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A.No.3668 of 2022
in C.S.No.343 of 2012

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Reserved On :	28.09.2022
Pronounced On:	18.10.2022

G.CHANDRASEKHARAN.J.,

This application has been filed for pronouncement of judgment and decree in C.S.No.343 of 2012 on the basis of admissions made by P.W.1 during the course of his evidence.

2.The learned counsel for the applicants submitted that the second applicant/third plaintiff along with her mother, applicants 1 and 4 filed the main suit for declaring the plaintiffs 2 to 4 as the absolute owners of 'F' schedule property, for possession of 'F' schedule property and for the consequential relief of directing the defendants to vacate and deliver possession of 'F' schedule property; for declaration that plaintiffs 2 to 4 are the absolute owners of 'G' schedule property, possession of 'G' schedule property and for permanent injunction against the defendants in respect of 'G' schedule property. The defendants 1 and 2 filed written statement. Mother Padmavathi died on 04.11.2019. Plaintiffs 2 to 4 are the legal heirs



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of deceased Padmavathi. Defendants 1 and 2 in C.S.No.343 of 2012 filed C.S.No.435 of 2009 before this Court. That suit was transferred to City Civil Court and re-numbered as O.S.No.10807 of 2010 and was pending before Vth Additional City Civil Court, Chennai. On the basis of application by the plaintiffs, the said suit in O.S.No.10807 of 2010 was transferred to this Court and for joint trial along with the suit in C.S.No.343 of 2012. O.S.No.10807 of 2010 was re-numbered in this Court as C.S.No.277 of 2017. Evidence was recorded in C.S.No.277 of 2017 before the learned Master in the joint trial. First defendant was examined as P.W.1 in C.S.No.277 of 2017. He was cross examined by the plaintiffs. When he was cross examined, he stated that he is not claiming any right over Survey Nos.283/1 and 283/3 and he has no objection for granting the reliefs to the plaintiffs in C.S.No.343 of 2012, since he has not claimed any right over the properties in Survey Nos.283/1 and 283/3. In view of this candid admission by P.W.1, there is nothing survives for trial of the suit in C.S.No.343 of 2012. The suit in C.S.No.343 of 2012 is filed for Survey Nos.283/1 and 283/3. When P.W.1 has no claim against these properties, the suit in C.S.No.343 of 2012 has to be decreed on the



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basis of this admission.

3.Per contra, the learned counsel for the respondents submitted that applicants filed the present suit for declaring that they are the absolute owners of 'E, F & G' schedule properties and for possession. However, they concealed and suppressed the dismissal of the earlier suit filed on the file of City Civil Court, Chennai. Respondents filed C.S.No.435 of 2009 for recovery of possession of 'B' schedule property in C.S.No.435 of 2009 and for the declaration that conveyances effected in respect of the suit property as illegal, invalid and non-est apart from claiming damages for use and occupation. On account of enhancement of pecuniary jurisdiction, C.S.No.435 of 2009 was transferred to City Civil Court and numbered as O.S.No.10807 of 2010. Again it was transferred to this Court and re-numbered as C.S.No.277 of 2017. The trial had commenced in City Civil Court. P.W.1 was partly cross examined. After transferring to this Court additional proof affidavit was filed. Thereafter, P.W.1 was cross examined. This application filed based on the certain portion of the cross examination of P.W.1 is not maintainable. Cross examination cannot be read in isolation. The answers given in the cross examination do not amount to



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admission of fact. Ex.A6 and Ex.A7 are true documents. P.W.1 has not admitted the title of the applicants in respect of the properties in C.S.No.343 of 2012. The maintainability of this suit is itself doubtful. Applicants are seeking relief of declaration of their title and other relief. Applicants are fictitious persons and their identity has to be proved. Applicants claim has to be independently proved irrespective of the alleged admission made by P.W.1. Therefore he prays for dismissal of this application.

4.In reply, the learned counsel for the respondents submitted that in the written statement filed by the defendants in C.S.No.343 of 2012, it is claimed that the plaintiffs have not mentioned about the pendency of O.S.No.10807 of 2010 and claimed that the suit in C.S.No.343 of 2012 would attract the mischief of Order II Rule 2 C.P.C. There is no plea raised with regard to the fact that the mischief of Order II Rule 2 C.P.C. applies to O.S.No.2944 of 2012. In O.S.No.2944 of 2012, I.A.No.7615 of 2012 was filed under Order II Rule 2 C.P.C. and permission was obtained for filing fresh suit. Therefore, the claim of the defendants that C.S.No.343



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of 2012 is barred under Order II Rule 2 C.P.C. is not maintainable.

