



S.A.No.529 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.529 of 2022

1.Dr.R.Yuvaraj
2.Jansirani
3.Dhanalakshmi

...Appellants

Vs

1. D.Radhakrishnan
2. Venkataramanan
3, R. Vasuki Ramanan
4. Thirugnannasambantham (Died)
5. The Sub Registrar,
SRO Joint I Chengapet Taluk
Chengalpet District.
6.The Tahsildhar,
Taluk Office, Chengalpet.
7.The Commissioner,
Municipal Office, Chengalpet.
8.Head Surveyor,
Municipal Office, Chengalpet.
9.The District Collector of Kancheepuram,
Kancheepuram District.



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10.Vijayalakshmi
11.T.Saravanakumar

R4 died, R10 and 11 are bring on record
as LR's of the deceased R4 vide Court
order dated 23.11.2023 made in
C.M.P.Nos.23723, 23724 and 23721
of 2023 in S.A.No.529 of 2022

...Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree passed in A.S.No.18 of 2017 dated 19.08.2021 on the file of the Court of Principal District Judge, Kanchipuram at Chengalpet in confirming the fair order and decree passed in I.A.No.411 of 2015 in O.S.No.93 of 2015 dated 29.03.2016 on the file of the Court of Principal Sub Judge, Chengalpet.

For Appellant : Ms.P.Srividhya

For Respondents :Mr.K.V.Babu
2 and 3

For Respondents

10 and 11 : Mr.K.Hari

For Respondent-4 : Died

For Respondents

5 to 9 : Given up

For Respondent-1 : Served – No Appearance



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JUDGMENT

Challenging the orders passed by the Courts below who have concurrently rejected the plaint filed by the appellants herein, the appellants/ plaintiffs are before this Court.

2.The facts are set out briefly hereunder, with the parties being referred to in the same ranking as before the trial Court.

3.The suit O.S.No.93 of 2015 has been filed by the plaintiffs on the file of the Principal Subordinate Judge, Chengelpet for the following reliefs:

*(a) for a partition and separate possession of
their 3/4th share in the suit properties;*



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(b) to declare the sale agreement dated 28.12.1992 executed by the first defendant in favour of defendants 2 and 3 as null and void ;

(c) to cancel the sale deed dated 29.01.2004 executed by the first defendant in favour of defendants 2 and 3 by cancelling the decree passed by the learned Additional Subordinate Judge, Chengalpet in O.S.No.299 of 1994;

(d) to declare the Sale agreement dated 17.02.2015 executed by the first defendant in favour of the fourth defendant as null and void and

(e) for permanent injunction restraining the defendants 1 to 4 from alienating the suit properties



*to any third party or parties through their men,
agents, attorney or any other person till the
disposal of the suit.*

4.The plaintiffs would, in the plaint, submit that the first defendant is their father and defendants 2 and 3 are purchasers of “A” schedule property from the first defendant pursuant to the decree for specific performance obtained by them on an alleged agreement of sale, as if the first defendant is the absolute owner of the entire extent of “A” schedule property. The plaintiffs would submit that the plaintiffs and the first defendant together constitute a Hindu joint family along with their grandfather, G.Devaraja Pillai. On the death of Devaraja Pillai, the first defendant became the Kartha of the property and was in control of all the ancestral properties, which were about 25 acres around Udayambakam Village and P.V.Kalathur. The plaintiffs would submit that even now some of the properties stand in the name



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of the plaintiff's grandfather, G.Devarajapillai and grandmother Egathammal.

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5.It is the case of the plaintiffs that the first defendant has been leading a wayward and extravagant life, as a result of which he has sold many properties for his immoral and luxurious life. The plaintiffs would submit that their father was addicted to alcohol. They would further submit that, in his drunken stupor, he has been signing a number of blank papers just for the day's drink. This has resulted in Avyavakarika debts by creating an encumbrance on the ancestral property which includes the suit properties.

