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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 05.06.2020

JUDGMENT PRONOUNCED ON : 30.11.2020

CORAM: THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.NO.224 OF 2007

AND

MP.NOS.1 & 2 OF 2007

P.Suresh

...Appellant/Appellant/Plaintiff

Vs

1.R.Rangasamy

2.R.Saravanakumar

3.R.Mayilvahanam

.... Respondents/Respondents/Defendants

Prayer :-

Second Appeal filed under Section 100 of CPC, praying to allow the Second Appeal and set aside the judgment and decree passed in A.S.No.146 of 2001 dated 28.06.2006 on the file of the Sub Court, Namakkal, confirming the judgment and decree passed in O.S.No.476 of 1999, dated 24.04.2001 on the file of the Additional District Munsif Court, Namakkal.

For Appellant : Mrs.Chitra Sampath, Senior Counsel
Assisted by Mr.S.Saravanan

For Respondents: Mr.T.Dhanyakumar [R1 to R3]

JUDGMENT

The plaintiff in O.S.No.476/1999, on the file of the Additional District Munsiff Court, Namakkal, is the appellant herein. He laid the suit for declaring that the decree passed in O.S.93/1989 on the file of the same court - is not binding on him, and for other ancillary reliefs. He lost the suit successively both before trial court and the first Appellate Court. Rival parties would be referred to by their ranks before the trial Court.



I The Pleadings:

2. The case of the plaintiff can be divided into two parts: There is no dispute regarding facts that led to the filing of the present suit. This is the first part. And, the dispute he has raised in this suit constitutes the second part.

(a) The undisputed facts:

- The father of the first defendant is one Ramasamy. Ramasamy along with his sons had instituted O.S.93/1989 against a certain Kandasamy Gounder, and his two sons Appu alias Palaniappan, and Durai as defendants 1 to 3, for recovery of possession of the suit property and for mandatory injunction to remove certain obstruction in the pathway. The plaintiffs (Ramasamy and his sons) alleged that the suit property belonged to them and that the defendants (Kandasamy Gounder and his sons) had encroached into the suit property. The copy of the plaint is Ext.A2.
- During the pendency of O.S.93/1989, both Ramasamy (first plaintiff) and Appu alias Palanisamy (the second defendant) died. Consequent to Palanisamy's death, his widow and children were brought on record as defendants 4 to 6. Of them, the present plaintiff was arrayed as the 6th defendant. He was a minor at that relevant time, and his mother, the 4th defendant was appointed as his guardian.
- The plaintiff's grandfather (Kandasamy, the first defendant in O.S.93/1989) alone filed the written statement. None of the other defendants contested the suit. In other words, the guardian of the 6th defendant-minor did not file any written statement on his behalf and contested the suit. Ultimately, on 30-06-1993, an exparte decree came to be passed in O.S.93/1989. Copy of this decree is Ext.A-3.

(b) The Dispute:

- The plaintiff's mother as his guardian had not bestowed adequate care to defend his interest in O.S.93/1989, and she had been callous and negligent in failing to contest the suit and in protecting the right of the plaintiff in the suit property, which has resulted in the plaintiff suffering an exparte decree (Ext.A-3) there.
- While so for executing the decree passed in O.S.93/1989, the defendants herein have laid REP.No.186/97 for delivery of suit property in O.S.93/1989. It is only now did the present plaintiff come to know of what had happened in the earlier suit. The plaintiff soon made enquiries with his paternal grandfather, the first defendant in OS.93/1989, to



which the latter would say that since that suit was only for a right of pathway, he did not offer a contest.

Since the present plaintiff's interest was not defended in the earlier suit, the present suit is laid to declare that the decree passed in O.S.93/1989 is not binding on him and to cancel it.

3. The case of the defendants (plaintiffs in O.S.93/1989) was that the suit property originally belonged to their father. Be that as it may, the grandfather of the present plaintiff and the former's two sons (the defendants 1 to 3 in O.S.93/1989) had encroached into their property, and hence the earlier suit was necessitated for recovery of the property so encroached. The plaintiff's grandfather had filed his written statement, and contested the suit. Subsequently, on the death of the second defendant (father of the plaintiff here), his heirs were impleaded. The counsel who appeared for the other defendants, entered appearance for defendants 4 to 6, the heirs of the deceased second defendant as well. The mother of the plaintiff was appointed as his guardian in that suit. Ultimately, a decree came to be passed and it has become final. Subsequently, these defendants had filed REP.No.186 of 1997 for executing the decree passed in O.S.93/1989. In the E.P, the plaintiff was set exparte. To set aside the exparte order the plaintiff had filed REA 101/1998 and 102/1998 again through the same counsel. The present suit, however, came to be laid after a year, on 04.8.1999. It is obvious that the present suit is instituted only to delay the execution of the decree. The suit is also barred by limitation.

