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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 28.03.2022

PRONOUNCING ORDERS ON : 01.04.2022

Coram:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Second Appeal No.187 of 2012
and MP.No.1 of 2012

B.Ravindranath ...7th Defendant/Appellant/Appellant

..Vs..

1.Sekar @ Deenadayalan
...Plaintiff/Respondent/Respondent

2.M.Narasimhalu

3.Veerabadra Pillai ...Defendants 1,3 to 5/Respondent 2 to
13 /Respondents 2 to13

4.V.Kasthuri

5.A.Bavanandham

6.S.Jagannadhan

7.Mrs.Vanaja

8.Mrs.C.Thirupurakumari

9.C.Surendrakumar

10.Ms.Dhayachandrika

11.Ms.Anuradha ...Defendants 8 to 15/Respondent 2 to 13
/Respondents 2 to13

12.V.Gopal

13.Hariramulu

Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.7 of 2010 dated 09.08.2011 on the file of the learned Sub-Judge, Poonamallee by confirming the Judgment and Decree in O.S.No.6 of 1984 dated 15.04.2009, on the file of the learned Additional District Munsif, Poonamallee.



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For Appellant : Mr.P.Gopalan
Mr.J.Ram

For Respondents : Mr.A.Veerasingam
Mr.M.Narayanan
for R 1

J U D G M E N T

The 7th defendant is the appellant in this Second Appeal.

2.The 1st respondent/plaintiff filed a suit seeking for the relief of delivery of possession of the suit properties from defendants 2 and 5 to 9.

3.The case of the plaintiff is that the suit properties were originally owned by late Munusami Naidu. The plaintiff is the adopted son of Munusami Naidu and his wife Jayammal. The said Munusami Naidu died in the year 1970 leaving behind the plaintiff and his mother Jayammal. The further case of the plaintiff is that Jayammal was in possession and enjoyment of all the lands till her death in the year 1975. The plaintiff claims to have become the absolute owner on the demise of Jayammal.

4.It is stated that the 1st defendant filed a suit in O.S. No.1079 of 1975 with respect to suit items 1 and 2 seeking for the relief of permanent injunction on the ground that Jayammal had sold those properties to Duraisami Naidu and he in turn settled the properties in favour of the 1st defendant. With respect to the 3rd Item, the 1st defendant was claiming to be a joint owner along with Duraisami Naidu.

5.The further case of the plaintiff is that he filed O.S.No.1276 of 1975 with respect to the suit properties as well as four other properties and sought for the relief of partition and allotment of half share in the properties. According to the plaintiff, the suit was decreed and he was allotted 108 cents in Survey No. 149/1 and 0.15 cents in Survey No. 150/1A.

6.Yet another suit was filed in O.S. No. 1721 of 1979 with respect to a house property. During the pendency of this suit, one of the witness DW1 had deposed that he was instrumental for



all the documents executed by Jayammal. Simultaneously, yet another suit was filed in O.S.No.1085 of 1975 by one Govindasami claiming title under a Will executed by Jayammal and a settlement deed executed by Duraisami Naidu with respect to the property in Survey No.149/1 measuring 1.08 acres. During this period, one more suit came to be filed in O.S. No.1079 of 1975. All the suits were tried together. During the stage of evidence, the plaintiff came to know that the so called documents executed by Jayammal were sham and nominal. Hence, the present suit was filed seeking for delivery of possession against defendants 2 and 5 to 9 who claimed ownership under these documents and were in possession and enjoyment of the suit properties covered under these documents.

7.The 6th defendant filed a written statement and it was adopted by 7th and 9th defendants. They took a very specific stand that the plaintiff does not have any right over the suit properties and sought for the dismissal of the suit.

8.The 1st and 2nd defendants filed a written statement and took a stand that the suit properties were subject matter of the earlier three suits wherein decree has already been passed and hence, they raised a preliminary objection on the maintainability of the suit on the ground of res judicata.

9. Both the Courts below on considering the oral and documentary evidence and the facts and circumstances of the case, concurrently held in favour of the plaintiff and decreed the suit. Aggrieved by the same, the 7th defendant has filed this Second Appeal.

