petitioner and the respondent. The learned counsel for the petitioner referred the decision of this Court in **Nagomi vs Evangeline** 2018 (6) CTC 189 income 100. where in the facts of the case court held that the suit was not barred by the Principle of Res judicata in the peculiar facts of the case.

8. The decision rendered in the above case is not relevant to the facts of the case. In that the case, the plaintiff had originally filed in O.S.No.115 of 1990 and had sought for declaratory relief against the first defendant.

9. However, the first defendant who had created obstruction had voluntarily removed the obstruction. Therefore, the suit had become infructuous. There was no discussion or finding rendered on merits. The court therefore did not give any finding on the issue of declaration of title and therefore no finding rendered over the title in the originally suit filed in O.S.115 of 1990.

10. The Court therefore held that since the suit was dismissed that rendering without specific finding on the relief claimed between the parties, cannot come in the way filing a fresh suit. Under those

circumstances, the Court held that the subsequent suit would not be barred by as res judicata.

11. Therefore, the order of the lower Court does not warrant interference. However, this is not case in the present case. Remedy available to the petitioner is to ask for refund of the amount from respondents instead of filing the suit to declare title over property which was transferred after the preliminary decree was passed in O.S.NO.298 of 1996.

12. In this context the decision of the Hon'ble Supreme Court in **Saroja vs Chinnusamy (Dead) by L.R.S and another** in (2007) 8 SCC 329 is relevant. The Court held as follows:

13. The Hon'ble Supreme Court distinguished the decision rendered in **A.S.Mani vs Udipi Hari Niwas**. (1996) 1 Mad LJ 171 and affirmed the views in **Arukkani Ammal vs Guruswamy** (1987) 100 LW 707. This Court had held as follows:

"It is also difficult to appreciate the view taken by the District Munsif that ex parte decree cannot be considered to be 'full decree on merits'. A decree which is passed ex parte is as good and effective as a decree passed after contest. Before the ex parte decree is passed, the court has to hold that

the averments in the plaint and the claim in the suit have been proved. It is, therefore, difficult to endorse the observation made by the Principal District Munsif that such a decree cannot be considered to be a decree passed on merits. It is undoubtedly a decree which is passed without contest; but it is only after the merits of the claim of the plaintiff have been proved to the satisfaction of the trial court, that an occasion to pass an ex parte decree can arise."

14. In paragraph 16, the Hon'ble Supreme Court held as follows:

"We are in full agreement with this view of the Madras High Court holding that a decree which is passed ex parte is as good and effective as a decree passed after contest. A similar view has also been expressed by a Division Bench of the Allahabad High Court in the case of Bramhanand Rai Vs. Dy. Director of Consolidation, Ghazipur [AIR 1987 All 100]. However, the learned counsel for the appellant relying on a decision of the Madras High Court, namely, A.S. Mani (deceased) by L.Rs. Thirunavukkarasu & Ors. Vs. M/s. Udipi Hari Ni was represented by Partners & Ors. [1996 (1) Madras Law Journal 171] invited us to hold that the principle of res judicata would not apply as the former suit was decided ex parte. This decision, in our view, is distinguishable on facts. In that decision, the observation that the ex parte decree shall not operate as res judicata was made on the basis that the earlier petition which was filed for eviction against the tenants was dismissed only on technical grounds, and after keeping this fact in mind only, the Madras High Court held that the ex parte decree would not operate as res judicata inasmuch as the petition was not heard and finally decided as contemplated in Section 11 of the CPC. Therefore, in our view, since condition No. (iv), as noted herein before, was satisfied, we hold that the principles of res judicata would be applicable in the present case as held by the First Appellate Court and also affirmed by the High Court."

15. In view of the above decision of the Hon'ble Supreme, the observations in the impugned order passed by the lower court does not warrant interference. However, liberty is given to the petitioner to recover the amount from the vendor purchase of the property and recover the amounts in accordance with law by amending the relief in the suit for recovery of the amount. If advised, the petitioner may amend the prayer for such relief in the suit within a period of four weeks from the date of receipt of a copy of this order. Therefore, the suit is restored to file of the court for the aforesaid purpose alone to facilitate the petitioner to amend the plaint. If the petitioner amend the plaint, the respondents shall file their written statement within four weeks thereafter.

16. The present Civil Revision Petition is dismissed with above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

20.03.2019

Index :Yes/No
Internet :Yes/No

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C.SARAVANAN, J.

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To

- 1.The District Munsif Cum Judicial Magistrate,
Portonovo.
- 2.The Section Officer, VR Section,
High Court, Madras.



Pre-delivery order in

C.R.P.(PD).No.1454 of 2014
and
M.P.No.1 of 2014

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