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A.No.5624 of 2022

A.No.5624 of 2022
in
C.S.No.167 of 2022

SENTHILKUMAR RAMAMOORTHY, J.

O.S.No.645 of 1984 was filed before the City Civil Court at Madras by Mr.A.Parthasarathy and Mr.A.Srinivachari. The suit was directed against Sri Parthasarathy Perumal Temple, Chennai (the Temple). Eight other trustees were joined as defendants. In the said suit, the plaintiffs prayed for a direction that they are the trustees of the Dhavanotsavam Festival and in respect of the suit schedule properties as per the Will of the late A.K.Venkatachariyalu. Several relief incidental and ancillary thereto such as rendition of accounts, possession of the properties of the trust and the like were prayed for. By judgment and decree dated 31.10.1990, the suit was decreed as prayed for. Appeal Suit No.713 of 1991 (the Appeal Suit) was instituted by the Temple. The Appeal Suit was disposed of by judgment and decree dated 29.11.2011. By the said decree, the decree of the trial Court was modified. The plaintiffs were declared as hereditary trustees and it was held that the family members of the testator are entitled



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to reside in the suit schedule property on payment of nominal rent. Some directions ancillary thereto were issued but in all other respects the suit was dismissed. The special leave petitions against the judgment and decree in the Appeal Suit were rejected by order dated 20.03.2017.

2. The present suit was instituted after issuing notice dated 07.02.2022 and 09.07.2022 by Mr.A.S.Raghavan and seven others against the Executive Officer of the Temple and Mr.A.K.L.N. Acharyulu. In this suit, the plaintiffs seek the handing over of vacant possession, rendition of accounts, mandatory injunctions, permanent injunction and costs. The first defendant has presented this application under Order VII Rule 11 CPC to reject the plaint.

3. Oral arguments were advanced by Mr.D.Rajagopal, learned counsel for the applicant, and by Mr.T.V.Ramanujun, learned senior counsel for the respondents / plaintiffs.



4. The first contention of learned counsel for the applicant is that the present suit has been instituted by the successors of the plaintiffs in the earlier suit. In fact, by drawing my attention to the judgment and decree in the Appeal Suit, learned counsel pointed out that the plaintiffs herein were impleaded as respondents 10 to 18 in the Appeal Suit in their capacity as legal heirs of the deceased plaintiffs. Consequently, he submits that the said judgment and decree is binding on the plaintiffs. Since such judgment and decree has attained finality, he contends that the present suit is barred by *res judicata*. In order to substantiate this contention, learned counsel invited my attention to the relief prayed for in O.S.No.645 of 1984 and the relief prayed for in the present suit. By making such comparison, learned counsel pointed out that prayer (a) in the present suit matches prayer (g) in the earlier suit and prayer (b) in the present suit matches prayer (c) in the earlier suit. As regards prayer (d) in the present suit, learned counsel contended that such relief may be prayed for only by way of execution proceedings. As regards prayers (e) and (f) in the present suit, learned counsel submits that the said relief are purely consequential.



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5. Learned counsel also pointed out that a writ petition was filed by one of the plaintiffs and that the said writ petition was disposed of by order dated 28.01.2022. In the writ petition, the petitioner prayed for a mandamus to restrain the first and second respondents therein from interfering with the petitioner's peaceful possession of the schedule mentioned property. The writ petition was disposed of by directing the petitioner to vacate the subject premises within a period of six months. Therefore, learned counsel contends that the present suit is not only barred by *res judicata* but clearly constitutes re-litigation and amounts to an abuse of process.

6. The third contention of learned counsel is that the present suit is barred under Order II Rule 2 CPC in as much as the plaintiffs did not claim all relief which could have been claimed on the same cause of action in the earlier suit. Since they also admittedly failed to obtain leave under subsection 3 of Order II Rule 2, he contended that the relief claimed even in respect of the bond of Rs.10,000/- is barred by law.

7. In support of these contentions, learned counsel for the applicant relied upon the following judgments:



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(1) *Smt.P.Leelarathinam and others -vs- P.E.Srinivasan and 11 others, 2012-1-L.W.280*, particularly paragraphs 7 to 10 and 14 thereof, in respect of a suit being both barred by *res judicata* and constituting an abuse of process.

