



S.A.No.655 of 2019
and C.M.P.Nos.28110 and 28112 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.655 of 2019

and

C.M.P.Nos.28110 and 28112 of 2024

S.Vaidhyanathan

... Appellant

Vs.

C.Palaniappan (Died)
S.C.Kanjamalai (Died)
1. V.Kasturi Venkatachalam
2. T.Vijaya Thammannan
3. S.P.Rajagopal
4. Mallikabegam
5. Nirmala
6. Ramya
7. Lavanya
8. Sivakumar
9. Sivakami
10. Durga
11. Suseela (Died)
12. Arunmozhi
13. Amuthaguna
14. R.Dhanalakshmi
15. Geetha
16. Karthick
17. S.K.Mohan
S.K.Raja (Died)
18. D.Kalavathi



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19. Thenmozhi
20. Minor R.Samruthi
21. Minor R.P.Srinivasan
22. Arunmozhi
23. Amudhaguna
24. M.Geetha
25. S.Karthi

... Respondents

(R11 Died. RR22 to 25 are brought on record as LR's of the deceased R11 vide court order dated 07.11.2024 made in C.M.P.Nos.8350, 8353 and 8356/2023 in S.A.No.655/2019)

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 19.11.2018 passed in A.S. No.63 of 2013, on the file of the II Additional District Court, Salem, upholding the decree and judgment dated 05.03.2013 passed in O.S.No.129 of 2005, on the file of the II Additional Sub Court, Salem.

For Appellants	: Mr.K.Doraisami, Senior Counsel assisted by Mr.Muthumani Doraisami
For R1	: Mr.V.Sekar for Mr.D.Shivakumaran
For R14	: Mr.S.Vasudevan
For RR15 and 16	: Mr.R.Kaaveesh for M/s.Cherien Mathawas



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JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal.

2. The plaintiff filed the suit in O.S.No.129 of 2005 before II Additional Sub Court, Salem, for dissolution of the partnership firm "Hercules Weigh Bridge" and for rendition of accounts of the said firm. He also prayed for 1/8th share in the net assets and profits of the partnership firm.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

4. The case of the plaintiff in a nutshell is as follows :

4.1. The plaintiff and the defendants 1 to 6 and one T.K.Kuppusamy (since deceased) entered into a partnership agreement dated 22.02.1984 (Ex.A1) for purchase of a land in Jagirammopalayam



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WEB COPY Village, Salem. The partnership firm was at will and for the purpose of conducting a business in the name and style of 'Hercules Weigh Bridge'.

4.2. All the partners decided to purchase a property in the name of the first defendant and T.K.Kuppusamy. The fifth defendant contributed a sum of Rs.10,000/- and other partners contributed a sum of Rs.7,200/- per head towards capital of the firm. It was agreed among the partners to construct a weigh bridge.

4.3. Subsequently, the partnership firm purchased 6152 sq.ft of land in survey number 223/10A1 of Jagirammappalayam Village under three registered sale deeds dated 21.03.1984 (Ex.A3), 30.03.1984 (Ex.A4) and 04.04.1984 (Ex.A5). After the purchase of the property, weigh bridge and a building were constructed with the funds of the firm.

4.4. On 25.04.1984, a codicil (Ex.A2) was executed through which the partners agreed to open a bank account which would be operated by the first defendant and T.K.Kuppusamy.

4.5. Though the first defendant was initially paying the profits to the plaintiff through cheques, he stopped paying the same since 2002. He did not also give proper accounts to the plaintiff. In the meanwhile,



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the government acquired 2637 sq.ft. of land in the property purchased by the partnership firm, in order to form a four way lane.

4.6. A sum of Rs.19,18,525.88/- was paid as compensation for the acquired land. The first defendant received the entire amount from the government. When the plaintiff approached the first defendant and requested him to pay his share of the compensation amount, the first defendant did not give him proper reply. Therefore, the plaintiff issued a notice dated 22.03.2004 (Ex.A6) to the first defendant calling upon him to pay 1/8th share of the compensation amount to him. The first defendant received the said notice and sent a reply dated 15.04.2004 (Ex.A7), which according to the plaintiff contained false allegations. Therefore, the plaintiff filed a suit in O.S.No.325/2004 before the Principal Sub Court, Salem, for recovery of 1/8th share in the compensation amount.

4.7. On 30.10.2003, the first defendant executed a settlement deed (Ex.B5) in respect of the suit property in favour of his wife and children (defendants 13 to 16). The said settlement deed is not binding on the plaintiff. Subsequently, the defendants 13 to 16 executed a sale deed



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in respect of 634 sq.ft. of land in favour of the 17th defendant. The said sale is also not valid.

4.8. The partnership firm can be dissolved at the instance of one of the partners. Hence the suit for dissolution of the partnership firm, for rendition of true accounts and for recovery of 1/8th share in the assets and profits of the partnership firm and the business.

