



S.A.No.416 of 1998

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Second Appeal No.416 of 1998

Chandrakanthan

... Appellant

Versus

1.Parimala Ammal

2.Venkatesan

3.Kannan

4.Srinivasan

5.Jothi

6.Amul alias Alamelu

7.Renuka

8.G.Chandran

9.Dhandayudam

...Respondents

[Respondents 1–7 represented by their

Power Agent G.Chandran/8th respondent]

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree made in A.S.No.56 of 1995, dated 26.08.1997, on the file of the Additional District and Sessions Judge at Cuddalore by setting aside the Judgment and decree in O.S.No.108 of 1991 dated 30.07.1993 on the file of the Additional Sub Judge at Cuddalore.



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For Appellant : Mr.S.Rajendra Kumar
For Mr.Prasanth Rajagopal
For R1 to R8 : Mr.V.Ramesh

JUDGMENT

The 1st defendant in O.S.No.108 of 1991 on the file of the Additional Sub Court at Cuddalore is the appellant herein.

2. The 1st - 8th respondents were the plaintiffs in the said suit.

3. They had instituted the suit, seeking a Judgment and decree for one half share in the suit properties and to pass final decree in accordance with such share. The plaintiffs had also stated that the 2nd defendant is also entitled to a share along with the plaintiffs.

4. The said suit came up for consideration and by Judgment dated 30.07.1993, the learned Additional Sub Judge at Cuddalore, dismissed the suit with costs to be paid by the 1st defendant therein/appellant herein.



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5. This necessitated filing of A.S.No.56 of 1995 which came up for consideration before the Additional District and Sessions Court at Cuddalore and by Judgment dated 26.08.1997, the dismissal of the suit was set aside and the Appeal Suit was allowed, thereby granting partition and separate possession as claimed in the plaint.

6. Aggrieved by the said Judgment by the First Appellate Court, the 1st defendant had filed the present Second Appeal.

7. The Second Appeal had admitted on the following two substantial questions of law:

"1. Whether the present suit is not barred by the principles of res judicata since the earlier suit O.S.No.61/77 was filed in respect of the very same property and between the very same parties?"

"2. Whether the plaintiffs are not estopped from filing the present suit since an earlier suit for partition was filed and a finality was arrived in A.S.No.240/79 of the Hon'ble Court?"



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8. Heard arguments advanced by Mr.S.Rajendra Kumar, learned counsel for the appellant and Mr.V.Ramesh, learned counsel for the respondents.

9. A brief facts are required to be stated even before examining the substantial questions of law.

10. There were four brothers, Govindan, Ramalingam, Gobalasamy and Seetharaman. Ramalingam had filed O.S.No.61 of 1977 seeking subdivision of the suit properties therein into four equal parts and to specifically allot door No.64 in equity since he was in possession of the said property to him.

11. It was stated that the said property having door No.64 was situated at Mahathma Gandhi Road, Panruti. There were also other properties in Door Nos.65 and 67 which were also subject matter of the partition suit. All the properties originally belonged to the father, Sankara Narayana Chettiyar.



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12. The suit in O.S.No.61 of 1977 proceeded in its own way and finally, partition and separate possession was granted by Judgment dated 01.09.1978. Further, as sought in the plaint, by equity, recognizing possession of Ramalingam, Door No.64 in Mahathma Gandhi Road, Panruti was allotted to him/plaintiff/Ramalingam.

13. That particular Judgment was taken up on appeal before this Court in A.S.No of 240 of 1979. The Judgment in the Appeal Suit was delivered on 08.03.1988 by a learned Single Judge of this Court and the allotment of the Door No.64, Mahathma Gandhi Road, Panruti to the plaintiff therein, Ramalingam was confirmed. It was also mentioned that pending the First Appeal namely A.S.No.240 of 1979, the 1st respondent Ramalingam had died and his legal heirs had been brought on record. In effect, among the properties which belonged to Sankara Narayana Chettiyar, Door No.64 was allotted to the branch of Ramalingam. This was recognized and this was confirmed in appeal.



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14. In the meanwhile, it also transpires quite unfortunately, Ramalingam had played in another wicket and, owing to the debts incurred in the family, the property in Door No.64 was brought to auction by a Creditor, Abirami Enterprises.

15. After following due process, the property was actually auctioned and the appellant herein/Chandrakanthan had purchased the said property in door No.64, Mahathma Gandhi Road, Panruti. It also transpires that quite parallelly, when he had filed an application to take possession, pursuant to the purchase in auction, the legal representatives of the other two brothers namely Gobalasamy and Seetharaman, each filed petitions under Order XXI Rule 58 CPC claiming that they had a one half share or rather the two branches had an 1/4th undivided share in the said property and that the said claim should be adjudicated in manner known to law.