Defendants created forged Will. Elangali Ammal died in the year 1995. It is claimed that she has executed a Will in 1994. Subsequently, sale deeds were also executed. Defendants have not claimed any relief in respect of Survey Nos.283/1 and 283/3 in C.S.No.277 of 2017. When it is clearly admitted by P.W.1 that defendants have no objection for seeking decree in favour of plaintiffs in respect of Survey Nos.283/1 and 283/3, the suit in C.S.No.343/2012 has to be decreed. In support of his submission, he relied on the judgment reported in **2012 (1) MWN (Civil) 366 [M.K.Babu Vs. M.K.Radhakrishnan]**, it is observed in the judgment as follows:-

12.In the case on hand, the plaintiff made an endorsement on the plaint of the former suit, namely O.S.No.3922 of 2007 praying for the dismissal of the suit as withdrawn with liberty to file a fresh suit stating that the actual value of the property was more than the upper limit of the pecuniary jurisdiction of the Court in which the said suit was filed and that the plaintiff wanted to file a fresh suit in the High Court. Recording the said endorsement and acting upon the said endorsement alone, the Court chose to pass a decree dismissing the said suit as withdrawn. As pointed out



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supra, at the cost of repetition, this Court wants to point it out again that the Court which purported to act on the endorsement made by the plaintiff did not chose to pass an order specifically that there was no formal defect which would make the suit fail or that there were no sufficient grounds for allowing the plaintiff to file fresh suit in respect of the subject matter of the said suit. The Court has not specifically ruled that the permission (leave) sought for in the endorsement was rejected on the ground of non-existence of any one of the above said grounds. When such an endorsement was made and the Court chose to act upon the endorsement and passed a judgment and decree in terms of the endorsement, the defendant has not chosen to raise any objection for the grant of leave or to insist upon a specific order being incorporated in the judgment and decree to the effect that the leave under Section Sub-clause (3) of Rule 1 of Order 23, was rejected. By pronouncing a judgment and passing decree in O.S.No.3922 of 2007, the Court which tried the former, suit namely O.S.No.3922 of 2007 by necessary implication granted permission to file a fresh suit in respect of the subject matter of the said former suit. For the above said reasons, this Court comes to the conclusion that the contention of the defendant that the present suit is barred by provisions of Order 23 Rule 1, C.P.C. cannot be



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countenanced and the same deserves to be rejected.
Accordingly, the said contention of the defendant shall stand rejected.

5.In reply to this submission, the learned counsel for the defendants submitted that whether this suit in C.S.No.343 of 2012 is barred under Order II Rule 2 C.P.C. or not is a question that is left open for decision as per the order passed in O.S.A.Nos.198 and 199 of 2013. When the issue has to be decided as to the suit on the maintainability of C.S.No.343 of 2012, the decree as claimed by the applicants cannot be passed.

6.Considered the rival submissions and perused the records.

7.The suit in C.S.No.343 of 2012 was filed for the following reliefs in respect of A to G schedule properties:-

a)Declaring that the plaintiffs 2 to 4 are the absolute owners of the schedule – F property and as such entitling to take the vacant possession of the schedule – F property from the defendants.



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b)In consequence there of directing the defendants to vacate and deliver the vacant possession of the schedule – F property to the plaintiffs 2 to 4 by removing the illegal constructions thereon put up in the schedule – F property and

c)Declaring that the plaintiffs 2 to 4 are the absolute owners of the schedule – G property and as such entitling possession of the schedule – G property and

d)In consequence thereof by way of permanent injunction restraining the defendants their men and agents from interfering with the plaintiff's peaceful possession and enjoyment of the schedule – G property and

e)Grant the cost of the proceedings.