5. The defendants 4 to 12 remained absent before the trial court and were set *ex parte*. During the pendency of the suit, the first defendant died and his legal heirs were impleaded as defendants 13 to 16. The second defendant (one of the partners) in his written statement admitted all the contentions of the plaintiff and prayed for passing a decree in favour of the plaintiff.

6. The suit was resisted by the defendants 3, 13 to 17 on the following grounds :

- i. The plaintiff has already filed a suit in O.S.No.325/2004 on the file of the Principal Sub Court, Salem, seeking 1/8th share in the



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WEB COPY compensation amount and therefore, the present suit is hit by Order II Rule 2 CPC.

- ii. The suit property is the exclusive property of the first defendant and it does not belong to the partnership firm.
- iii. A sum of Rs.60,400/- was mobilized to start the weigh bridge business in the land to be purchased in Jagiramanpalayam Village, Salem.
- iv. The first defendant alone paid the entire sale consideration for the purchase of the land in Jagiramanpalayam Village.
- v. The total value of the property was Rs.1,35,310/- on the date of three sale deeds (Ex.A3 to Ex.A5).
- vi. The first defendant also had spent a huge sum of money for constructing a building, weigh bridge, office room, service station, etc.
- vii. A part of the land was acquired by the Tamil Nadu Government and the first defendant was paid the entire compensation amount after due verification.
- viii. The seventeenth defendant had purchased 634 sq.ft. of land from



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the first defendant and has been in possession and enjoyment of the same till date.

ix. The plaintiff does not have any right over the suit property.

7. On the basis of the above pleadings, the trial Court framed the following issues and additional issues :

"i. Whether the settlement deed dated 30.10.2013 is valid and binding on the plaintiff ?

ii. Whether the sale deed dated 30.04.2004 is valid and binding on the plaintiff ?"

Additional Issues :

"i. Whether the suit properties are absolute properties of the first defendant?

ii. Whether the properties were purchased for the partnership firm business?

iii. Whether the suit is hit under Order II Rule 2 CPC in view of the suit in O.S.No.325/2004?

iv. Whether the suit is maintainable by the plaintiff in his individual capacity?

v. Whether the suit is barred under the provision of Indian Partnership Act?

vi. Whether the suit is bad for non-joinder of parties?



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vii. Whether the plaintiff is entitled for the relief of dissolution of firm and rendition of accounts?

viii. Whether the plaintiff is entitled for 1/8th share in the net assets and profits ?

8. In the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A15. The defendants 2 and 17 examined themselves and marked Ex.B1 and Ex.B17.

9. The learned trial court judge on considering the evidence on record, dismissed the suit filed by the plaintiff, vide his decree and judgment dated 05.03.2013, on the following grounds:

- i. The suit property was purchased under three sale deeds (Ex.A3 to Ex.A5) by the first defendant from one Narayanan. Though the plaintiff claims that the suit property was purchased by the firm, there is no acceptable evidence to show that the firm had financial capacity to purchase the suit property.
- ii. When the capital of the firm itself is Rs.60,400/- the suit property which is worth more than a lakh could not have been purchased



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WEB COPY from the capital.

- iii. There is no pleading in the plaint that the firm borrowed loan from a bank for the purpose of purchasing the suit property.
- iv. The plaintiff has not proved the codicil (Ex.A2) by adducing acceptable evidence.
- v. The plaintiff has not also produced the original codicil.
- vi. Though the plaintiff in his evidence had deposed that he contributed a sum of Rs.25,000/- for constructing a building in the suit property, there is no pleading to that effect in the plaint.
- vii. The suit property stands in the name of the first defendant and he has also executed a settlement deed dated 30.10.2003 (Ex.A8) in favour of his wife and children. Based on the settlement deed the beneficiaries had executed a sale deed in favour of the seventeenth defendant.
- viii. On an earlier occasion, the plaintiff has filed a suit in O.S.No.325/2004 before the Principal Sub Court, Salem, seeking 1/8th share in the compensation amount paid by the government for acquisition of portion of a land purchased under Ex.A3 to



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ix. Since the cause of action in the earlier suit in O.S.No.325/2004 and in the instant suit is one and the same, the suit is hit under Order II Rule 2 CPC.

10. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiff filed an appeal in A.S. No.63 of 2013, on the file of the II Additional District Court, Salem. The learned II Additional District Judge, Salem, after analysing the evidence on record, upheld the findings recorded by the trial court judge vide his decree and judgment dated 19.11.2018, as against which the present second appeal is filed.

