

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 10.08.2021	Orders pronounced on 03.09.2021
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Coram
THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No.680 of 2021
and
C.M.P.No.5830 of 2021

Sarojmani

... Petitioner

Vs

1. Sathyanath

2. Premnath

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 03.10.2019 made in I.A.No.399 of 2018 in O.S.No.95 of 2016 on the file of III Additional District and Sessions Court, Coimbatore.

For Petitioner

सत्यमेव जयते
... Mr.S.Mukunth
for

M/s.Sarvabhauman Associates

For Respondents

.. Mr.C.Santhosh Kumar

ORDER

This Civil Revision Petition is filed to set aside the order passed by
the learned III Additional District and Sessions Court, Coimbatore, in

2. I.A.No.399 of 2018 was filed under Order 14 Rule 2(2) of CPC to try the following issues as preliminary issues:-

1. Whether the suit is not hit by resjudicata and estoppel as claimed by the defendant in the written statement in para-10 & 11.
2. Whether the suit is not hit by resjudicata and estoppel as claimed by the defendant in the written statement in para-12.
3. Whether the suit is not barred by limitation as contended by the defendant in the written statement in para-13.
4. Whether the plaintiffs have deliberately and wantonly abused the process of the court, as contended by the defendant in the written statement in para-15 and 16.
5. Whether the suit is not valued properly and court fee paid is deficient as claimed by the defendant in para-18 of the written statement.

(The aforesaid issues are reproduced as typed in the petition. Issues 1 and 2 are duplication of a single issue as to, Whether the suit is hit by resjudicata and estoppel as claimed by the defendant in the written statement)

3. The case of the petitioner/defendant is that the subject matter of the suit was long back decided in three previous suits and the respondents/plaintiffs have completely suppressed those proceedings. This suit is barred by limitation, principle of resjudicata, estoppel and by abuse of process of Court. Not only that this suit is undervalued and proper court fee is not paid. Therefore, the above issues have to be decided as preliminary issues. That petition was resisted by the respondents/plaintiffs alleging that the petitioner/defendant filed I.A.No.1096 of 2016 for rejection of plaint with frivolous allegations. That petition was disposed of on 20.06.2017 with the finding that the suit cannot be rejected for the reasons that the suit is not barred by any law and the relief was claimed on the basis of cause of action. Therefore, respondents/plaintiffs prayed for the dismissal of this petition. Considering the rival submissions, learned trial Judge dismissed the petition. Against the order of dismissal, the present Civil Revision Petition is filed.

4. Learned counsel for the petitioner submitted that title to the suit property was decided in O.S.No.125 of 2005 by the learned District Munsif, Coimbatore. The settlement deed dated 02.09.2004 executed in

favour of respondents/plaintiffs by their mother was set aside. The issues to be tried in this suit were already decided in the earlier suit. Therefore, this suit is barred by the principle of resjudicata and limitation. The respondents have knowledge about the exparte decree even in 2005, but the present suit is filed only in 2016. Thus, it is clear that the suit is barred by limitation. Therefore, an application was filed to try the issues on limitation, resjudicata and estoppel as preliminary issues and the trial Court has wrongly dismissed the petition. Learned counsel for the petitioner/defendant prayed for setting aside the order of the trial Court and allow this Civil Revision Petition.

5. In response, learned counsel for the respondents submitted that the issues as to whether the suit is barred by limitation, resjudicata and estoppel involve disputed and mixed question of facts and law. Oral and documentary evidence is necessary to decide as to whether the suit is barred by limitation and resjudicata. These issues cannot be decided as preliminary issues. The issue as to the valuation of the suit and payment of court fee is also involved in appreciation of documents and oral evidence to find out whether the suit is properly valued and proper correct court fee is paid. The learned trial Judge has properly considered

these issues and dismissed the petition. The learned counsel for the respondents prays to sustain the order of trial Court and to dismiss the Civil Revision Petition.

