



OSA.No.30/2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

OSA.No.30/2022

S.V.Mathaprasad

... Appellant

Vs.

- 1.S.V.R.Saroja [Died]
- 2.S.V.R. Vijaya
- 3.S.V.R.Ramaprasad
- 4.S.V.R.Renuka Devi
- 5.Mrs.Zubaida Hamid
- 6.Mr.Mohammed Farooq
- 7.Mrs.Maimeena Jamal
- 8.Haja Mohideen Buhari
- 9.Abdul Coder Buhari
- 10.Mrs.Mumtaj Buhari
- 11.Mrs.Shahira Basheer
- 12.Mrs.Fazeelath Siraj
- 13.Ms.Mahajubdeen Ibrahim
- 14.Haja Abdul Nazeer
- 15.Mrs.Farzana Malik
- 16.Haja Anwar Murad
- 17.Mrs.Zeenath Yusuf



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18.Haja Ahmed Imtiaz  
19.Haja Mohammed Sameer  
20.Miss Roshanara Begam  
21.R.S.P.Dhanumathi

... Respondents

**\*\*R21 impleaded as LR of the deceased  
R1 viz., S.V.R.Saroja vide order dated  
07.03.2024 made in CMP.No.23125/2023  
in OSA.No.30/2022.**

**Prayer** : Original Side Appeal filed under Clause 15 of the Letters Patent read with Order XXXVI Rule 1 of Madras High Court O.S.Rules to set aside the order passed in A.No.6685/2019 in EP.No.48/1997 dated 26.05.2020 and thus allow the appeal.

For Appellant : Mr.V.Raghavachari, Senior counsel  
for Mr.S.Hemanand

RR1, 11,16 & 18 : Died

For R2 to R4 : Mr.R.Natarajan

For R5 to R10 : No appearance

RR12 & 15 : Refused

For RR13, 14, 17, 19,20 : Left



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## JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

- (1)The above appeal is directed against the order of the learned Single Judge dated 26.05.2020 in application A.No.6685/2019 in EP.No.48/1997.
- (2)This vexatious appeal is nothing but a third round of litigation by one of the decree-holders in CS.No.43/1962.
- (3)Brief facts that are necessary for the disposal of this appeal are as follows.
- (4)The appellant is the son of one Mr.S.V.Ramakrishnan. Respondents 1 to 4 are also the children of Mr.S.V.Ramakrishnan through another lady by name Saroja. The father of the appellant, Mr.S.V.Ramakrishnan filed a suit in CS.No.43/1962 along with the appellant for specific performance of an Agreement of Reconveyance. The said suit was decreed vide judgment and decree dated 10.11.1965 by directing the defendants to reconvey the properties described in the suit schedule to the plaintiffs or to the 1<sup>st</sup> defendant receiving a sum of Rs.1,15,500/- and by directing defendants to deliver possession of suit "A" schedule to plaintiffs on such



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payment being received. The judgment and decree in CS.No.43/1962 dated 10.11.1965 was challenged by defendants 1 and 2 in OSA.Nos.8 and 9 of 1966. The said appeals were allowed and the suit in CS.No.43/1962 was dismissed by a Division Bench of this Court on 10.05.1972. Aggrieved by the reversing judgment of the Division Bench of this Court, the father of the appellant herein Mr.S.V.Ramakrishnan, preferred a Special Leave Petition in SLP[C].No.20869/1973 which was later converted as Civil Appeal No.224/1974. It is to be noted that the appellant herein was arrayed as the 3<sup>rd</sup> respondent in CA.No.224/1974 as the father alone challenged the judgment and decree of the Division Bench by filing a Special Leave Petition. During the pendency of the Civil Appeal before Hon'ble Supreme Court, the father of the appellant died on 31.12.1980. In the meanwhile, the father of the appellant, Mr.S.V.Ramakrishnan executed a registered Will bequeathing all his properties in favour of Smt.S.V.R.Saroja and the children born to her through Mr.S.V.Ramakrishnan. Therefore, on the death of Mr.S.V.Ramakrishnan, respondents 1 to 4 filed a substitution petition in CMP.No.7242/1981 in CA.No.224/1974 as legal representatives of the



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deceased/sole appellant and the said petition was allowed on 15.12.1981.