II The trial and the first appeal:

4.1 The matter went to trial, in which the plaintiff has examined himself as P.W.1 and produced Ext.A1 to Ext.A5. On the side of defendants, the first defendant was examined as D.W.1 and his documents are marked Exts.B1 to Ext.B3. The trial Court has taken a view that, if at all the plaintiff herein is aggrieved by the exparte decree passed in O.S.93/1989, he ought to have moved the Court which passed the decree and had the same set aside, and that an independent suit is not maintainable.

4.2 When the contest was taken to the first appellate court at the instance of the plaintiff, the Court primarily held that the plea of the plaintiff fell under Order XXXII Rule 3A(2) CPC, and that he has not established how he was prejudiced by the decree in O.S.93/1989. It proceeded to hold that the present suit is laid only when a petition to execute the decree in O.S.93/1989 was filed, and given its context and timing, the institution of the present suit was more a ploy to defeat and delay the execution of the decree in O.S.93/1989.



III The second appeal:

5. Undeterred, the plaintiff has come with this second appeal. It is admitted for considering the following substantial question of law :

Whether exparte decree unrepresented by guardian is not vitiated under law by Order 32 Rule 11 and Order 32 Rule 3A(1) and (2) of Civil Procedure Code and natural justice, since denial of apparently to defend the case on behalf of minor sixth defendant (appellant herein)?

(a) The Arguments:

6. The pointed contention of the learned senior counsel for the plaintiff is that when once the plaintiff's mother failed to contest O.S.93/1989 to protect his interest and defaulted in discharging her duty as a guardian of the minor, the court ought to have removed her from guardianship and should have appointed a new guardian in terms of Order XXXII Rule 11 CPC. This, in other words, would be similar to a situation where no guardian was appointed under Order XXXII Rule 3 CPC. Placing reliance on the authorities in Bhagabat Sahu Vs.Parbati Samal and others [AIR 1982 Orissa 186]; Nathumal Vs. Mohd. Nazir Beg and another [AIR 1955 Allahabad 584]; Khursheed Ahmad and Anr. Vs. Gulzar Ahmad and Or. [AIR 2006 Allahabad 280]; Rambadan Rai and others Vs. Paltan Paswanand other [AIR 1977 Patna1], the learned counsel argued that when the court has failed to appoint a guardian for the minor-defendant, then the procedural lapse is not a mere irregularity and it renders the decree passed against him in O.S.93/1989 void and non est.

7. Heard the counsel for the respondent. He defended the line of reasoning of the first appellate court.

(b) The discussion:

8. This Court observed a strategic shift in the core contention of the plaintiff. He started with an allegation that his mother had been grossly negligent in not defending his interest in O.S.93/1989. However, when he arrived at this Court, this initial contention changed into one of the trial court failing to remove his mother as his guardian for her negligence. To state it differently, when the match commenced, it was mother's default, but in the end overs of the game, it became Court's default. The strength and the sustainability of this newly contrived stratagem will be tested in the rest of the paragraphs.

9. To appreciate the argument advanced, it is now necessary to reproduce Order XXXII Rule 3, 3A, and 11 CPC :



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ORDER XXXII	Provision
Rule 3	Guardian for the suit to be appointed by court for minor defendant- (1)Where the defendant is a minor, the court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for suit for such minor. (2)An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by plaintiff. (3)Such application shall be supported by an affidavit verifying the fact that the proposed guardian has not interest in the matters in controversy in the suit adverse to that of the minor and that he is fit person to be so appointed. (4)No order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf of where there is no such guardian, upon notice to the father or where there is no father or mother or other natural guardian to the person in whose care the minor is and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule. (4A)The court may, in any case, if it things fit, issue notice under sub-rule(4) to the minor also.