6.The plaintiffs would further submit that from the sale of the ancestral properties at Udayambakkam Village and from the income derived from the ancestral properties, the plaintiff's mother, Ramathilagam, had taken efforts to purchase the suit properties

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measuring an extent of 1798 sq.ft. in S.Nos.449/4A and 449/6. The plaintiffs would further submit that a part consideration of Rs.75,000/- was raised by borrowing loan from defendants 2 and 3 by the first defendant and the plaintiffs grandfather, Devarajapillai. The plaintiffs would submit that encumbrances created by the first defendant were not binding on them.

7.It is the case of the plaintiffs that within a year of purchase of the properties, the first defendant, without the knowledge and consent of the plaintiffs, had executed a sale agreement in favour of defendants 2 and 3. The defendants 2 and 3 have collusively obtained the signatures from the first defendant without the knowledge and consent of the plaintiffs, as if they were getting the mortgagee deed from the first defendant. The plaintiffs would submit that defendants 2 and 3 are not *bonafide* purchasers.

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8.The plaintiffs would submit that on the strength of this collusive agreement of sale, defendants 2 and 3 had filed O.S.No.299 of 1994 on the file of the Additional Subordinate Court, Chengalpet for specific performance. The suit came to be decreed, since the first defendant had not contested the same. It appears that the first defendant had once again executed a sale agreement dated 17.02.2015 in favour of the fourth defendant without disclosing anything to the plaintiffs in respect of "B" schedule property. The plaintiffs would submit that the act of the defendants to execute a sale agreement without the consent of the other co-parceners is illegal. The plaintiffs would submit that the properties are still in their possession and they were also lulled into believing that the father would not sell the property without the concurrence of the other members of the family. On 20.02.2015, the plaintiffs had demanded partition. The first defendant not only refused to give share in partition but also called defendants 2 to 4 over phone for his assistance. The defendants 2 to 4



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had come to residence with about 15 to 20 goondas and threatened the plaintiffs with dire consequences.

9.The plaintiffs, meanwhile, had issued a legal notice dated 24.05.2012 to defendants 1 to 3 calling upon them to cancel the sale deed. However, the same was not considered. The plaintiffs had themselves filed a suit for partition and permanent injunction in O.S.No.78 of 2015 on the file of the Additional Subordinate Court, Chengalpet. Since all parties had not been impleaded, namely the Government side, the plaintiffs had withdrawn the suit with liberty to file a fresh suit. Hence, the present suit was filed for the same cause of action.

10.The defendants, on entering appearance, have filed an application in I.A.No.411 of 2015 under Order 7 and 11(a) and (d) of the Code of Civil Procedure to reject the plaint on the ground that there

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was no cause of action for the suit and the suit is barred by law. From a reading of the affidavit filed in support of the above application, it appears that the ground on which the present application was filed was that 11 years after the plaintiffs application in E.A.No.207 of 2005 in E.P.No.199 of 2002 for impleading them as parties to the proceedings had been dismissed by the Subordinate Court, Chengalpet, the present suit has been filed.

11.The plaintiffs have not preferred any revision against the said order. Thereafter, it appears that the plaintiffs had filed I.A.No.57 of 2012 in A.S.Sr.No.2385 of 2012 before the Principal District Judge to condone the delay of 3814 days in filing the appeal and also filing I.A.677 of 2013. This application was also dismissed after a detailed enquiry and against the said order, C.R.P.No.1193 of 2015 was filed, which was dismissed on 09.06.2015. Within a few days thereafter, the present suit has been filed. The defendants would submit that the suit

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is not maintainable on the ground that item Nos. 1 and 2 are self-acquired properties of the first defendant. The first defendant is very much alive. Therefore, the question of partition would not arise. Hence, the defendants would contend that there is no cause of action. They would submit that prayers 'B' and 'C' are not available for the plaintiffs and the relief claimed is an abuse of process of Court and a clear case of contempt. That apart, they would submit that the suit is barred by law. However, under what law the suit has been barred has not been explicated.