(2) *Rajendra Bajoria and others -vs- Hemant Kumar Jalan and others, 2022(1) CTC 685*, particularly paragraph 20 thereof, for the proposition that a plaint which does not disclose a cause of action is liable to be rejected.

(3) *ITC Limited -vs- Debts Recovery Appellate Tribunal and others, (1998)2 SCC 70*, particularly paragraphs 13, 16 and 27 thereof, for the proposition that a plaint should be read in a meaningful way and a plaint which is cleverly drafted to create the illusion of a cause of action should be rejected.

(4) *State Bank of India -vs- S.Ramesh Narayanan and another, 2021(6) CTC 303*, particularly paragraphs 5.3 to 6.1 thereof, for the proposition that if the same relief is claimed in the earlier suit and the subsequent proceeding, the plaint in the subsequent proceedings should be struck off.



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(5) *M.V.Jayavelu -vs- E.Umapathy, Order dated 29.10.2010 in*

C.R.P.(PD) No2089 of 2008, particularly paragraphs 11 and 12 thereof, for the proposition that the plaint is liable to be rejected if the suit constitutes a clear abuse of process of law.

(6) *T.Arivanandam -vs- T.V.Satyapal and another(Arivanandam), AIR 1977 SC 2421*, for the proposition that the plaint should be read in a meaningful and not formal manner so as to prevent the institution of the suit through clever drafting by creating an illusion of a cause of action.

(7) *N.Babu -vs- S.Shanmugam and others, 2013(1) CTC 180*, particularly paragraphs 10 and 25 thereof, with regard to re-litigation and the existence of an alternative remedy under Order XXI, Rule 97 CPC.

(8) *Shiv Kumar Sharma -vs- Santosh Kumari, (2007)8 SCC 600*, with regard to the bar under Order II Rule 2 CPC.

(9) *Director of Settlements, A.P and others -vs- M.R.Apparao and another (2002)4 SCC 638*, with regard to the binding nature of a judgment of the Supreme Court under Article 141 of the Constitution of India.



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8. Learned senior counsel for the plaintiff refuted these contentions.

By drawing my attention to the decree of the Court in the Appeal Suit, learned senior counsel submitted that the Court declared that the Will created a trust and that the plaintiffs in the said suit were held to be hereditary trustees in respect of the trust properties. Once it is concluded that the properties are trust properties, he submitted that the Temple is not the owner thereof. Learned senior counsel next submitted that the earlier suit was filed by Mr.A.Parthasarathy and Mr.A.Srinivachari in their individual capacities and not in a representative capacity. He contended that since the Temple is not the owner of the properties, the Temple should be treated as being in permissive occupation and not in possession on the basis of being the lawful owner of the property.

9. After pointing out that the trust is a private trust to which the Indian Trusts Act, 1882 (the Trusts Act) applies, learned senior counsel invited my attention to Sections 11 to 13 and 25 to 26 thereof. As per Sections 11 to 13, he submitted that trustees are duty bound to fulfil the purpose of the trust by obeying the directions of the settlor. They are also



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required to keep themselves informed of the state of the trust property and protect the title to such trust property. With specific reference to Section 25 of the Trusts Act, he submitted that a succeeding trustee is not liable for the acts or defaults of his predecessor. Consequently, he submitted that the plaintiffs in this suit, being successors of the plaintiffs in the earlier suit, cannot be held to be bound by the acts or omissions of their predecessors. As regards the plaintiffs herein being arrayed as respondents in the Appeal Suit, he submitted that they were joined in their capacity as legal heirs of the deceased plaintiffs and not in their current capacity as hereditary trustees. Since a trust is permanent and irrevocable, he submitted that the succeeding hereditary trustees are entitled to initiate action to protect the properties of the trust and to call for accounts in relation thereto.

