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C.R.P.(PD)No.853 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.853 of 2022

and

C.M.P.No.4337 of 2022

1.Kanagaraj (Died)

2.K.Deivathal

3.Rajagopal

4.Saravanakumar

.. Petitioners

Vs.

M.Shanmugham

.. Respondent

Prayer : The Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order of the III Additional Subordinate Judge at Coimbatore dated 18.03.2021 in I.A.No.2 of 2020 in O.S.No.911 of 2019.

For Petitioners : Mr.P.Valliappan

For Respondent : M/s.Hema Sampath

Senior Counsel for Mr.P.R.Ramesh Babu

ORDER



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This Civil Revision Petition challenges an order, dated 18.03.2021, passed by the learned III Additional Subordinate Judge at Coimbatore in I.A.No.2 of 2020 in O.S.No.911 of 2019 dismissing an application filed for rejection of plaint.

2. This case has a previous history. The petitioner herein Kanagaraj, as plaintiff, had presented a suit in O.S.No.292 of 2005 on the file of the learned I Additional District Judge at Coimbatore seeking partition and separate possession on the ground that the properties were ancestral properties of his family. There were totally five schedules of property, namely, 'A' to 'E' schedule properties.

3. The learned I Additional District Judge, in and by way of his judgment dated 17.11.2008, granted a decree for partition of 1/5th share with respect to 'A' and 'E' Schedule properties and dismissed the suit with respect to the other schedules. In the said proceedings, he had held that the suit B, C, D schedule mentioned properties are self acquisitions of the father of the petitioner herein, namely, one Rangasamy Gounder. After the dismissal of the suit, the said Rangasamy Gounder executed a settlement deed of the “C”



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schedule properties in favour of his grandson one M.Shanmugam. After the execution of the settlement deed, a regular appeal was preferred before this Court in A.S.No.565 of 2009. An order of injunction was obtained restraining Rangasamy Gounder and other respondents in the appeal from, in anyway, alienating or encumbering the property. Pending the appeal, Rangasamy Gounder died on 16.08.2012. Though the settlement deed had been executed in favour of M.Shanmugam, unfortunately, he was not brought on record.

4. When the appeal was taken out for hearing before this Court on 20.04.2017, it was represented that Rangasamy Gounder having passed away, each of his son will be entitled to 1/4th share. Taking note of the subsequent event, this Court had granted a decree for partition of the properties of Rangasamy Gounder.

5. On coming to know of this judgment and decree, which affects his property rights over the 'C' schedule mentioned property, namely, க.ச.942, செட்டிபாளையம் கிராமம், கோயமுத்தூர் தெற்கு வட்டம், திருப்பூர் பதிவு மாவட்டம், the plaintiff/respondent has come forward with a suit for a declaration that the



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judgment and decree is not binding on him and for declaration of his title and consequential relief of injunction.

6. In response to the suit, an application was taken out for rejection of plaint in I.A.No.2 of 2020 on the ground that the suit is barred by *res judicata* and is an abuse of process of Court. The said application was dismissed by the learned III Additional Subordinate Judge on 18.03.2021.

7. On 23.03.2022, this revision was admitted and an interim order of stay of further proceedings was granted.

8. On service of notice, M/s.Hema Sampath, senior counsel representing Mr.P.R.Ramesh Babu, appears on behalf of the respondent.

9. Heard the counsel on either side.

10. It is the argument of Mr.P.Valliappan that the matter had been settled by virtue of the judgment of this Court in A.S.No.565 of 2009 dated 20.04.2017 and hence, it cannot be reopened by the learned III Additional



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Subordinate Judge in O.S.No.292 of 2005. He would plead that the suit is an abuse of process of Court as it seeks interference with the rights that has been declared for the 4th defendant as plaintiff in O.S.No.292 of 2005 on the file of the 1st Additional District Judge at Coimbatore. He would, therefore, state that it is the case of clever drafting and the plaint requires to be rejected.

11. M/s.Hema Sampath would submit that whether the properties are ancestral or self acquisition had been gone into by the Trial Court alone and when the matter came up before this Court in the first appeal, the issue of ancestral or self acquisition was never gone into. Since Rangasamy Gounder had passed away, this Court had granted a decree for partition with respect to all the schedule mentioned properties of 1/4th share each. The issue of the settlement deed executed by Rangasamy Gounder was never gone into by the Court in those proceedings.

12. From the aforesaid narration, it is clear that the suit being dismissed on 17.11.2008 with respect to B, C and D schedule mentioned properties, Rangasamy Gounder had transferred all the rights he had in the



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'C' schedule mentioned property in favour of his grandson.

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13. Therefore, the plaintiff in O.S.No.292 of 2005/the 4th defendant in the present suit ought to have impleaded M.Shanmugam, the plaintiff herein, to get a binding judgment on him. However, the said procedure had not been followed. This Court too, while deciding the appeal had taken note of the subsequent event and had declared all the sons have equal shares. It is trite that where a person is not a party to the proceedings, the same is not binding on him, unless and until, he claims through one of the persons, who is already a party to the suit.

14. In the case on hand, the Court would necessarily have to go into the issue whether 'C' schedule mentioned property alone is an ancestral or self acquired property of Rangasamy Gounder. The plaintiff in the case is also concerned only with the 'C' schedule mentioned property as described in O.S.No.292 of 2005 on the file of the I Additional District Judge at Coimbatore. That issue not having been gone into by this Court, obviously, it cannot operate as *res judicata*.



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15. The right of the present plaintiff had never been gone into at any stage of the previous proceedings. By virtue of the fact that his father is a party to the proceedings, his personal rights cannot be taken away. Whether the decree in O.S.No.292 of 2005 as confirmed by this Court in A.S.No.565 of 2009 is binding on the plaintiff is a matter which essentially has to be gone into by the Court after framing issues. This is not a case where a plaint can be rejected at the threshold.

16. Taking the overall circumstances into consideration, I have no necessity to take a view different from the view taken by the III Additional Subordinate Judge at Coimbatore in I.A.No.2 of 2020 in O.S.No.911 of 2019. Therefore, the order, dated 18.03.2021, passed in I.A.No.2 of 2020 in O.S.No.911 of 2019 is confirmed.

17. Accordingly, the Civil Revision Petition stands dismissed. It is open to the civil revision petitioner to raise all the defences, that are available to him, in the written statement to be filed by him.

18. Mr.P.Valliappan states that his client will file a written statement



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on or before 30.07.2024. The learned Judge is requested to frame issues on or before 31.08.2024. Time for filing those documents is granted till 30.09.2024. Once the pleadings and documents are on record, the Court shall dispose of the suit within the period of nine months from the date of filing of documents.

19. Consequently, connected Civil Miscellaneous Petition is closed.

No costs.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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The III Additional Subordinate Judge,
Coimbatore

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V. LAKSHMINARAYANAN, J.

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