12.The learned Principal Subordinate Judge, Chengalpet on considering the aforesaid pleadings and the documents that had been put forward by the defendants in the application for rejecting the plaint, came to the conclusion that the suit in question is a re-litigation. The learned Judge would submit that defendants 2 and 2 who are senior citizens have settled the properties on the basis of the possession



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handed over to them by the Court of law under Ex.P4-Sale Deed with the delay of 3814 days. The defendants had preferred I.A.No.57 of 2012 in A.S.Sr.No.2388 of 2012 which was filed to condone this delay. This application had been dismissed by the Principal District Judge, which is evident from Ex.P5. Against the said order, the defendants had preferred a revision which was also dismissed on 09.06.2015 as against which there is no further appeal. Therefore, the learned Judge held that the present suit is nothing, but a re-litigation and hence allowed the application. Aggrieved by the same, the plaintiffs had filed A.S.No.18 of 2017 on the file of the Principal District Judge, Chengalpet. The learned Principal District has also dismissed the appeal. Challenging the same, the plaintiff is before this Court.

13.The Second Appeal was admitted on the following Substantial Questions of Law:

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1. *When the suit B schedule property was not a subject matter of earlier suit. O.S.No.299 of 1994 whether the Courts below erred in law in rejecting the plaint on the ground of res judicata?*
2. *When the subject matter of two suits are not one and the same, whether the Courts below erred in law in rejecting the plaint on the ground of res judicata?*
3. *When the relief of partition is a continuing cause action and the cause of action is also one of bundle of facts, whether the Courts below erred in law in rejecting the plaint, wherein the relief of partition is claimed?*
4. *When the law requires that the collusion must be pleaded and proved whether the same could be a ground for rejection of plaint?*
5. *When the present plaintiffs were not parties to the earlier suit whether the Courts below erred in law in rejecting*



the plaint on the ground of collusion, which is to be pleaded and proved?

14.Ms.Srividhya, learned counsel appearing for the appellant would submit that it has been time and again held that when considering an application for rejecting the plaint under Order 7 Rule 11 (a) and (d), the Court should only be bound by the contents of the plaint and the documents filed along with the plaint and not the defense or the documents in defense. She would further submit that a mere perusal of the plaint in question would clearly bring out the cause of action and a perusal of the judgments under appeal would clearly prove that both the Courts below have not taken into consideration the plaintiffs pleading but have been totally swayed by the contents of the application for rejecting the plaint and the documents that had been filed therein. The Courts below have totally failed to consider that the plaintiffs have come to court contending that the suit properties are



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ancestral joint family properties and execution of the agreement of sale by the first defendant in favour of defendants 2 and 3, including the shares of the plaintiffs, is wrong. This is the issue in the present suit, which has been proved by the plaintiffs, and the plaintiffs cannot be thrown out at the threshold.

15.Per contra, Mr.K.V.Babu, learned counsel appearing on behalf of defendants 2 and 3 would submit that the sale agreement had been entered into between the 1st defendant and defendants 2 and 3 on 28.12.1992 and the sale deed had been executed in favour of defendants 2 and 3 pursuant to orders in E.P.No.4 of 1999 on 29.01.2004. Thereafter, E.P.No.199 of 2002 had been filed for delivery and the delivery has been taken through Court. The plaintiffs have then filed E.A.No.207 of 2005 to implead themselves in the execution proceedings which was dismissed by orders dated 13.12.2003. This order has not been challenged by the plaintiffs and

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after 11 years, the plaintiffs had filed I.A.No.57 of 2012 in A.S.Sr.No.2385 of 2012 to condone the delay in filing the appeal against the judgment and decree in O.S.No.299 of 1994 (suit for specific performance filed by the defendants 2 and 3 against the first defendant) He would submit that this application had been dismissed and the Civil Revision Petition filed against this I.A order has also been dismissed, against which no further has been filed. On the contrary, within 10 days of the dismissal of the C.R.P, the present suit has been filed for partition. He would submit that therefore there is no cause of action for filing the above suit and the Courts below have rightly rejected the plaint. He would rely upon the judgment of the Hon'ble Supreme Court reported in *MANU/SC/0092/1998 [K.K.Modi Vs. K.N.Modi and Others]*. He would submit that the present suit is nothing but a re-litigation and an abuse of process of Court.