16. To examine the substantial questions of law in this particular Second Appeal, it may not be necessary for me to travel to



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examine whether they actually had a right of one half share. In the Claim Petitions in E.A.Nos.868 & 870 of 1981, the Additional Sub Judge, Cuddalore recognized their claim that the two branches/legal representatives of the two branches were entitled to an undivided 1/4th share each in the property in Door No.64, Mahathma Gandhi Road, Panruti.

17. It must be kept in mind that the present appellant was the auction purchaser of the entire door No.64. Therefore, an acceptance receipt was issued to him. It was marked during the proceedings as Ex.B5. It was dated 30.09.1988. He accepted to the said order in the Claim Petition filed under Order XXI Rule 58 CPC and recognized that the legal representatives of Gobalasamy and Seetharaman were actually entitled to an undivided one half share in Door No.64. This would necessarily restrict his right over Door No.64, Mahathma Gandhi Road, Panruti to the other undivided one half share. This would also imply that the rights of the parties were thus crystallized.



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18. The property in Door No.64, which was originally allotted to Ramalingam and subsequently owing to debts incurred and due process followed, brought to auction and purchased by the appellant herein, was further divided and it was further recognized that the plaintiffs in the suit from which the present Second Appeal had emanated namely O.S.No.108 of 1991 were entitled to an undivided one half share in the said door No.64 and the Auction Purchaser/1st defendant in the said suit was entitled to the other undivided one half share in the said property.

19. The recognition of any one being entitled to an undivided share in a property naturally gives rise to a suit for partition to divide the property into metes and bounds and allot that particular share. This is precisely why O.S.No.105 of 1991 was filed before the Sub Court at Cuddalore.

20. The plaintiffs claimed one half share in Door No.64, Mahathma Gandhi Road, Panruti to be allotted to them and the 8th defendant. This suit was resisted by the auction purchaser/1st defendant.



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21. The Trial Court had refused to accept the claim of the plaintiff/8th defendant that they were entitled to one half share and therefore dismissed the suit by Judgment dated 30.07.1993.

22. This Judgment was taken up in appeal before the Additional District Court at Cuddalore in A.S.No.56 of 1995. The Appellate Court re-examined and re-appraised the evidence on record and upheld the claim of the plaintiffs/8th defendant to claim of one half share in door No.64.

23. The First Appellate Court examined the Schedule to the property and also the claim made, namely one half of the house. As a matter of fact, even for the well one half right was granted with right to access the well and to draw water.

24. The property in Door No.64 was therefore directed to be divided into two equal halves. One half was to be allotted to the 1st defendant/auction purchaser in accordance with his own acceptance letter,



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Ex.B5 in the earlier suit by which, he admitted his right was limited to one half share and that the other half share would have to be divided into two equal parts and the 1st and 3rd to 7th plaintiffs will have to be allotted a 1/4th share and the 2nd plaintiff and the 8th defendant will have to be allotted the other 1/4th share.

25. The Judgment of the First Appellate Court is now put to test before this Court in the Second Appeal which had been filed by the 1st defendant/auction purchaser.

26. The Second Appeal had admitted on two substantial questions of law.

27. The first substantial question of law revolves around the principles of res judicata with respect to the findings in O.S.No.61 of 1977, which was the earlier suit filed by Ramalingam for allotment by equity, Door No.64 to him. Door No.64 was actually so allotted and that allotment had been recognized in A.S.No.240 of 1979.



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28. That particular door No.64 was purchased by the present appellant in auction proceedings owing to proceedings initiated by a Creditor, Abirami Enterprises for credits advanced to the plaintiff therein/Ramalingam. But it must be pointed out that under the Claim Petitions in E.A.Nos.868 & 870 of 1981, the right of the appellants herein had been further limited down by an undivided one half share.

29. Mr.S.Rajendra Kumar, learned counsel for the appellant drew the notice of this Court to Order XXI Rule 58 CPC. Order XXI Rule 58(2) provides that all questions raised in the Claim Petition shall be decided by the Executing Court itself and the parties to the suit should not be driven to file a separate suit to adjudicate their rights. The Additional Sub Court at Cuddalore had actually examined the issues under Order XXI Rule 58 CPC and had passed final orders.

30. The learned counsel for the appellant then pointed out Sub Clause 5 of Order XXI Rule 58 CPC which stipulates that if any adverse



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order is passed as against the petitioner during adjudication under Order XXI Rule 58 CPC then, a separate suit would lie.

31. In effect, this would be in the nature of an appeal. But since, the trial proceedings or adjudication of all issues had been undertaken in an Interlocutory Application or Claim Petition under Order XXI Rule 58 CPC, a further opportunity is granted by the statute to file a suit. It is an inherent right to file necessary pleadings stating a fact and inviting a denial of such fact necessitating framing of an issue and casting the burden on the Presiding Officer to adjudicate on the said issues. This would further mean that every fact will have to be proved will have to be admissible and will have to be relevant and only thereafter, on analysis should a considered Judgment be passed.