8.The suit in C.S.No.277 of 2017 was originally filed in C.S.No.435 of 2009 for the following reliefs in respect of 'A' and 'B' schedule properties:-

a)For recovery of suit “B” schedule mentioned property forming part of “A” schedule mentioned property more fully described in the schedule hereunder;

b)For recovery of past damages of Rs.4,95,000/-



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with future interest at the rate of 18% p.a. in respect of the 'B' schedule mentioned property more fully described in the schedule hereunder;

c)For recovery of future damages at the rate of Rs.50,000/- per month for use and occupation of the “B” schedule property more fully described in the schedule hereunder;

d)For a declaration that the purported sale deed, dated 16.07.2007 registered as Document 3216/2007 SRO, Velachery is illegal, invalid and non-est in the eyes of law in respect of the suit schedule 'B' mentioned property more fully described hereunder;

e)For a declaration that the purported sale deed, dated 16.07.2007 and registered as Document No.3220 of 2007, SRO Velacherry executed by 5th defendant in favour of 4th defendant is illegal, invalid and non-est in the eyes of law in respect of the schedule 'B' mentioned property more fully described in the schedule hereunder;

f)For a declaration that the purported power of attorney executed by the 3rd defendant in favour of the 2nd defendant, dated 26.07.2007 and registered as document No.1953/2007 Book IV, SRO Velacherry is illegal, invalid and non-est in the eyes of law in respect of the suit schedule 'B' mentioned property more fully described in



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the schedule hereunder;

g)For a declaration that the purported power of attorney executed by the 4th defendant in favour of the 2nd defendant, dated 26.07.2007 and registered as document No.1954/2007 Book IV, SRO Velacherry is illegal, invalid and non-est in the eyes of law in respect of the suit schedule 'B' mentioned property more fully described in the schedule hereunder;

h)For a declaration that the purported settlement deed, dated 06.10.2008 and registered as Doc.No.492, SRO, Velachery executed by the 6th defendant in favour of defendants 7 – 9 is illegal, invalid and non-est in the eyes of law in respect of the suit schedule 'A' mentioned property more fully described in the schedule hereunder;

i)For a permanent injunction restraining the defendants their men, agents, servants or any person or persons claiming through them against interference with plaintiffs' peaceful possession and enjoyment of the suit schedule 'A' mentioned property more fully described in the schedule hereunder including the plaintiffs' right and entitlement of the plaintiffs to collect the rents from the tenants who are in occupation of the suit schedule 'A' property;

j)For a permanent injunction restraining the



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defendants, their men, agents, servants or any person or persons claiming through them from encumbering, alienating, or dealing either by way of sale, mortgage, lease, charge or otherwise in respect of the schedule 'A' mentioned property more fully described in the schedule hereunder;

k)grant such further or other reliefs; and

i)Costs of the suit.

9.Subsequently, this suit was transferred to City Civil Court on the point of pecuniary jurisdiction and numbered as O.S.No.10807 of 2010. Again it was transferred to this Court for joint trial with C.S.No.343 of 2012 and numbered as C.S.No.277 of 2017. Survey number of the properties concerned in 'A' to 'G' schedule properties in C.S.No.343 of 2012 are as follows:-

'A' schedule property – Survey No.283 to an extent of 1 Acre 50 cents in Velachery Village, Mambalam, Guindy Taluk.

'B' schedule property – Part of schedule A property, Land in Survey No.283 to an extent of 75 cents in Velachery Village, Mambalam, Guindy Taluk.



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'C' schedule property – Part of schedule A property (30.5 cents in Schedule B property and 27.5 cents in the remaining Schedule A property.

'D' schedule property – Portion of Schedule – B property, bearing Survey No.283/1, T.S.No.56, 57, 58 to an extent of 33.5 cents situate on the Northern side of C schedule property.

'E' schedule property – Portion of Schedule B property in Survey No.283/3 and 283/11; T.S.No.29, to an extent of 11 cents situate on the Southern side of 'C' schedule property.

'F' schedule property – Portion of 'D' schedule property and the superstructure thereon bearing survey No.283/1 (part) T.S.No.57 to an extent of 3022 sqft.

10.'A' schedule property in C.S.No.277 of 2017 is Survey No.283/2, present Survey Nos.283/13 and 283/14, Old Door No.25, New Door No.10, Sambandam Garden, 100 feet Road, Velachery, Chennai – 600 042, consisting of ground plus first floor within a specified boundary.

11.'B' schedule property is in Survey No.283/2 (part), 283/13 (part),



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283/14 (part), bearing Door No.25/10, Sambandam Garden, 100 feet road, Velacherry, Chennai – 600 042, with appurtenant land measuring 4800 sq.ft.

12. May be on the face of it, the properties in both the suits appear different and the plaintiffs in C.S.No.277 of 2017 do not claim any relief in Survey Nos.283/1 and 283/3. However, it is now informed that there are several other survey numbers in Survey No.283. It is claimed that Survey No.283 is sub-divided now as 283 -1 to 283-14. It is claimed by the plaintiffs in C.S.No.343 of 2012 that they are the absolute owners of the properties in Survey Nos.283/1 and 283/3 and they have revenue records in support of their claim. It is also claimed that Survey No.283/2 is a road portion. This claim of the applicants/plaintiffs disputed by the respondent and they say that this aspect has to be proved only in the trial by producing relevant documents, revenue records and by examining the concerned witnesses.