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16. Heard the learned counsel on either side and perused the materials available on record.

17. Before venturing into the discussion, it would be useful to refer to the provisions of Order 7 and Rule 11 of the code of civil procedure with particular reference to sub clauses (a) and (d).

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper*



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within a time to be fixed by the Court, fails to do

so;

(d) where the suit appears from the statement in

the plaint to be barred by any law;

18. A reading of the provision clearly sets out that the plaint could be rejected if it does not disclose a cause of action or where from the very pleading, it is evident that it is barred by any law. It is for this reason that the Court have time and again held that when considering an application for rejecting the plaint, the Court should be guided only by the contents of the plaint and the documents filed in support of the plaintiffs case. The Hon'ble Supreme Court, in the judgment reported in **2015 (5) SCC 644 [Soumitra Kumar Sen vs Shyamal Kumar Sen And Ors]**, has held that while rejecting the plaint, the averments in the plaint along with documents filed therewith have to be looked into, and no other material except the plaint averments has to be considered.

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19.The application for rejecting the plaint has been made on the ground that;

a) it does not disclose the cause of action; and

(b) the suit is barred by law.

As already submitted, the defendants have not stated as to which law bars the filing of the suit. With reference to argument that the plaint lacks cause of action, it has been time and again held that the cause of action is a bundle of facts and the Court has to consider the contents of the plaint to see if a semblance of a cause of action has been made out. In the instant case, the plaintiffs have come forward to file the suit on the ground that the properties are ancestral properties in which they have a share and suppressing the same, the first defendant had executed a sale agreement in favour of the defendants 2 and 3, who have obtained a decree for specific performance and have executed the same. The suit is one for partition, which clearly denotes that the plaintiffs have not challenged the decree obtained by the defendants. It is an

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admitted fact that the plaintiffs are not parties to the earlier suit.

Therefore, the allegation that it is a re- litigation cannot be sustained.

Therefore the judgment relied upon by the learned counsel for the defendants 2 and 3 would not come to their aid. A reading of the plaint does disclose a cause of action and ultimately it is for the plaintiffs to prove their case. The defendants cannot seek to shut out the plaintiffs from establishing their case at the very threshold by filing the application for rejecting the plaint. Both the Courts below have not referred to the contents of the plaint and they have been completely bowled over by the contents of the affidavit for rejecting the plaint and the documents filed support thereof. This approach is contrary to the time tested orders passed by the Courts. It is only the contents of the plaint that have to be looked into. Therefore, substantial question of law Nos. 3, 4 and 5 are answered in favour of the plaintiffs. It is seen that the collusion has to be pleaded and proved, which is not the case in the instant case since the defendants have not chosen to file their

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written statement. The subject matter of the two suits is different in as much as in the instant suit the plaintiffs have also included the property at Thirukazhukundram. Therefore, the Courts below have committed an error in rejecting the plaint on the ground of *res-judicata*. Consequently, the substantial question of law Nos. 1 and 2 are answered in favour of the plaintiffs. In fine, the second appeal is allowed. Therefore, the judgment and decree of both the Courts below are set aside. No costs.

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Index: Yes/No
Speaking order/non-speaking order
srn

To

1. The Principal District Judge, Kanchipuram at Chengalpet
2. The Principal Sub Judge, Chengalpet.
3. The Section Officer, V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

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