10. When the Second Appeal was admitted, the following substantial questions of law were framed:

a) In the light of the compromise entered into between the parties in O.S. No. 1079 of 1975, O.S. No. 1085 of 1975 and O.S. No. 1276 of 1975 on the file of Principal District Munsif Court, Poonamallee, out of 7 items in O.S. No. 1276 of 1975 filed for partition and separate possession claiming 1/2 share in the suit properties, two items viz., 6 and 7 were given up by the plaintiff/ first respondent and as per the compromise, straight away, Final Decree has been passed



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allotting suit item Nos.3 and 4 to the first respondent/ plaintiff in O.S. No.1276 of 1975 vide Ex.A7 dated 31.08.1978, whether separate suit for possession in respect of the remaining suit items which was ranked as suit item Nos. 1, 2 and 5 in O.S. No.1276 of 1975 is maintainable in law? And whether the same is barred by Order 23 Rule 3A of Civil Procedure Code.

b) Whether the findings rendered by both the Courts below can be termed as perverse in view of improper appreciation of oral and documentary evidence?

11.Heard Mr.P.Gopalan, learned counsel for the appellant and Mr.A.Veerassamy, learned counsel for the respondents. This Court also perused the materials available on record and the findings of both the Courts below.

12.The plaintiff has filed the present suit mainly on the ground that the sale deed dated 02.07.1972, the settlement deed dated 25.11.1974 and yet another sale deed dated 24.10.1970 are sham and nominal documents and hence, the plaintiff who is claiming his right through his adoptive mother Jayammal, wants to recognise his right over the properties covered under the documents and consequently has sought for recovery of possession from the concerned defendants.

13.Before going into the claim made by the plaintiff, it is very important to take note of the earlier proceedings where the suit properties also formed part and the very same documents were relied upon.

14.The plaintiff filed the earlier suit in O.S. No.1276 of 1975 seeking for the relief of partition and separate possession and the present suit properties were shown as Item Nos. 1,2 and 5 therein. Likewise, O.S.No.1079 of 1975 was filed by the 1st defendant and the suit properties were shown as Item Nos.1,2 and 4 therein. Similarly, O.S.No.1085 of 1975 was filed by one Govindasami Naidu and one of the item of the property was also a subject matter in that suit. In these three suits, the documents that have been questioned in this suit, were marked as Exhibits B5, B6, B9 and B10. In the present suit, the very same documents were marked as Exhibits A1 to A4.



15. All the three suits were tried jointly and during the course of the proceedings, the matter was compromised between the parties. Recording the same, a Common Judgment was passed on 31.08.1978 and that Judgment was marked as Ex.A7 in the present suit. It will suffice if the findings in this Judgment are elaborately considered and this Judgment itself will provide an answer for deciding this Second Appeal.

16. For proper appreciation, it will be relevant to extract the issues that were framed in O.S. No. 1079 of 1975 and O.S. No. 1085 of 1975. The issues that were framed in 1079 of 1975 are as follows:

1. Whether the sale deed dated 24.10.1970 and the sale deed dated 2.7.1972 are true and supported by consideration ?
2. Whether the Settlement Deed dated 25.11.1974 is true and supported by consideration ?
3. Whether the adoption pleaded by the first Defendant is true and valid ?
4. Whether minor Sekaran is a necessary and proper party to the suit ?
5. Whether the Plaintiff is in possession of the suit properties ?
6. To what relief ?

17. The issues that were framed in O.S. No. 1085 of 1975 are as follows:

1. Whether the Will dated 27.7.1975 is true, genuine and valid ?
2. Is the Settlement Deed dated 21.8.1975 is true ?
3. Whether the Plaintiff was in possession of the suit property on the date of the suit ?
4. Whether the adoption pleaded by the Defendant is true and valid ?
5. Whether minor Sekaran is a necessary and proper party to the suit ?
6. To what relief ?

18. The issues that were framed in the above two suits covered Exhibits A1 to A4 that were marked in the present suit and which documents, according to the plaintiff, are to be considered as sham and nominal.



19. In O.S. No. 1276 of 1975 filed by the plaintiff, the following relief was granted:

"Hence, I hold that the Plaintiff is the adopted son of Munuswamy Naidu and his wife Jayammal and the said adoption took place on 10.7.1966 is true and valid. The Plaintiff is entitled to partition and separate possession of his half share in the suit properties. At the stage of the arguments, it is conceded by the Counsel for Plaintiff that by virtue of compromise entered into between the parties in O.S. No.1077 of 1975, the Plaintiff has not pressed his claim in respect of item Nos.6 and 7 of the suit properties herein. It is also conceded by both the Counsel for the Plaintiff and the Defendants that there may be a final decree in favour of the Plaintiff allotting item Nos.3 and 4 of the Plaintiff Schedule. In view of the admission made by both the Counsels, I hold that the Plaintiff towards his half share, item Nos.3 and 4 of the suit properties towards his half share."

