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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2022

CORAM

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

A.S.No.384 of 2021

Saroja

...Appellant

Vs.

1.Ramasamy

2.Rajalakshmi

3.Chandiramani

...Respondents

Prayer: Appeal Suit filed under Order 41 Rule 1 and Section 96 of C.P.C., praying to set aside the decree and judgment in I.A.No.132 of 2015 in O.S.No.20 of 2014 dated 16.03.2017 on the file of Principal District Judge at Namakkal and allow the First appeal.

For appellant .. Mr.C.B.Muralikrishnan

For Respondents .. Mr.P.Iyappan (for R.1)
Mr.S.Satish Kumar (for R.3)
No appearance (for R.2)

JUDGMENT

Heard the learned counsel for the appellant who was the first defendant in O.S.No.20 of 2014 on the file of the Principal District Court at Namakkal. Heard the learned counsel for the first respondent / third defendant in the suit and also the learned counsel for the third respondent / second defendant in the suit. There is no representation on behalf of the second respondent / plaintiff.

2. I am informed that there was a delay in filing the appeal. At that particular point of time, the learned counsel for the second respondent / plaintiff has taken notice. Since notice has also been served subsequently after the Appeal has been numbered and the name and address of the second respondent is printed, even though there is no representation, I may not hold over the first appeal any further on the board of this Court.

3. The suit in O.S. has been filed for partition and



separate possession. It has been filed by a sister, against her other two sisters and her brother. The schedule of the properties for which partition was sought, has been given in the plaint. The plaintiff sought 1/4th undivided share in the suit schedule property. She also sought a further relief that the third defendant in the suit / the brother should not deal with the property. In the said suit, written statement has also been filed.

4. Thereafter, an application in I.A.No.132 of 2015 was filed by the third defendant / brother under Order VII Rule 11 C.P.C. The said application came up for consideration before the Principal District Court, Nammakal on 16.03.2017 and the application was allowed. This has forced the present appellant / first defendant in the suit to file the present appeal. It must be kept in mind that in a suit for partition, the plaintiff and the defendants stand on the same footing, and therefore, the first defendant being aggrieved, by the suit being rejected under Order VII Rule 11 of C.P.C., which effectively would also mean that she would also not be able to get the fruits of the partition, if effected among the parties, had filed the present Appeal.

5. The learned District Judge in the course of the order had made a fundamental error. He had permitted the applicant / third defendant, to mark documents Exs.P1 to P5. Ex.P.1 was a compromise decree in O.S.No.224 of 1990 before the Sub Court Nammakal dated 26.11.1990. Ex.P2 was a sale deed executed by the third defendant S.P.Ramasamy in favour of a third party and dated 19.11.2013. Ex.P.3 was another sale deed executed by S.P.Ramasamy in favour of yet another third party and dated 04.06.2014.

6. It is a fundamental aspect to be kept in mind that when an application is filed under Order VII Rule 11 C.P.C., the plaint will have to be read in entirety to examine whether the plaint is vitiated by any of the provisions under Order VII Rule 11 CPC.

Order VII Rule 11 CPC is as follows;

"11.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 undervalued, and the plaintiff, on being required by the Court to 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 returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time



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



issues. These are all aspects in which both oral and documentary evidence is required. A cursory reading of a compromise decree without knowing the surrounding circumstances of that particular decree or the pleadings of that particular plaint cannot be and should not have been the basis to reject a plaint.

11. The entire procedure adopted by the learned Judge is non-est. If at all the principle of res judicata is to be applied, that should be framed as a separate issue and both the plaintiff and the defendant must be granted an opportunity to grace the witness box, lead evidence as to whether Section 11 of C.P.C. applies or does not apply and thereafter a judgement will have to be given on analysis of the evidence presented. The evidence presented should not only be on the compromise decree which the learned Judge had read but also on the plaint in the earlier pleadings in the suit to determine the nature of the parties in the earlier suit and whether they were at lis in the same capacity and the nature of judgment which had been passed in the earlier suit. If at all a compromise had been effected, even then, the terms of the compromise will have to be examined in terms of the pleadings to examine whether the compromise was with regard to the pleadings or whether the parties have gone beyond the pleadings and settled any other issue among themselves.

12. Moreover, these are documents which cannot and should not have been examined by the learned Judge come to a conclusion that the plaint is to be rejected under Order VII Rule 11 of C.P.C.

13. The order under appeal does not stand the scrutiny of this Court and is set aside.

14. Let the trial proceed further in O.S.No.20 of 2014.

15. The First Appeal stands allowed and the order in I.A.No.132 of 2015 dated 16.03.2017 is set aside. The parties shall present their pleadings before the Principal District Court, Nammakal, who shall frame issues and put the parties to trial. There shall be no order as to costs.

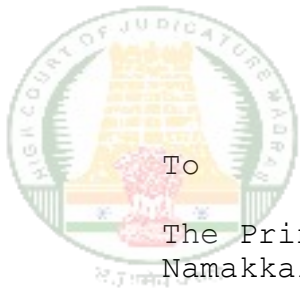
Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mrm



To

The Principal District Judge
Namakkal.

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Copy To:

The Section Officer,
V.R Section, High Court,
Madras.

+lcc to Mr.C.B.Muralikrishnan, Advocate, S.R.No.14978

A.S.No.384 of 2021

PA (CO)
SB(30/05/2022)