11. At the time of admission the following substantial questions of law were framed by my learned predecessor.

“a. Whether the Courts below are right in dismissing the suit for dissolution of Partnership Firm and rendering true and proper accounts for the Partnership Firm namely “Hercules Weigh Bridge” when the existence of the Partnership Firm namely “ Hercules Weigh Bridge”



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holding the plaintiff, the defendants 1 to 6 and one T.K.Kuppusamy as partners is admitted by all the defendants?

b. Whether the Courts below are right in dismissing the suit on the ground that the Suit is barred under Order II Rule 2 of C.P.C when the Reliefs sought for and the cause of action in the earlier suit in O.S.No.325 of 2004 are entirely different from the Reliefs sought for and the cause of action in the present suit?

c. Whether the Courts below are right in dismissing the suit when the Exhibits A-3 to A-5 will clearly and categorically prove beyond doubt that the schedule properties were purchased for the Partnership Firm, represented by C.Palaniappan (D1) and not in the individual name of D1?

d. Whether the Courts below are right in dismissing the suit when no oral evidence has been given against the claim of the plaintiff on the side of the defendants and when the 2nd defendant (DW1) deposed in favour of the plaintiff?

e. Whether the Courts below are right in dismissing the suit when the defendants 13 to 16 failed to adduce any evidence that the 1st defendant alone



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12. Heard Mr.K.Doraisami, learned Senior Counsel assisted by Mr.Muthumani Doraisami, learned counsel for the appellant, Mr.V.Sekar, learned counsel for the first respondent, Mr.S.Vasudevan, learned counsel for the fourteenth respondent and Mr.R.Kaaveesh, learned counsel for the respondents 15 and 16.

13. Mr.K.Doraisami, learned Senior Counsel for the appellant contended that though the trial court had come to a conclusion that the plaintiff is entitled for the relief of dissolution of the partnership firm and for rendition of accounts, had dismissed the suit on the ground that the suit is barred under Order II Rule 2 CPC. He relied on the decision of the Hon'ble Supreme Court in ***Jayantilal Chimanlal Patel vs. Vadilal Purushottamdas Patel*** reported in ***(2017) 13 SCC 409*** and contended that when the defendants did not file a copy of the plaint filed in the earlier suit in O.S.No.325/2004 on the file of the Principal Sub Court, Salem,



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they cannot maintain a plea that the present suit is hit under Order II Rule 2 CPC. He also drew the attention of this Court to the recitals of the sale deeds (Ex.A3 to Ex.A5) and contended that the properties comprised in Ex.A3 to Ex.A5 were purchased only for the purpose of the partnership firm business and in the circumstances, both the Courts below had wrongly dismissed the suit filed by the plaintiff. He therefore, prayed for allowing the present second appeal.

14. Per contra, learned counsel for the contesting respondents would contend that the capital of the partnership firm was Rs.60,400/- and therefore, the firm could not have purchased the suit property which is worth more than Rs.1,00,000/-. The property also stands in the name of the first defendant and the plaintiff has not proved that he financially contributed for the purchase of the properties comprised in Ex.A3 to Ex.A5. He also relied on the decision of the Hon'ble Supreme Court in *State Bank of India vs. Gracture Pharmaceuticals Limited* reported in **2013 (6) CTC 789** and contended that a suit filed by the plaintiff should include the whole claim and if he relinquishes any part of his claim, he



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cannot file a subsequent suit as no fresh cause of action would arise in between the first suit and the second suit. It is also his contention that Order II Rule 2 CPC stipulates inclusion of all claims based on the same cause of action in one suit and the plaintiff should seek comprehensive relief at the first instance when there is cause of action to make such claim. His specific contention is that since the plaintiff has already filed the suit in O.S.No.325/2004 on the file of the Principal Sub Court, Salem, seeking 1/8th share in the compensation amount paid by the government to the first defendant, he cannot maintain the present suit.

15. Mr.V.Sekar, learned counsel for the first respondent contended that the documents pertaining to the earlier suit in O.S.No.325/2004 on the file of the Principal Sub Court, Salem, was not filed by the contesting defendants and in the circumstances, the observations of both the courts below that the suit is hit under Order II Rule 2 CPC cannot be sustained. He also contended that the partners might have generated funds for the purchase of the properties comprised under Ex.A3 to Ex.A5.



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16. It is seen from the records that the sale deeds (Ex.A3 to Ex.A5) stands in the name of the first defendant. In the sale deed it is mentioned thus :

“சேலம் டவுன் அரிசிபாளையம், தம்மண்ணன் ரோட்டில் தற்காலம் இருந்து வரும் ஹர்குலிஸ் வே பிரிட்ஜுக்கு அதன் தற்கால நிர்வாக பாகஸ்தரும் 1/138 அங்கம்மாள் நகரில் இருந்து வரும் சின்னப்ப மேஸ்திரி குமாரர் சி.பழனியப்பன் எம்.பி. ஆகிய தங்களுக்கு”

“இனி தாங்களே மேற்படி வேபிரிட்ஜிற்காக இதன் கீழ்கண்ட சொத்தை தாங்கள் நாளது தேதி முதல் சர்வ சுதந்திர பாத்தியங்களுடன் தான விற்கிரயங்களுக்கு யோக்கியமாய் புத்திர, பவுத்திர பாரம்பரியமாய் ஆண்டு அனுபவத்திக்கொண்டு சுகத்திலிருக்கவும்.”