32. It is complained by Mr.Rajendra Kumar, learned counsel for the appellant that having succeeded in E.A.Nos.868 & 870 of 1981 wherein, adjudication was made with respect to their respective claim of 1/4th



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undivided share, it would not lie on the plaintiffs to file a separate suit in the teeth of Sub Clause 5 of Order XXI Rule 58 CPC.

33. I must confess that at first glance, the said arguments seemed attractive. But, the Court also had the benefit of hearing the arguments of Mr.V.Ramesh, learned counsel for the respondents.

34. Mr.V.Ramesh, learned counsel for the respondents took this Court through the Schedule given in the suit in O.S.No.108 of 1991 and pointed out that the Schedule indicated exercise of right of an undivided 1/2 share alone and what was sought was the division of the property into two equal halves and to allot one half to the 1st to 7th plaintiffs and to the 8th defendant whose rights have been crystallized and recognized in E.A.Nos.868 & 870 of 1992.

35. It was therefore contended by the learned counsel that filing of a suit for partition was a necessary subsequent step initiated to actually



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divide the property and to be allotted to the half share which was allotted in the proceedings under Order 21 Rule 58 CPC.

36. Now let me advert to the first substantial question of law namely whether the issue of res judica stares on the face of the appellant or on the respondents herein in seeking partition and separate possession.

37. In the earlier suit in O.S.No.61 of 1977, Ramalingam, the predecessor in title of the appellant herein, was entitled to Door No.64 in entirety. At first the appellant herein had purchased the said property in auction after due legal process. Thereafter, a Claim Petition was filed under Order XXI Rule 58 CPC. If at all the Judgment in O.S.No.61 of 1977 were to be pressed to act as resjudicata, the said issue should have been put up, when the Claim Petition was filed.

38. It is not imperative on my part to examine the reasons given while adjudicating the Claim Petitions in E.A.Nos.868 & 870 of 1981. It is a



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fact that the auction purchaser/ appellant herein had accepted that his right was limited only 1/2 share. Therefore, the Judgment in O.S.No.61 of 1977 would apply only to the extent of Door No.64 of 1977 was allotted to Ramalingam and thereafter, in the Claim Petition, the respondents herein were adjudicated to have a right over 1/2 share and such right had been admitted and accepted by the appellant herein himself and had not been tested before any further Appellate Authority or Revisional Authority.

39. Therefore the right of the respondents had been further strengthened by the admission of the appellant in his acceptance receipt dated 30.09.1988, which had been marked as Ex.B5. Such document had crossed the stages of admissibility, relevancy and proof in manner known to law. Therefore a competent Court having adjudicated on such document, this Court would also have to hold such document was issued with knowledge and full with consensus.



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40. The issue of res judicata would apply only to the limited extent Door that No.64 was allotted to Ramalingam and subsequently, the said door number was divided into two halves and the right of the respondents to one half and the right of the appellant to the another half have been recognized. This necessitated the division of the property into two equal parts which is what the First Appellate Court had held. I find no reason to interfere with that particular Judgment and the decree passed by the First Appellate Court. The first substantial question of law is answered accordingly.

41. The second substantial question of law is on estoppel from filing of a suit.

42. Filing a suit, is an inherent right. After the filing of a suit, it could be held that the suit is not maintainable or that the Civil Court was barred because a part of the jurisdiction vested under Section 9 of the Code of Civil Procedure had been carved out and transferred or relegated to any



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other special Tribunal. The right can still be claimed before that particular Tribunal. Therefore, when a right is sought to be claimed and sought to be adjudicated, it can be either before a Civil Court or if the jurisdiction of the Civil Court had been divested in relation to the issues before any other Tribunal or any other Judicial Authority. But still, the right to claim exists. The forum alone changes. Therefore, there cannot be any estoppel to prevent a party from filing a suit or a claim. I would thus answer the second substantial questions of law.

43. In the result, the Second Appeal stands dismissed however without costs.

44. The burden is now cast on the Sub Court at Cuddalore to pass consequential orders in the final decree application, if filed, for actual division of the property in Door No.64 into two equal shares. The Additional Sub Court at Cuddalore may endeavour to dispose of such final decree application within a period of 6 months from the date on which that



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particular application is filed by following procedure in manner known to law.

45. I am confident that the parties being extremely frustrated by the delay in litigation would co-operate would endeavour to allow the Court to proceed further in manner known to law.

46. In the Final Decree application, if a complaint is made about non payment of rent, necessary adjudication on that particular issue may also be undertaken by the Additional Sub Court at Cuddalore.

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Index:Yes/No

Speaking Order : Yes/No

To

- 1.The Additional District and Sessions Judge at Cuddalore.
2. The Additional Sub Judge at Cuddalore.
- 3.The Section Officer,
VR Section, High Court of Madras.



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