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ORDER XXXII	Provision
	(5)A person appointed under sub-rule(1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree.
Rule 3A	Decree against minor not to be set aside unless prejudice has been caused to his interest (1)No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject matter of the suit adverse to that of the minor, but the fact that by reason of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interest of the minor, shall be ground for setting aside the decree. (2)Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interest of the minor.



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ORDER XXXII	Provision
Rule 11	Retirement, removal or death of guardian for the suit (1)Where the guardian for the suit desires to retire or does not do this duty or where other sufficient ground is made to appear, the court may permit such guardian to retire or may remove him and may make such order as to costs as it thinks fit. (2)Where the guardian for the suit retires, dies or is removed by the court during the pendency of the suit, the court shall appoint a new guardian in his place.

These provisions contemplate: That a guardian shall be appointed for a minor-defendant. If he fails to do his duty as a guardian, Court may remove him and appoint a fresh guardian. Cumulatively they signify the procedural anxiety that a minor-defendant shall have a guardian appointed by the Court to defend his interest in the suit. Another aspect which is visible is that Order XXXII Rule 3, which mandates the initial appointment of a guardian for a minor-defendant, does not spell out the consequence of the non-appointment of a guardian. Similar is Order XXXII Rule 11, which deals inter alia with the removal of a guardian and appointment of a new guardian.

10. The quintessential content of the appellant's contention is whether Order XXXII Rule 11 is mandatory, and whether non-appointment of a new guardian under Rule 11(2) is same as the non-appointment of a guardian under Rule 3. For understanding of these procedural provisions, the learned counsel for the plaintiff relied on few authorities, whose ratio may now be summarized:

- Where the minors are not adequately represented in an action right from the inception of the suit, then whatever that has occasioned in the suit is a nullity; If however, a guardian is appointed in terms of Order XXXII Rule 3 CPC, then whatever that is done, which includes a decision not to contest the suit, falls within the prudent management of the affairs of the minor (Bhagabat Sahu Vs.Parbati Samal and others, AIR 1982 Orissa 186).



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● The procedure contemplated under Order XXXII Rule 3 is mandatory and it cannot be dispensed with (Nathumal Vs. Mohd. Nazir Beg and another (AIR 1955 Allahabad 584; and Khursheed Ahmad and Anr. Vs. Gulzar Ahmad and Other, AIR 2006 Allahabad 280). Where the notice issued to the guardian is defective and no order is made under Order XXXII Rule 3 CPC, the decree passed against the minor is void (Nathumal Vs. Mohd. Nazir Beg and another, AIR 1955 Allahabad 584).

It is instantly noticeable that even the authorities which the plaintiff's counsel had relied on have drawn a distinction between a non-appointment of a guardian and a guardian's negligence in not performing his/her duty.

11. Judicial thinking on the Code of Civil Procedure in general, and the procedure insisting on the appointing a guardian for a minor in particular, are not as narrow as it has been attempted to be projected by the learned counsel for the plaintiff/appellant. It can be demonstrated if the arguments of the plaintiff's counsel are routed through an understanding of the procedural law.

12. A right to defend an action is a substantive right, and the procedural law largely regulates how that right must be exercised. The idiomatic common cliché to describe a procedural law is that it is a handmaid of justice, from which it can be derived that the role of the procedural law is circumscribed by the aid it can provide for enthroneing justice, and no more. About a century and two scores ago In Re Coles [(1907)1 KB 1, 4], Collins M.R. wrote:

"...Although I agree that a Court cannot conduct its business without a code of procedure, I think that the relation of rules of practice to the work of justice is intended to be that of a handmaid rather than mistress, and the Court ought not to be so far bound and tied by rules, which are after all only intended as general rules of procedure, as to be compelled to do what will cause injustice in the particular case."

Justly apprehensive and alive to the fact that a conservative Bench and the Bar might honour this dictum in its breach than in its observance, Charles E. Clark, a former Dean of the School of Law, Yale University, observed in his lecture, 'The Handmaid of Justice', [23 Washington University Law Review, (1938) page 297]:



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"...A handmaid, no matter how devoted, seems never averse to becoming mistress of a household should opportunity offer. Just so do rules of procedure tend to assume a too obtrusive place in the attentions of judges and lawyers-unless, indeed, they are continually restricted to their proper and subordinate role..."