6. Learned counsel for the respondents relied on the following judgments in support of his case:

1. ***L.P.Alaghappa Chettiar & another .vs. Janarthanan & another*** reported in **2013(5) CTC 12** for the proposition that the issue regarding inadequacy of court fee is not a mere issue of law; It is settled proposition of law that in appealable cases all the arising issues are to be legally tried together and decided;
2. ***Nusli Neville Wadia .vs. Ivory Properties and others*** reported in **2020 (6) SCC 557** for the proposition that if there are disputed facts in question of law, which depend upon the outcome of investigation of case, such question of fact cannot be decided as a preliminary issue; and
3. ***Srihari Hanumandas Totala .vs. Hemant Vithal Kamat & others***
– ***Civil Appeal No.4665 of 2021*** are the guiding principles for deciding an application under Order VII Rule 11(d) of CPC.

7. Considered the rival submissions. The suit in O.S.No.95 of 2016 is filed seeking the relief of declaration that the respondents/plaintiffs are the absolute owners of the suit property; to declare the judgment and decree in O.S.No.65 of 2003 as null and void; and for permanent injunction. It is seen from the copy of the plaint averments in O.S.No.95 of 2016 that the respondents/plaintiffs are the sons of one K.P.Rajendran. The defendant Saroja Mani is their paternal aunt. Suit properties and other properties were allotted to respondents'/plaintiffs' grandfather Purushothaman Naidu in a family partition in 1945. Respondents'/Plaintiffs' father Rajendran, petitioner/defendant Saroja Mani and respondents/plaintiffs' grandmother Kamala Ammal partitioned the properties left behind by Purushothaman Naidu on 15.05.1986. The suit property fell to the share of Kamala Ammal. Petitioner/Defendant got a settlement deed from her mother Kamala Ammal on 29.05.1987 with respect to the suit property and other properties by force. However, the settlement deed dated 29.05.1987 was not acted upon. Kamala Ammal cancelled the settlement deed on 07.09.1989 and was enjoying the property. Suppressing the cancellation of settlement deed, the petitioner/defendant filed O.S.No.65 of 2003 to declare the cancellation deed 07.08.1989 as null and void and obtained

an exparte decree. This fact is known to the respondents/plaintiffs very recently. Therefore, this suit.

8. There was another suit between the parties to this lis. The petitioner/defendant Saroja Mani filed O.S.No.125 of 2005 against Tmt.Kamala Ammal and others including the respondents/plaintiffs, for the relief of declaration that settlement deed dated 02.09.2004 executed by the deceased Kamala Ammal in favour of respondents/plaintiffs Sathyanath and Premnath is invalid, void and unenforceable. In O.S.No.125 of 2005, Kamala Ammal filed written statement. Respondents herein had also filed written statement. After contest, the suit was decreed on 29.11.2013.

9. It is clear that that after the suit in O.S.No.125 of 2005 was decreed, the present suit in O.S.No.95 of 2016 is filed. Filing of O.S.No.65 of 2003 was mentioned in the plaint filed in O.S.No.125 of 2005. Therefore, respondents/plaintiffs cannot claim that they are not aware of O.S.No.65 of 2003 filed by the petitioner/defendant. The issue involved in O.S.No.125 of 2005 is whether the settlement deed dated 02.09.2004 executed by Kamala Ammal in favour of the respondents is