20. Insofar as O.S. No.1085 of 1975 is concerned, only one property was involved in this case, which was Item No.3. Since this property was given in favour of the plaintiff herein, the Court held that the relief sought for has virtually become infructuous.

21. In O.S. No. 1079 of 1975, the plaintiff was given the properties in the "A" schedule therein and Item No. 2 of the "B" schedule therein.

22. The allotment of the properties were made in all the three suits based on the compromise between the parties. The Trial Court went ahead and passed the final decree also in the partition suit filed by the plaintiff with respect to Item Nos. 3 and 4 of the schedule properties therein. Admittedly, the suit properties herein were shown as Item Nos. 1, 2 and 5 in O.S. No.1276 of 1975. While entering into a compromise, the plaintiff was allotted Item Nos. 3 and 4 towards his half share by passing a final decree.



23. The main issue that has been raised in this Second Appeal is that the present suit is barred by res judicata and if at all, the plaintiff had any grievance on the compromise decree, he should have worked out his remedy only in the very same suit and a fresh suit is barred Under Order XXIII Rule 3A of C.P.C.

24. The Trial Court completely misdirected itself by giving a finding at Para 34 of the Judgment as if, the Decree passed in the earlier suits was a contested decree. Both the Courts below did not even take into consideration the scope of a compromise decree and the effect of Order XXIII Rule 3A of C.P.C. Both the Courts unnecessarily got into the merits of the case and went into the validity of all those documents which were questioned by the plaintiff by forgetting the fact that the same documents also formed part in the earlier suits which ended in a compromise. It is quite curious that the plaintiff created a cause of action for the present suit based on the deposition made by a witness in the earlier suits. The earlier suits were filed in the year 1975 and the compromise decree was passed in the year 1978. If the plaintiff was not interested in going for a compromise, he should have questioned those documents in those suits. Having failed to do so, the plaintiff cannot be allowed to file yet another suit in the year 1984 without any cause of action. The cause of action as pleaded in the plaint pertained to documents which were available when the earlier suits were filed.

25. The plaintiff is bound by the compromise decree and he cannot be allowed to wriggle out of the effect of the compromise decree and file a fresh suit by claiming right over properties which were the subject matter of the compromise decree. A compromise decree operates as an estoppel and it is valid and binding unless it is set aside by the Court which passed the decree on an application filed under the proviso to Order XXIII Rule 3 of C.P.C. The scheme of Order XXIII Rule 3 is to avoid multiplicity of litigation and permit the parties to amicably settle the dispute and attain a finality with the seal of the Court. It is for this reason that a compromise decree is not permitted to be questioned by filing a separate suit even by a third party to the proceedings.

26. The law that has been set out by this Court will squarely apply to the facts of the present case. If at all, the plaintiff had any grievance with respect to the suit properties (which were Item Nos.1, 2 and 5 in O.S. No. 1276 of 1975), the



plaintiff ought to have filed an application before the same Court and worked out his grievance. In short, the plaintiff had willingly taken certain properties and given up certain properties on a compromise between the parties and that was recorded as a compromise decree. If the plaintiff is permitted to file an independent suit and prosecute the same, like in the present case, the Judgment passed in this suit will completely impact the compromise decree passed in the earlier suits. This will unnecessarily lead to multiplicity of proceedings. This crucial factor has been lost sight of by both the Courts below.

27. In view of the above discussion, this Court holds that the present suit filed by the plaintiff is not maintainable in law and it is barred in view of the compromise decree that was passed in the earlier suits. The first substantial question of law is answered accordingly.

28. There is no requirement for this Court to answer the second substantial question of law since this Court did not go into the merits of the case discussed by both the Courts below and the suit has been held to be not maintainable in law.

29. In the result, the Judgment and Decree passed by both the Courts below are hereby set aside and accordingly, this Second Appeal is allowed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

KP

To

1. The Sub-Judge,
Poonamallee.

2. The Additional District Munsif,
Poonamallee.

+1cc to Mr.P.Gopalan, Advocate Sr.22110

+1cc to Mr.M.Narayanaswamy, Advocate Sr.22111

Second Appeal No.187 of 2012

ssv[co]

srg 18/04/2022