These views are frequently echoed by the Hon'ble Supreme Court, and in *Ashok Kumar Kalra v. Surendra Agnihotri* [(2020) 2 SCC 394 : (2020)1 SCC (Civ) 545], the Court found yet another occasion to reiterate:

"50. It is well settled that procedural rules should not be interpreted so as to defeat justice, rather than furthering it. This is because procedural law is not meant to serve as a tyrant against justice, but to act as a lubricant in its administration. Thus, when courts set out to do justice, they should not lose sight of the end goal amidst technicalities. In some cases, this means that rules that have traditionally been treated as mandatory, may be moulded so that their object and substantive justice is not obstructed. It would be apposite to remember that equity and justice should be the foremost considerations while construing procedural rules, without nullifying the object of the legislature in totality."

In *Bhagwan Swaroop v. Mool Chand* [(1983) 2 SCC 132 (138)] the Hon'ble Supreme court made a similar statement even as it emphasised the significance of obeying and observing the procedural law. It reads:

"12. It is no doubt true that a code of procedure "is designed to facilitate justice and further its ends and it is not a penal enactment for punishment and penalty and not a thing designed to trip people up". Procedural laws are no doubt devised and enacted for the purposes of advancing justice. Procedural laws, however, are also laws and are enacted to be obeyed and implemented. The laws of procedure by themselves do not create any impediment or obstruction in the matter of doing justice to the parties..."

13.1 The Code of Civil Procedure may be understood as a rule book of fairness, which has for its objective, providing procedural uniformity coupled with reasonable certainty to the litigants, with inbuilt checks to ensure that neither side



attempts to gain an unfair advantage. However, the fundamental strength of the procedural law is its inherent flexibility and elasticity, even as it provides a level field for the litigants to contest. They manifest through the infinite opportunities the Court has for its interpretation, backed by considerable judicial discretion for shaping the course of justice in individual cases. Justice is an ideal but it lies beneath the complexities created by the mechanics of unpredictable human attitude and conduct. Hence, it cannot be obtained in gross, but has to be searched for in every case individually. Therefore, beyond certain apparent similarities, every litigation has its own intricate complexion, and they deserve to be given the care they require. A physician may come across similar cases, yet he has to deal with each of his patients differently. And, so does the Court. The procedural law thus is a balancing-constant in an equation of countless variables. If this flexibility is sapped out of the procedural law and is replaced with a procrustean consistency, it will cease to be a rule book of fairness, and may transform into a book of formulae. But, the Court halls are neither any science-labs, nor any lecture-halls in a school of mathematics to produce cut and dried solutions.

13.2. In the Salem Bar Association case I and II [See: (2003)1 SCC49 : 2002(4)CTC504; and (2005)6 SCC 344 : AIR 2005 SC 3353], when the Supreme Court declared that a few apparently mandatory provisions as introduced by Code of Civil Procedure (Amendment) Acts of 1999 and 2002, must be understood as directory, what it achieved in essence was to restore the fundamental flexibility and elasticity that has characterized the CPC. They showed the maid of justice its place.

14. Is then an understanding of Order XXXII Rule 3 and 11 inflexible? In other words, should a breach of an apparently mandatory procedural provision in Order XXXII Rule 3 read with Rule 11(2) produce identical results? Is there a causality available to understand a violation of a mandatory provision and the results it produces? This forms the plane for considering and ascertaining if a decree passed against the minor in the earlier suit, in violation of these provisions, more particularly Rule 11(2) is void.

15. The ratio that the procedural compliance of appointing a guardian for the minor is mandatory, and that its breach would render the decree passed against the minor as void (as contended by the appellant/plaintiff) is premised on the fact that the minor has a substantial right in the subject matter of the earlier suit, and that this interest has gone undefended before a decree was passed against the minor. In Anadram & another Vs Madholal & others [AIR 1960 Rajasthan 189], the Court held:



"It is true that the court must strictly observe the provisions of Order 32 R. 3 and 4, but at the same time the real object of the said rules is to safeguard the interest of the minor."