10. As regards the bar under Order II Rule 2 CPC, he submitted that the cause of action for the present trustees is distinct from the cause of action of their predecessors. He also drew reference to the Will dated 16.12.1871 and submitted that the Will dealt with the properties of the testator as also the investment by the testator in a bond for a sum of



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Rs.10,000/-. As regards the bond, he submitted that no relief was prayed for earlier. In support of his contentions, he relied upon the following judgments:

(1) *C.Nagamanickaya and others -vs- K.Syamanthakamma and others, 2012(2) LW 970*, particularly paragraph 32 thereof, for the proposition: once a trust always a trust.

(2) *Balakrishna Savalram Pujari Waghmare and others -vs- Shree Dhyaneshwar Maharaj Sansthan and others, AIR 1959 SC 798*, particularly paragraph 31 thereof, with regard to the meaning of a continuing wrong and continuing cause of action.

(3) *Commissioner of Wealth Tax, Amristar -vs- Suresh Seth, 1981(2) SCC 790*, particularly paragraphs 11 and 12 thereof, as regards a continuing cause of action.

(4) *A.M.Shamsudeen -vs- A.M.Mohamed Salihu and others, 2004(2) LW 487*, particularly paragraph 99 thereof, for the proposition that the Court is the ultimate guardian of a trust.



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(5) *L.N.Aswathama and another -vs- P.Prakash 2009(13) SCC 229*,

particularly paragraph 13 thereof, for the proposition that possession follows title.

(6) *Sha Mulchand and Company Limited -vs- Jawahar Mills Limited*,

Salem, 1952(2) SCC 674, particularly paragraphs 12, 25 and 26 thereof, for the proposition that estoppel does not create title.

(7) *Madhav Prasad Aggarwal and another -vs- Axis Bank Limited*

and another (Madhav Aggarwal), 2019(7) SCC 158, for the proposition that the plaint cannot be rejected in part.

(8) *Mohanrawale -vs- Damodar Tatyaba alias Dadasaheb and*

others, 1994(2) SCC 392, particularly paragraph 10 thereof, for the proposition that a plaint cannot be rejected on the ground that the cause of action is weak.

11. By way of a brief rejoinder, learned counsel for the applicant pointed out that the earlier suit was not only on behalf of the plaintiffs therein but also on behalf of defendants 2 to 9 therein, who were the other trustees. As regards the bond of Rs.10,000/-, he pointed out that this relief arose out of the same cause of action. By relying upon paragraph 19 of the

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judgment of the Supreme Court in *AIR 2003 SC 3349*, he submitted that *res judicata* applies even in the context of a public trust. *A fortiori*, he submitted that it is applicable in the context of a private trust.

12. In the light of the rival contentions, the question to be determined is whether the applicant has made out a case to reject the plaint either because it does not disclose a cause of action or because the suit is barred by law. The settled legal position is that an application to reject the plaint should be decided on the basis of statements made in the plaint.

13. The principal ground on which the application is founded is that an earlier suit was filed by the predecessors of the plaintiff seeking substantially the same relief. Since an application to reject the plaint is decided on the basis of statements made in the plaint, the plaint in this suit should be examined. On examining the plaint, it is noticeable that the plaintiffs have set out details of the earlier suit, including the judgment and decree in the appeal suit. Therefore, in order to test the applicant's contention that the relief prayed for in the two suits are substantially



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identical, the relief prayed for in the earlier suit and the present suit should be set out and compared.

14. The relief prayed for in O.S.No.645 of 1984 are as under:

"The plaintiffs therefore pray for judgment and decree against the defendants:-

(a) Granting leave to the plaintiffs / petitioners to sue as indigent persons;

(b) Declaring that the plaintiffs are the Trustees of the Dhavanotsavam festival and in respect of the suit properties as per the Will of late A.K.Venkatacharyulu;

(c) Directing the first defendant to render accounts in respect of rental collections and management in respect of the suit property viz New Door No.86 to 92 and 96 to 103. Tholasinga Perumal Koil Street, Triplicane, Madras and in respect of expenditure made for the performance of "Dhavanotsavam" festival by the first defendant for all the past years upto date when they have been in management;



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(d) Directing the first defendant to pay a sum of Rs.30,000/- in respect of balance of rental collections subject to rendering of accounts:

