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Application No.600 of 2023
in
C.S.No.362 of 2021

N.SATHISH KUMAR.J.,

This application has been filed seeking rejection of plaint in C.S.No.362 of 2021 on the file of this court.

2. The suit has been filed for partition of the Fixed Deposits and to hand over 1/5th share amounting to Rs.2,14,28,007/- being the plaintiffs' share together; rendition of true and proper accounts of all Fixed Deposits stood in the name of late Maruthai Chettiar as on the date of his death i.e., on 07.10.2019; and for permanent injunction restraining the defendants 1-7 by themselves, their partners, men, servants, agents, representatives, assigns, successors in interest, licensees and/or all other person acting on their behalf, from in any manner using/disbursing/distributing/appropriating the amounts of monies already withdrawn by them from the fixed deposits, made by late Maruthai Chettiar.

3. Admittedly, the 1st defendant being nominee had withdrawn the Fixed Deposit held in the name of late Maruthai Chettiar.

4. The relationship between the parties is not in dispute.



5. The plaint is sought to be rejected on the grounds (i) suit is not maintainable as it is hit by Order II, Rule 2 of CPC, (ii) proper court-fees have not been affixed; and (iii) suit has not been properly valued.

6. Heard both sides.

7. Though various allegations have been made in affidavit, the argument of the learned counsel for the applicant is three-fold, firstly, the suit is barred by Order II, Rule 2 of CPC; secondly, the court fee ought to have been paid either under Section 24 or 22 of the Tamil Nadu Suit Valuation and Court-Fees Act; and thirdly the suit has not been valued properly.

8. This court has perused the plaint thoroughly. Admittedly, the respondents have earlier filed a suit in O.S.No.7775 of 2019 on the file of the VIII Assistant Judge, City Civil Court, Chennai, for bare injunction restraining the banks from paying the fixed deposit to the defendants 1 to 3 and also restraining the defendants 1 to 3 from withdrawing the funds from the defendants 4 to 6 viz, Karur Vysya Bank, Lakshmi Vilas Bank and Tamil Nadu Mercantile Bank. Though the said civil suit was sought to be used as weapon in the instant proceedings to non-suit the respondents 1 to 3 herein under order II, Rule 2 of



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CPC, it is relevant to note that in an application filed earlier by the respondents numbered as A.Nos.4663 & 4664 of 2021 in O.A.No.807 of 2021 in C.S.No.362 of 2021 for various reliefs including a direction to respondents 1 to 7 therein to deposit 3/5th (1/5th for each of the legal heirs) of the monies already withdrawn by them from the deposits of late P.M.Maruthai Chettiar into this court, this court, on considering the arguments advanced on either side elaborately, passed a detailed order on 30.09.2022. In the said applications also it was contended that suit was barred by Order II , Rule 2 of CPC, there was undervaluation of the suit and improper payment of court-fees.

9. This court in its order dated 13.09.2022 while holding that cause of action arose in the suit for permanent injunction vis-a-vis the cause of action in the suit for partition are entirely different negated the contentions of the applicants herein that the present suit was barred under Order II, Rule 2 of CPC. Similarly, the court-fees issue raised in the present application was also considered and answered by the learned single Judge of this court in A.Nos.4663 & 4664 of 2021.



10. The above order was put to challenge before a Division Bench of this Court by way of intra court appeal in O.S.A.No.11 of 2023 and the Division Bench of this Court by order dated 06.06.2023 dismissed the appeal thereby confirming the order of the learned single Judge of this Court. Aggrieved by the dismissal of the Original Side Appeal, Special Leave Petition was filed by the applicants herein before the Supreme Court in SLP © No.14504 of 2023 and the Supreme Court by order dated 17.07.2023 dismissed the Special Leave Petition. Thus, the order of the learned single Judge of this Court dated 30.09.2022 in A.Nos.4663 & 4664 of 2021 had reached its finality.

11. Therefore, this court is of the view that when the similar issues raised earlier were negated and the same had reached its finality, particularly, in the same suit proceedings, it will certainly operate as res judicata. In such view of the legal position, the applicants cannot be permitted to urge the very same grounds for rejection of the plaint under Order VII, Rule 11 of CPC.

12. Insofar as the contention with regard to undervaluation of the suit and improper payment of court-fees, R.10 & 11 (b) & (c) of Or.VII CPC will not be applicable to the proceedings before this Court as per Order XLIX and Rule 3(1)



CPC. In such view of the position, this court is of the view that issue regarding undervaluation of suit and insufficient payment of court-fees can be gone into by the court only at the time of trial after framing appropriate issues.

13. In view of the discussions made above, this court does not find any merit in the application and the same is dismissed accordingly. No costs.

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