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It emphasizes that the criterion for deciding the consequence to arise out of the non-compliance of appointing a guardian for the minor for defending an action, is the existence of a substantial right in the minor in the subject matter of the earlier suit. This precisely was the situation in Saradamani Vs Rajendran [AIR 1981 Madras 217], where a preliminary decree passed in a suit for partition was challenged on the ground that the minor-defendant was not defended. The Court held that minor's interest was not prejudiced by the preliminary decree passed, and refused to entertain the plea. In Rangammal Vs Minor Appasami [(1972) 85 LW 574], the natural guardian of the minor had ably defended an action even without a formal proceeding under Order XXXII CPC appointing him as the guardian for the minor for the purpose. When the decree was challenged, the Court rejected it and held that the interest of the minor had been effectively defended and invoked the doctrine of substantial representation. Also see: Rangammal v. Minor Appasami & Others [AIR 1973 Mad 12].

16. It may be seen only in Order XXXII Rule 3A(1), the Code expressly speaks about 'prejudice'. It states that a mere conflict of interest per se between the guardian and the minor would not render the earlier decree passed against the minor void, unless prejudice is shown. However, notwithstanding the fact that Rule 3 does not touch upon 'prejudice' Courts have still read 'prejudice' as a criterion into the provision to understand the effects of non-compliance of Order XXXII Rule 3.

17. The ratio of the few cases among the many on the topic, points out that a perceived mandatory provision in Order XXXII Rule 3 is still elastic enough to accommodate a degree of flexibility which the justice of the cause, as guided by the facts constituting it, demands. Its application can swing from holding the earlier decree passed against the minor as void to a position where it can be valid, depending on the factual context of the case and on proof if the minor's right has been prejudiced. Procedural law does not operate in auto-mode to render every decree or order passed without compliance of its provisions including those that may appear mandatory (including Order XXXII Rule 3 CPC) a nullity, but works in the manual mode. The Courts have to necessarily evaluate the implications which a procedural non-compliance produces in the context of the facts of the particular case and the justice involved therein. Consistency in the application of procedural law is appreciable as long as the cause of justice is served, but it is determined



by, and varies with, the sphere of operation of the procedural law and the context of the case.

18. In the backdrop of what has been stated, should a Court necessarily remove a guardian for his/her perceived negligence under Rule 11(1) and appoint a new guardian under Rule 11(2)? This has to be distinguished from an appointment of a guardian for a minor under Rule 3. When a suit is instituted against the minor, Court presumes that the minor has a substantial interest to defend the cause for the action, and hence appointment of a guardian is insisted as mandatory. But in a Rule 11(1) situation, the Court assesses if the minor has a substantial interest, and if the guardian has been negligent in not defending the interest of the minor. This depends on the facts that has emerged before the Court. Hence, the Court is not under an eternal mandate to remove the guardian. Rule 11(1) therefore, is an enabling provision that empowers the Court to remove a guardian where it finds a need, and this is evident from the expression 'may' employed in the provision. And, even in instances where a Court does not remove a guardian for non-performance of a duty and appoint a new guardian, still the merit of the decree passed against the minor depends on the prejudice caused to the minor by the guardian's negligence. To expatiate it further, even if the Court has omitted to remove a guardian and appoint a new one, the criterion for deciding the effect of the decree passed against the minor will still be the prejudice-factor.

19. If the issue is approached even from the angle of the rule of fairness, the need for reading in the prejudice-factor finds justification. This brings to fore the maxim 'actus curiea navinum gravabit' - act of court shall harm none. But, this applies to both the parties. Accordingly, if the decree which the plaintiff has obtained in the earlier suit has to be declared void on a mere fact that no guardian was appointed in the earlier suit without anything more, then for the same fault of the court, the plaintiff in the earlier suit would be penalised. But by bringing in the prejudice-factor into the equation, the balance required in protecting the interest of both the sides is maintained.

20. The prejudice-criterion as a determinative factor in deciding the consequence of a procedural violation of Order XXXII Rule 3 or Rule 11(2) CPC, therefore, implies that the Court may have to now evaluate every individual case on a fair consideration of:

- the cause of action in the earlier suit;



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- the nature of right the minor has viz a viz the subject matter of the suit, which implies whether the presence of the minor must be understood as a necessary party or a proper party in the suit;
- if there were co-defendants;
 - if the minor shares identical and inseverable interest in the subject matter of the suit with other co-defendants; or is it independent of their right.
 - if the minor is a Hindu, and the subject matter litigated is an ancestral property, then whether the karta of the coparcenary was in the party array to defend it;
 - if the natural guardian of the minor has defended the action; and
 - the nature of the decree passed.