null and void. Respondents claimed right in respect of suit property on the basis of the settlement deed dated 02.09.2004 alleged to have been executed by Kamala Ammal. The issue involved in this suit in O.S.No.95 of 2016 is directly and substantially the issue in O.S.No.125 of 2005 and that was decided against respondents in O.S.No.125 of 2005. May be that the issues with regard to limitation and estoppel require certain amount of oral and documentary evidence. Same is the case with regard to valuation of the suit. These issues involve disputed facts and therefore, they require oral and documentary evidence. Without the required evidence, these issues cannot be considered as preliminary issues. That is not the case in case of resjudicata. Respondents are parties to O.S.No.125 of 2005. Therefore, respondents/plaintiffs cannot claim that the issue of resjudicata cannot be decided as a preliminary issue. It is observed in ***Srihari Hanumandas Totala .vs. Hemant Vithal Kamat & others – Civil Appeal No.4665 of 2021*** that the issue of maintainability of the suit on the point of resjudicata can be tried as preliminary issue. In the light of the decision made in O.S.No.65 of 2003 and O.S.No.125 of 2005, the issues such as whether this suit is barred by the principles of resjudicata is necessarily to be tried as preliminary issue to avoid unnecessary recording of evidence and to save the time of the

court.

10. In this view of the matter, the fair order and decretal order of the learned III Additional District and Sessions Court, Coimbatore dated 03.10.2019 made in I.A.No.399 of 2018 in O.S.No.95 of 2016 is set aside and this Civil Revision Petition is allowed. The learned III Additional District and Sessions Court, Coimbatore is directed to frame preliminary issue as to whether this suit is barred by resjudicata and dispose the case on merits and in accordance with law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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03.09.2021

Index : Yes / No

Internet : Yes / No

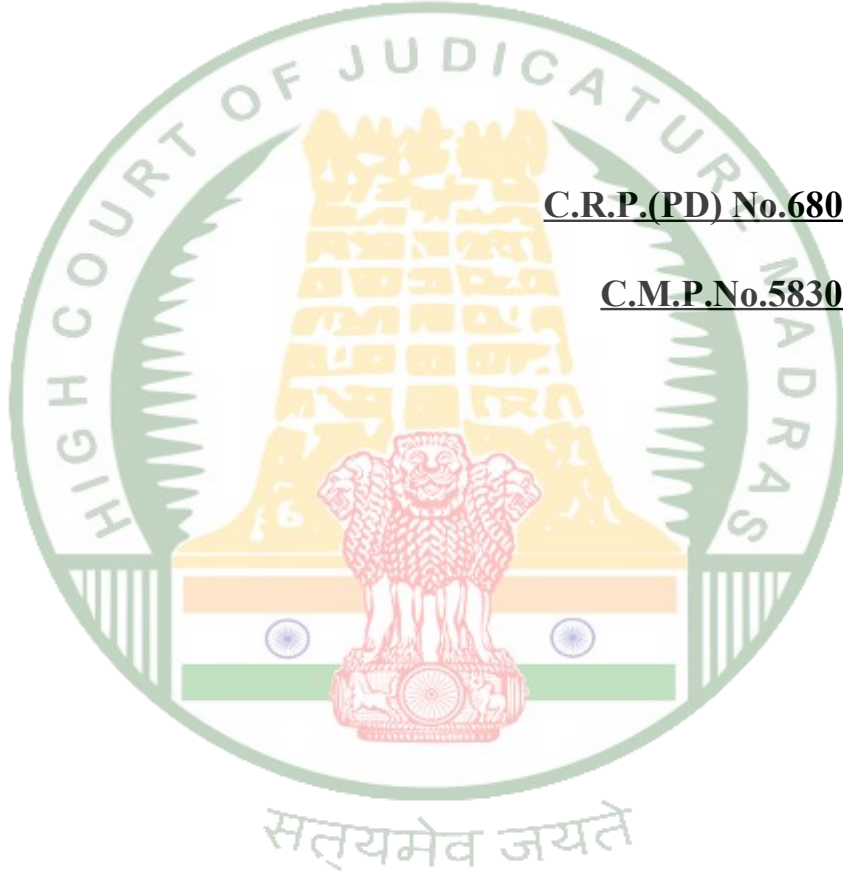
Speaking order : Yes / No

To,

1. The III Additional District and Sessions Court,
Coimbatore.

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Order in
C.R.P.(PD) No.680 of 2021
and
C.M.P.No.5830 of 2021

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