(e) Declaring that the deed of sale dated 25.03.1910 registered as Document No.1039 of 1910 with the Sub Registrar of South Madras in favour of first defendant stands set aside and that the said sale is null, void and invalid;

(f) Directing issue of injunction restraining first defendant from disturbing possession of the suit property bearing New No.86, Old No.78, Original Door No.70, Tholasinga Perumal Koil Street, Triplicane, Madras - 5, more particularly described in Schedule hereunder;

(g) Directing the first defendant to hand over possession and management of the suit properties to the plaintiffs to hold the same as Trustees in terms of the Will of late A.K.Venkatacharyulu;

(g) Directing the first defendant to hand over the key of the room in the Tirumamani Mandabam referred to in Schedule 'B'; in the plaint to the plaintiffs;



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(h) Directing the defendants to pay the costs of this suit to the plaintiffs; and

(i) Passing such further or other orders as this Honourable Court may deem fit."

15. The relief prayed for in the present suit are as under:

"The plaintiffs therefore pray that this Hon'ble Court may be pleased to pass a judgment and decree in favour of the plaintiffs and against the defendant:-

(a) Directing the defendant to hand over possession of properties morefully described in the Schedule 'A' and 'B' hereunder (Trust Properties), to the plaintiffs within a time to be fixed by this Hon'ble Court; failing which directing an officer of this Hon'ble Court to hand over possession of the Schedule 'A' and 'B' mentioned properties (Trust Properties) to the plaintiffs;

(b) Directing the defendant to render true and proper accounts of the rental income from the properties morefully described in the Schedule 'A' hereunder (Trust Properties) from



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31.10.1990 upto the date of plaint and pay the plaintiffs the net rental income from the properties deducting the expenses of Dhavanotsavam Festival as per the terms of the Will dated 01.02.1872 (marked as Exhibit A-2 in O.S.No.645 of 1984 on the file of XII Assistant Judge, City Civil Court, Madras) together with interest at the rate of 18% per annum from 31.10.1990 till the date of plaint and also to render true and proper accounts of the rental income from "A" & "B" schedule mentioned properties along with the list of tenants including the tenants who are in arrears in rent from the date of plaint till the date of handing over the "A" & "B" schedule mentioned properties to the plaintiffs and pass a preliminary and Final Decree thereon;

(c) Direct the defendant to render a true and proper accounts of the income derived out of "B" Schedule property (Trust Property) from 01.02.1872 till the date of plaint to the plaintiffs and pay the plaintiffs both the principal amount of Rs10,000/- together with accrued interest together with an interest @ 18% per annum from



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01.02.1872 till the date of the plaint and subsequently interest @ 18% per annum till the date of defendant handing over the "B" schedule property to the plaintiffs;

(d) For a mandatory injunction directing the defendant to demolish the item 1 of the plaint "A" schedule property, within a time to be fixed by this Hon'ble Court (from 08.08.2022) out of the trust funds only (Dhavanotsavam Festival Trust) and hand over the reconstructed building to the plaintiffs for the residential purposes as per the judgment in A.S.No.713 of 1991, on the file of Hon'ble High Court of Madras within a time to be fixed by this Hon'ble Court;

(e) For a mandatory injunction directing the defendant to disclose and hand over to the plaintiffs, before starting of the work of demolition and reconstruction of item 1 of the plaint "A" schedule property;

(i) Sanctioned plan

(ii) Budget

(iii) Name of the contractors and sub-contractors,

(iv) Availability of the Trust funds (Dhavanotsavam Trust Funds)



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(v) Details of all the amenities and facilities.

(f) For a permanent injunction restraining the defendant, their men, servants, officials, staffs, anyone claiming under them or acting on their behalf from in anyway borrowing any money from any person or agency or financial institutions, nationalised banks, etc., on the trust properties morefully described in 'A' schedule hereunder, for the purpose of demolition and reconstruction or for any other purposes;

(g) Directing the defendant to pay the cost of this suit;

(h) Pass such other suitable orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice."