21. Accordingly, it can now be held that:

- (a) If the earlier suit was laid solely against the minor, and the minor is shown to have a substantial right in the subject matter of the suit, then non appointment of a guardian to defend the action, in all probability, will render the decree void, since the prejudice-element may impact the decree passed against the minor substantially.
- (b) Where there are multiple defendants and the minor shares identical right to defend an action, and the co-defendants had ably defended the action, then the earlier decree may not be void, since the action was effectively and substantially defended. Here if the doctrine of prejudice is overlooked, it may produce chaos and not peace.
- (c) Where however, the co-defendants have not defended the action, then the interest of the minor assumes the same character as if his right is independent of the right of the other defendants, and has to be treated as in (a). Still, he has to show how he is prejudiced.
- (d) Where a minor's interest was ably defended by the natural guardian, then notwithstanding the fact that a guardian was not formally appointed by the Court in terms of Order XXXII CPC, the decree passed against him would not be void, and the procedural non-compliance will become a breach of a procedural formality. See: Rangammal Vs Minor Appasami [(1972) 85 LW 574], Anandram & another Vs Madholal & others [AIR 1960 Rajasthan 189].



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(e) Where, a minor is not shown to have any right or interest in the subject matter of the earlier litigation, then the decree passed against him in the earlier litigation will be valid as he would not have suffered any prejudice.

(c) Winding up:

22.1 The stage is now well set to consider how the facts of this case have organised themselves in the context of the discussion hereinabove. In *Siraj Fatima & others Vs Mahmood Ali & Others* [138 IC 465], the Full Bench of the Allahabad High Court spoke through Sulaiman J thus:

"The case of the minor litigant is very peculiar. While the litigation is being fought he is in a helpless position and cannot protect his interests or defend his rights. The Courts have therefore a duty cast upon them to watch his interest vigilantly and the minor is considered to be under the protection of the court. The guardian ad litem who is appointed to represent the minor has to be appointed by the court and he must be the proper person to be his guardian for the suit..... The guardian is bound to take care of the interest of the minor in the same way as a prudent man would look after his own interest. Negligence on his part would be a breach of duty."

It is an indisputable fact that the guardian appointed for the plaintiff in O.S.93/1989 did not file any written statement and defend the action. Now, unless the plaintiff is shown to have any substantial and independent interest in the suit property which had gone undefended in O.S.93/1989, he cannot be said to be prejudiced. The plaintiff however, has not disclosed even in this suit the nature and the extent of his right or interest in the subject matter of the earlier suit. In the absence of pleading or proof of any such right or interest in the subject matter of O.S.93/1989, the failure of the guardian to contest the suit cannot be said to have prejudiced the minor. And, necessarily, the suit has to fail.

22.2 This is evident from another fact: The plaintiff has sought only a declaratory decree to declare that the decree passed against him in O.S.93/1989 is void, and for a bare injunction. He has not sought a declaration of his right in the suit property. Is that because he has no right in the subject matter of O.S.93/1989? This is the irresistible conclusion towards which the facts of this case direct this Court to.



22.3 There is yet another reason why the plaintiff must be non-suited. A simple relief for declaring that the decree passed in the earlier suit, without a corresponding prayer for declaration of his right in the suit properly achieves nothing. A decree declaring an earlier decree as void is a mere enabling decree, passing which the Court would be in a position to declare the right of the plaintiff. A suit where the plaintiff seeks only an enabling relief but omits to seek a substantial relief is plainly not maintainable.

Conclusion:

23. In conclusion, this Court holds that the approach of the first appellate court cannot be faulted, and the decree passed by it does not suffer from any illegalities or perversity. The appeal is dismissed, and the Judgment and Decree passed in A.S.No.146 of 2001 dated 28.06.2006 on the file of the Sub Court, Namakkal is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To:

1. The Subordinate Judge
Namakkal.
2. The Additional District Munsif
Namakkal.

Copy To

The Section Officer
VR Section, High Court,
Madras-104.

+1cc to Mr.S.Saravanan, Advocate, S.R.No.38065

S.A.No.224 of 2007
and MP.Nos.1 & 2 of 2007

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