



S.A.No.263 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

S.A.No.263 of 2011

1.Ramasamy
2.KJeyanthi
3.M.Saraswathi

...Plaintiffs / Appellants /
Appellants

-Vs-

1.Kondathal
2.Sundarambal
3.Kandasamy
4.Murugasamy
5.Chinnammal
6.Kondathal
7.Kanniathal
8.Kamalathal
9.Suseela
10.S.Devaraj
11.S.Karuppusamy
12.S.Visalakshi
13.K.Saraswathi
14.S.Marappan
15.S.Krishnaveni

...Defendants / Respondents
Respondents

Prayer:- Second Appeal preferred under Section 100 of CPC, against the judgment and decree dated 02.08.2010 passed in A.S.No.124 of 2008 on the



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file of the Additional District Court, Coimbatore, confirming the judgment and decree dated 23.09.2008 passed in O.S.No.83 of 2004 on the file of the Sub Court, Tiruppur.

For Appellants : Mr.K.Govi Ganesan
For R1 & R2 : Mr.P.Navaneetha Krishnan
For R8 & R9 : Mr.R.Singaravelan
Senior Counsel
for M/s.M.Srividhya
For R3 to R7
R10 to R15 : Ex parte

J U D G M E N T

The Second Appeal has been preferred by the plaintiffs in the suit as against the concurrent findings of the Courts below. The plaintiffs had filed the suit for the following reliefs:

- i.To declare the preliminary decree dated 18.12.1990 passed in O.S.No.230 of 1990 and the final decree dated 21.12.2000 as null and void in respect of the property in S.F.No.243/2 to an extent of 2.24 acres in Velampalayam Village, Tiruppur, which is the second item of suit schedule properties.
- ii.To declare the title of 2nd and 3rd plaintiffs in respect of the 2nd item of



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the suit schedule properties.

iii.To grant permanent injunction against 2nd and 3rd defendants in respect of the aforesaid property.

iv.To direct the defendants to pay the cost of the suit.

2. The brief facts of the plaintiffs' case are as follows:

The suit property originally belonged to one Kaliappa Gounder. Thereafter, the said Kaliappa Gounder has sold the property to his minor children on 07.05.1925 through his wife Chinnakkal. The first defendant Marathal is the aunty of the 1st plaintiff, and sister of the 1st plaintiff's father. The plaintiffs 2 and 3 are the daughters of the 1st plaintiff. When that being so, the first defendant has filed a suit in O.S.No.230 of 1990 for partition of the suit property claiming that the suit property belonged to her mother Chinnakkal.

3. The plaintiffs contended that the first defendant had also claimed that under family arrangement, some of the suit properties were given as stridhana to her. The first defendant knowing very well that the suit properties were originally purchased by the minors has filed the suit for



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partition. One of the sons of Kaliappa Gounder viz., Velappa Gounder died without any issue. Therefore, the suit properties were partitioned on 01.03.1960 between Palani Gounder, the father of the 1st plaintiff and the 4th defendant. Thereafter, the 1st plaintiff and his brother, the 5th defendant in the suit were enjoying the property allotted to their father Palani Gounder. They partitioned the suit property on 19.08.96. The plaintiff is in possession of the suit property ever since the date of partition by his father. However, the defendants 4, 10 and 11 joined together to defeat the rights of the plaintiff and sold the property to the third parties.

4. The plaintiffs contended that, though the 1st plaintiff was made as a party in the suit filed by the first defendant, he was not aware of the real facts and the same has been suppressed to him. The defendants 1 to 3, 10 and 11 have joined together and committed fraud on the Court and obtained a decree for partition of the suit property. Such decree is nullity in the eye of law. Whereas, the plaintiff is in possession of the suit property from the very beginning. Hence, they have filed the present suit to declare the preliminary decree as well as final decree in O.S.No.230 of 1990 dated 18.12.1990 and 21.12.2000 respectively as null and void. The plaintiff also



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sought for permanent injunction restraining the defendants 2 and 3 from interfering in the plaintiffs' peaceful possession of the suit property.

5. The defendants 2 and 3, the legal heirs of the first defendant have filed a written statement stating that the first defendant Marathal filed a suit in O.S.No.230 of 1990 against her brother Kandappa Gounder and three sons and three daughters of her deceased brother Palani Gounder. Wherein she has specifically pleaded that there was a family arrangement between herself and her two brothers.

6. The defendants contended that having appeared in the suit, the 1st plaintiff and the other defendants remained ex parte. Therefore, ex parte decree was passed on 18.12.1990. Thereafter an I.A.No.368 of 1992 for final decree was filed and the respondents in the above suit including the 1st plaintiff Ramsamy appeared in the said I.A and filed counter on 22.02.1993. Thereafter, a Commissioner was appointed. In fact, the 1st plaintiff has filed objections for the Commissioner's report. Besides, an application was also filed to set aside the ex parte preliminary decree with 588 days delay. Ultimately on 09.07.1998, the said application was dismissed for default.



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7. Therefore, after considering the Commissioner's report, a final decree was passed and the respective shares have been allotted to the parties. The 1st plaintiff was a party to the suit all along and he has the knowledge about the pending proceedings. Therefore, the decree in O.S.No.230 of 1990 operate as *res judicata* in this suit.

