



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.NO.898 OF 2013

M.Parvathi
W/o.Marimuthu Gounder

..Appellant/
Appellant/
1st Petitioner

.Vs.

1.Subbathal

...1st Respondent/
1st Respondent/
2nd Petitioner

2.Ramasamy Gounder (died)
3.Krishnasamy Gounder
4.Muthusamy
5.Kannammal
6.Marathal
7.Karupathal
8.Palanathal
9.Chellammal
10.Muthammal
11.Mylsamy
12.Kaliammal
13.Parvathi
W/o.Palanisamy
14.Rajasekar
15.Sudha

..Respondents 2 to 15/
Respondents 2 to 15/
Respondents 1 to 14

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the Decree and Order made in A.S.No.19 of 2011 on the file of Sub Court, Pollachi dated 31.08.2012 confirming the Order and Decree made in I.A.No.2089 of 2010 in O.S.No.105 of 1993 on the file of the District Munsif Court, Pollachi dated 07.03.2011.



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For Appellant : Mr.C.Veeraraghavan
For Respondents : Mr.K.S.Karthik Raja
for R4 to R7 & R10 to R15

Mr.S.S.Rajesh for R3

Notice served (no appearance)
for R8, R9

JUDGMENT

The plaintiff in the final decree proceedings is the appellant in the present Second Appeal.

2.The appellant along with one Subbathal filed the suit for partition in O.S.No.105/1993. They claimed one share each in the suit properties. A preliminary decree was passed on 05.10.1994. An application came to be filed by the defendants in I.A.No.2084 of 1994 to set aside the ex parte decree. This application was allowed by imposing cost and since the cost was not deposited, the application came to be dismissed. Aggrieved by the same, the defendants filed CMA No.10/1995 and this appeal was allowed by directing the defendants to pay cost of a sum of Rs.1000/-. Since the cost was not paid, the appeal itself came to be dismissed.

3.The plaintiff in the suit filed I.A.No.3023 of of 1997 for passing final decree after dividing the suit properties into eight shares and to allot 1/8th share to each sharer. When this final decree petition was pending, an application was filed in I.A.No.807 of 1999 for early hearing of the final decree petition on the ground that the parties have reached a compromise and each party is filing a memo and the same can be recorded and the petition can be closed. This application was allowed and the final decree petition was taken up for hearing on 08.04.1999. The parties were also present before the Court at the time of hearing.

4.The Court below went through the memo and found that defendants 1 to 4 are going to continue to enjoy the properties in their possession and the 1st plaintiff has received a sum of Rs.30,000/- and the 2nd plaintiff has received a sum of Rs.1,00,000/- from the defendants. Hence, it was mentioned in the memo that there was no requirement to divide the properties and the petition itself can be closed. Recording this memo, the petition was dismissed as "not pressed" on 08.04.1999 by passing the following order:



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"Petitioners and Respondents present, with their Counsels. Memo's filed. The petitioners and the respondents admit the terms of the memo to be corrected. Heard the counsels for both sides. Memo's recorded. Petition is dismissed as not pressed. No cost".

5. After nearly 11 years, the appellant filed I.A.No.2089 of 2010 for passing a final decree. Both the Courts below on considering the facts and circumstances of the case and also the conduct of the parties, found that there was absolutely no justification on the part of the appellant to have moved such a petition after 11 years and that too after being a party to the memo, which was filed in the year 1999 based on which the earlier orders were passed and the petitions were dismissed "as not pressed". Aggrieved by the dismissal of the petition and the same being confirmed in appeal, the present Second Appeal has been filed before this Court.

6. The learned counsel for the appellant submitted that the settlement was made between the parties only outside the Court and the earlier order passed in the year 1999 was not in the nature of a compromise decree. Therefore, the learned counsel submitted that the final decree petition filed in the year 2010 is maintainable. The learned counsel further submitted that even though the appellant had received the money at the time of filing the memo, there is no bar for the appellant to move a fresh petition for passing a final decree since the earlier petition was only "dismissed as not pressed". The learned counsel further submitted that where the memo of compromise has not been recorded to the satisfaction of the decree holder in terms of Order XXI Rule 2(2) of CPC., the petitioner is always entitled for applying for a final decree and these issues were not properly appreciated by both the Courts below. The learned counsel therefore sought for the interference with the orders passed by both the Courts below.

7. It is a settled position of law that Court proceedings must reach its finality at some point of time and it cannot remain in a state of limbo for ever. This Court is remained of the maxim interest reipublicae ut sit finis litium which means that it is in the interest of the State that there should be an end to litigation.

8. In the present case, there was a preliminary decree passed in the year 1994. A petition was filed for passing final decree in the year 1997. This final decree petition was filed in I.A.No.3023 of 1997. During the pendency of this petition, all the parties together filed a memo in the year 1999 and informed



the Court that they have settled the dispute among themselves and wanted the Court to take the memo on file and dismiss the petition as "not pressed". The Court below took into consideration the memo as well as the submissions made on the side of the parties and the petition was dismissed "as not pressed" by order dated 08.04.1999. The said order has been extracted supra.

9. After a deep hibernation, the appellant all of a sudden woke up after 11 years and filed a petition for passing final decree. This petition came to be dismissed by both the Courts below after taking into consideration all the earlier proceedings and also the conduct of the parties. The appellant seems to be taking a hyper technical stand as if, the earlier order was not passed by recording a compromise memo. Ultimately, the procedure is only a handmaid to justice. Once the parties report before a Court that they have compromised and a memo is also filed, they cannot be allowed to wriggle out of the same at a later point of time. Even though, the concept of res judicata may not be a bar in maintaining the present petition, the principle of estoppel will go against the appellant. The appellant along with others filed a memo before the Court and made the Court to act upon and thereafter, the appellant alone comes after 11 years and seeks for a final decree. This attitude on the part of the appellant can never be entertained and the rule of estoppel has to be put against the appellant.

10. This Court does not find any grounds to interfere with the judgments passed by both the Courts below and there is no substantial question of law involved in the present Second Appeal.

11. In the result, this Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

KP



To

1. The Subordinate Judge, Pollachi.

2. The District Munsif, Pollachi.

Copy To

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

+2ccs to M/s.S.S.Rajesh, Advocate, S.R.No.8839

S.A.No.898 of 2013

SMI (CO)
RLP (21/03/2022)