16. As correctly contended by learned counsel for the applicant, prayer (a) in the present suit corresponds to prayer (g) in the earlier suit and prayer (b) in the present suit corresponds to prayer (c) in the earlier suit. Prayer (c) in the present suit relates to the bond for a sum of Rs.10,000/- and such relief was not prayed for in the earlier suit. Similarly, the relief prayed for in prayers (d) to (f) in the present suit were not prayed for in the earlier



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suit. As regards the relief prayed for in prayer (d), learned counsel for the applicant contended that such relief should only be claimed by way of execution proceedings and not by a separate suit. Whether the applicable rules under Order XXI prohibit an aggrieved person from instituting a suit in respect thereof is a matter that calls for deeper examination. Therefore, the plaint cannot be rejected at the threshold on the ground that the said relief can only be claimed under Order XXI CPC and not by a separate suit.

17. As regards the relief claimed under clause (e) and (f), the contention of learned counsel for the applicant is that these remedies are consequential. The relief relate to the sanctioned plan, budget, names of contractors, sub contractors, etc. for the demolition and re-construction of item-1 of the plaint-A schedule property and to prevent the defendants from borrowing money for purposes of demolition and re-construction of the property. In paragraph 14 of the plaint, the plaintiffs referred to actions that took place in January 2022 in relation to the property under occupation by the plaintiffs. In paragraph 19, the plaintiffs referred to the HR and CE Department and the Government of Tamil Nadu as being entitled to



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demolish and re-construct the trust property only out of trust funds. These pleadings and remedies relate to developments that are subsequent to the earlier suit and the decree passed therein. Since the decree in the Appeal Suit recognized the plaintiffs herein as hereditary trustees, it cannot be concluded that there is no cause of action at all to seek these remedies. While judgments such as *Arivanandan* were relied upon to contend that it is just a case of clever drafting, I am not inclined to accept such contention because the predecessors of the plaintiffs were recognised as hereditary trustees and the plaintiffs are currently the hereditary trustees. It should, however, be recognized that the disclosure of a cause of action is distinct from the sustainability thereof. No opinion is being expressed herein as regards the sustainability of the relief prayed for by the plaintiffs, including in prayers (e) and (f) of paragraph 43.

18. From the above discussion, it follows that the remedies prayed for in paragraph 43(a) and (b) are the same as those prayed for in the earlier suit, whereas the remedies prayed for in paragraph 43(c) to (f) do not have an equivalent in the earlier suit. As regards the latter, I also concluded that



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such remedies cannot be rejected at the threshold in an application to reject the plaint on the basis of objections raised by the applicant. Although a large number of precedents were placed on record by both parties with regard to rejection of the plaint, it is not necessary to dilate upon the same. It is sufficient to record that it cannot be concluded that the plaint does not disclose a cause of action or that the suit is barred by law based on statements made in the plaint. In cases such as *Madhav Aggarwal*, the Supreme Court held that a suit cannot be rejected in part. Hence, albeit subject to the caveat that it would be open to the applicant to plead issue estoppel on issues decided earlier, the plaint cannot be rejected.

19. The next issue to be examined is re-litigation. The judgments with regard to re-litigation and abuse of process instruct that a plaint may be struck off if it is evident to the Court that it constitutes an abuse of process. In the case at hand, in view of the fact that the plaintiffs herein were joined as respondents in the Appeal Suit, the contention that the present suit constitutes re-litigation cannot be disregarded. As noticed earlier, the decree in the Appeal Suit recognized the predecessors of the



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present plaintiffs and thereby the plaintiffs as hereditary trustees in respect of the trust created under the Will and the properties bequeathed thereunder.

As trustees, it cannot be said that the plaintiffs herein do not have rights in relation to the trust properties. When the facts and circumstances are considered cumulatively, at this juncture, I am not inclined to reject the plaint on the ground of re-litigation. However, this is an aspect that will warrant attention and close consideration in course of disposal of the suit.

20. For reasons set out above, this application is dismissed without any order as to costs.

21. List the other applications on 15.02.2023.

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SENTHILKUMAR RAMAMOORTHY, J.

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