The learned senior counsel relied on these recitals in Ex.A3 to Ex.A5 and contended that the suit property was purchased for the partnership firm. It is pertinent to point out that on the date of partnership deed (Ex.A1) the properties comprised under Ex.A3 to Ex.A5 were not purchased. The capital of the partnership firm was Rs.60,400/-. In the circumstances, it is not known as to how the partnership firm purchased the land under the sale deeds Ex.A3 to Ex.A5 which is worth Rs.1,35,344/-. There is no



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pleading in the plaint that the partners mobilized funds from various other sources.

17. It is relevant to extract Section 14 of the Indian Partnership Act:

Section 14 in The Indian Partnership Act, 1932

"14. The property of the firm.—

Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm."

However, in the instant case, the plaintiff has not proved that the suit property was purchased by all the partners and was brought into the stock of the firm. Both the plaintiff and the second defendant had miserably



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failed to plead and prove that the sale consideration was paid by all the partners. Admittedly, the suit property stands in the name of the first defendant and it cannot be stated that the suit property belongs to the partnership firm. It is an admitted fact that the plaintiff had already filed a suit in O.S.No.325/2004 on the file of the Principal Sub Court, Salem, seeking 1/8th share in the compensation amount paid by the government to the first defendant for acquisition of a portion of the land purchased by the first defendant.

18. The learned counsel for the contesting defendants contended that, in the suit in O.S.No.325/2004 on the file of the Principal Sub Court, Salem, it has been held that the suit property is the separate property of the first defendant and that it does not belong to the partnership firm. It is his further contention that the plaintiff has not filed any appeal against the decree and judgment passed in O.S.No.325/2004.

19. Learned counsels appearing for the plaintiff and the first defendant contended that the contesting defendants did not file a copy of



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the judgment passed in O.S.No.325/2004 as an exhibit in the suit.

However, they did not deny the contention of the learned counsel for the respondents / defendants that the suit in O.S.No.325/2004 was dismissed by the Principal Subordinate Judge, Salem.

20. The main contention of the learned counsel for the plaintiff is that since a copy of the plaint has not been filed by the respondents / defendants, the observations of the both the courts below that the present suit is barred under Order II Rule 2 CPC cannot be sustained. It is seen from the records that the seventeenth defendant filed a copy of the plaint along with a memo after completion of the trial proceedings. It is also pertinent to point out that the defendants had taken a specific stand that the present suit is hit under Order II Rule 2 CPC. In the circumstances, the plaintiff should have filed a copy of the plaint in O.S.No.325/2004 and should have explained that the cause of action in the present suit is totally different from the cause of action in the earlier suit (in O.S.No.325/2004). This has not been done.



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21. In any event both the Courts below after analysing the evidence on record concurrently held that the cause of action in the earlier suit in O.S.No.325/2004 and the cause of action in the present suit are one and the same. Moreover, the first defendant had executed a settlement deed dated 30.10.2003 (Ex.B5) in respect of the suit property in favour of his wife and children and they sold the same in favour of the seventeenth defendant. The suit was filed in the year 2005. The seventeenth defendant in turn alienated the properties in favour of third parties. The subsequent purchasers have not been impleaded as parties either before the trial court or before the first appellate court. When the second appeal is posted for final hearing today, learned counsel for the plaintiff filed two petitions in C.M.P.Nos.28110/2024 and 28112/2024 for impleading subsequent purchasers. When the suit property is the exclusive property of the first defendant, there is no meaning in impleading the subsequent purchasers in the present second appeal.

22. Both the Courts below had analysed each and every aspect of the case and had concurrently held that the suit property is the separate



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property of the first defendant and that the present suit is also hit under Order II Rule 2 CPC. All the observations made by both the Courts below are perfectly in order and I do not see any reason to interfere with the same. The substantial questions of law are answered accordingly.

23. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.
- ii. the decree and judgment dated 19.11.2018 passed in A.S. No.63 of 2013, on the file of the II Additional District Court, Salem, and the decree and judgment dated 05.03.2013 passed in O.S.No.129 of 2005, on the file of the II Additional Sub Court, Salem, are upheld.
- iii. the suit in O.S.No.129 of 2005, on the file of the II Additional Sub Court, Salem, is dismissed with costs.



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21.12.2024

Index: Yes/No
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Speaking/Non-Speaking order
mtl

To

1. The II Additional District Court, Salem.
2. The II Additional Sub Court, Salem.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.
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