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13.As regards the bar under Order II Rule 2 C.P.C., this Court perused the records and found that when O.S.No.2944 of 2012 was filed by the plaintiffs, they also filed application in I.A.No.7615 of 2012 seeking leave to file the suit for permanent injunction with a liberty to file a suit seeking declaration of title for the 'G' schedule property and declaration of title. That permission was granted. Subsequently the suit was numbered as O.S.No.2944 of 2012. The suit properties in O.S.No.2944 of 2012 are the suit properties in C.S.No.343 of 2012. Subsequently, in O.S.No.2944 of 2012, the learned counsel for the plaintiffs made an endorsement on 17.05.2012 to dismiss the suit as withdrawn with liberty to file comprehensive fresh suit. However, the Court dismissed the suit as withdrawn and no liberty was given for filing a comprehensive fresh suit.

14.In C.S.No.343 of 2012, O.A.Nos.449 & 450 of 2012 have been filed for the relief of injunction in respect of 'G' schedule property against the defendants from disturbing the possession and alienating and encumbering the properties. The issue of filing the suit in O.S.No.2944 of



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2012 and its dismissal was considered and it was observed in para 21, 22 and 23 as follows:-

21.It is well settled law, that the party coming to the Court with unclean hand is not entitled to the discretionary relief of injunction. Admittedly, the plaintiffs/applicants have not disclosed the fact regarding the filing previous suit, which was got dismissed as withdrawn. The suit was withdrawn without liberty to file fresh one.

22.The fact remains, that the plaintiffs/applicants did not disclose the material fact regarding filing of previous suit and its withdrawal, therefore, cannot be said to have come to the Court with clean hands, thus, are not entitled to the discretionary relief of injunction.

23.Consequently, all these applications are dismissed. No costs.

15.Against this order applicants preferred O.S.A.Nos.198 and 199 of 2013. O.S.A.Nos.198 and 199 of 2013 were disposed on 25.09.2013 and it was observed as follows:

6.Accordingly, we are inclined to set aside the common order of the learned single Judge made in O.A.Nos.449 and 450 of 2012 in C.S.No.343 of 2012 dated 22.01.2013, so as to



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enable the learned Single Judge to consider the entire matter afresh on merits including the existence and the relevancy of the order said to have been passed by the City Civil Court under Order II Rule 2 of C.P.C. All other issues are left open, including the alleged suppression said to have been made by the appellant and scope and applicability of the Code of Civil Procedure.

7. Accordingly, the common order passed in O.A.Nos.449 and 450 of 2012 in C.S.No.343 of 2012 dated 22.01.2013 are set aside and the Appeals are allowed. Consequently, the Original Applications are restored to the file of the learned Single Judge to decide the matter on merits. No costs. Consequently, connected miscellaneous petitions are closed.

16. As it is seen that the issue as to whether the suit in C.S.No.343 of 2012 is barred under Order II Rule 2 C.P.C is left open to be decided in the trial of these cases. When the issue as to whether the suit in C.S.No.343 of 2012 is barred by Order II Rule 2 C.P.C. is left open to be decided, the applicants cannot seek to pass a decree and judgment in favour of the applicants mainly on the basis of certain admissions made by



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the P.W.1. The entire evidence of P.W.1 has to be read as a whole. On the basis of his admissions alone, suit cannot be decreed, especially in the light of independent title set up by the applicants/plaintiffs and the prayer asked. May be admissions made by P.W.1 in the course of his cross examination can be taken advantage by the applicants after recording the evidence of all the other witnesses at the final hearing of the case. It seems that there is rival claim in respect of certain portions of properties covered in Survey Nos.283/1, 283/2 and 283/3. Unless the concerned documents relied by the parties to establish their right, title and the revenue records are produced in evidence, the real issue in controversy between the parties cannot be adjudicated effectively. For all these reasons, this Court finds that the prayer by the applicants in A.No.3668 of 2022 to pass a decree and judgment on the basis of the alleged admissions made by P.W.1 cannot be entertained.

17.In this view of the matter, this application is dismissed with the costs of the respondents.



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Speaking Order: Yes/No

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