8. The allegation of fraud is denied by the defendants. This suit itself is barred by limitation. Hence, the defendants prayed for dismissal of the suit and also submitted that the alleged settlement and partition between the 1st plaintiff and the 5th defendant will not be binding on the defendants. The 6th defendant filed written statement stating that the 6th defendant is also entitled to 1/3 share in the suit property. Hence, they prayed for dismissal of the suit.

9. The Trial Court framed the following issues for consideration:

- (a) Whether the defendants 1 to 3, 10 and 11 have played fraud upon the Court and obtained decree in O.S.No.230 of 1990?
- (b) Whether the suit framed is not maintainable?
- (c) Whether the suit is barred by Section 11 of CPC?



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(d)Whether the plaintiff is entitled for declaration and injunction in respect of the second item of the property?

(e)Whether there was no cause of action?

(f)To what relief?

10. Before the Trial Court, on the side of the plaintiff, P.W-1 to P.W-5 were examined and Exs.A-1 to A-27 have been marked. On the side of the defendants, D.W-1 was examined and Exs.B-1 to B-13 have been marked. The report and sketch of the Advocate Commissioner were marked as Exs.C-1 and C-2.

11. Based on the materials and evidence, the learned Trial Judge has dismissed the suit. Aggrieved by the judgment and decree of the Trial Court, the plaintiffs preferred an appeal in A.S.No.124 of 2008 on the file of the learned I Additional District Judge, Coimbatore.

12. The First Appellate Court framed the following points for determination:

“a)Whether the fraud has been committed by the first



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defendant while obtaining decree in O.S.No.230 of 1990?

b)Whether the suit is barred by limitation?

c)Whether the suit is hit by rule of *res judicata*?”

13. The First Appellate Court had categorically come to the conclusion that the appellant/plaintiff is not entitled to the reliefs. The first plaintiff in the suit was made as defendant No.3 in the suit for partition filed by the 1st defendant in the present suit. The plaintiffs had already participated in the earlier suit, not only in the preliminary decree stage, but also in the final decree stage and even in the execution proceedings.

14. The final decree in the aforesaid partition suit was passed on 21.03.2000 as per Ex.A-5, and preliminary decree was passed in the year 1990 itself. These facts are not in dispute. Whereas, the present suit has been filed only in the year 2004, much after the period of limitation.

15. In the cross examination of P.W-1, the 1st plaintiff has admitted that he had appeared in O.S.No.230 of 1990 and that he had knowledge about the previous case filed by the first defendant. Further he has also



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admitted that while conducting the suit in O.S.No.230 of 1990, no one has cheated him. Therefore, he has categorically admitted that he was neither cheated nor fraud was played upon him while conducting the suit in O.S.No.230 of 1990.

16. Therefore, he cannot claim that he had no knowledge about the earlier proceedings. Article 59 of the Limitation Act clearly stipulates that suit has to be filed within 3 years from the date when the facts entitling the plaintiffs to have the instruments or decree cancelled or set aside or to have the contract rescinded, first become known to him. Admittedly, the first plaintiff was all along a party to the previous suit. Therefore, the present suit filed in the year 2004, itself is not maintainable. Besides, the earlier suit also operates as *res judicata* and binding on the plaintiffs.

17. The First Appellate Court confirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent judgments and decrees passed by the Courts below, the above Second Appeal has been preferred by the plaintiffs in the suit.



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18. From the records, it is seen that this Court has only issued notice to the respondents at the stage of admission and the second appeal was not admitted on any substantial question of law.

19. Learned counsel for the appellants would contend that the Courts below have failed to note that the respondents / defendants had played fraud upon the Court in the earlier suit filed for partition by the 1st defendant and the Courts below did not analyse the evidence of P.W-1 to P.W-4.

20. The learned counsel for the first and second respondents would contend that the second appeal cannot be entertained, since the suit itself was filed beyond the period of limitation and the suit is hit by *res judicata*.

21. The learned Senior Counsel for the respondents 8 and 9 would contend that when the first plaintiff had admitted in the cross examination that he has appeared before the Court in the earlier suit and the respondents have not played fraud upon the Court while conducting O.S.No.230 of 1990, the appellants have failed to establish their case and they are not



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entitled to any reliefs.

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22. On perusal of the judgments of the Courts below, it is clear that the first plaintiff was added as a party in the partition suit in respect of the suit property. Admittedly he was a part of the earlier suit and he has filed an application to set aside the ex parte decree in the earlier proceedings. In spite of the fact that the said application was rejected, filing of the said application by the 1st plaintiff itself is a sufficient reason to hold that the 1st plaintiff had knowledge about the earlier suit all along. Therefore, as rightly found by the Courts below, the suit is barred by limitation and the appellants are bound by the preliminary and final decree in O.S.No.230 of 1990. The suit is barred by the principle of *res judicata* and limitation.

23. As stated supra, the second appeal was not admitted on any substantial question of law by this Court till this date. After hearing the arguments advanced on either side, this Court is of the view that there is no substantial question of law involved in the above second appeal. Therefore, the judgment and decree of the Courts below need not be interfered with.



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24. In the result, the **second appeal stands dismissed**. The judgment and decree in A.S.No.124 of 2008 dated 02.08.2010 passed by the I Additional District Court, Coimbatore, is hereby confirmed. No costs.

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Index : Yes/No

Speaking/Non Speaking order



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To

- 1.The Additional District Court, Coimbatore.
- 2.The Sub Court, Tiruppur.
- 3.The Section Officer, VR Records,
High Court, Chennai.



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N.SENTHILKUMAR, J.

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