Therefore, the civil appeal itself was prosecuted only by respondents 1 to 4.

(5)The Hon'ble Supreme Court allowed CA.No.224/1974 on 17.04.1995 by restoring the judgment and decree passed in CS.No.43/1962. The operative portion of the order, viz., paragraph No.30, of Honble Supreme Court in CA.No.224/1974, reads as follows:-

*"30.The result of the foregoing discussion is that we allow the appeal, set aside the impugned judgment of the Letters Patent Bench and restore that of the trial Judge and decree the suit for specific performance. The respondents or their successors-in-interest would reconvey the property mentioned in Schedule "A" of the plaint within a period of one month failing which it would be open to the trial Judge to execute the required document[s]. In the facts and circumstances of the case, the parties are left to bear their own costs throughout."*

(6)It is true that Hon'ble Supreme Court has not decided the right *inter-se*



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between respondents 1 to 4 who prosecuted the Civil Appeal as legal heirs of the deceased Mr.S.V.Ramakrishnan and the appellant. However, the appellant herein filed an execution petition in EP.No.48/1997 before this Court after disposal of CA.No.224/1974 claiming himself as the sole legal heir of Mr.S.V.Ramakrishnan. It is pertinent to mention that the appellant herein has not even impleaded his natural sister who is also one of the legal heirs of the deceased Mr.S.V.Ramakrishnan.

(7)By an order dated 07.07.2000, the learned Master in A.Nos.1106 to 1108/2000, directed the judgment debtors to execute reconveyance of the properties in favour of the appellant herein who has claimed himself as the sole decree holder showing his father as deceased. The Executing Court also directed delivery of properties to the appellant. As against this order dated 07.07.2000, respondents 1 to 4 filed applications in A.Nos.2872 and 2873/2000 to set aside the order passed in EP.No.48/1997 in CS.No.43/1962. A learned Judge of this Court recording the fact that the appellant did not join with his father Mr.S.V.Ramakrishnan while preferring an appeal before Hon'ble Supreme Court and that respondents 1 to 4 alone prosecuted the appeal as legal



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heirs of the deceased, rendered a specific finding that the order of learned Master is erroneous as the application filed by the appellant without impleading other legal heirs, is not proper. The learned Single Judge of this Court, while allowing the application, observed that the dispute if any, between the appellant and respondents 1 to 4, can be decided separately. In paragraph 10, it has been held by the learned Single Judge as follows:-

*"10.For the reasons stated above, the order passed by the learned Master dated 07.07.2000 is modified and the petitioners being decree holders along with the first respondent are entitled to get reconveyance of the property. The judgment debtors are directed to execute the reconveyance of the property in favour of the petitioners as well as the 1<sup>st</sup> respondent. The dispute, if any, between the petitioners and the 1<sup>st</sup> respondent relating to their respective shares in the property is left open to be decided separately. These applications are ordered accordingly."*

(8)The above order of the learned Single Judge dated 24.08.2000 was under



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challenge before this Court in OSA.No.372/2000 by the appellant. A Division Bench of this Court dismissed the Original Side Appeal by a judgment and decree dated 11.04.2001. It is relevant to mention that the Division Bench took note of the father's assertion of title to the properties himself and observed that the father had not recognised the son as having any specific right in the property. Even though the Will executed by the father was also produced before the Division Bench, the Division Bench held that it is not necessary for them to examine the claim based on the Will as the Will had not been probated by them. It is relevant to extract paragraphs No.8, 9 and 11 of the judgment of the Division Bench dated 11.04.2001 and hence, they are extracted below:

*"8.We are for the moment ignoring any claim based upon a Will and the order made by us is solely on the basis of the relationship of the parties. On the demise of the father, in the absence of a Will, the legal representatives would be his wife and children. All those who are parties before the Supreme Court as legal representatives of the deceased-1<sup>st</sup> plaintiff shall be entitled to be joined as petitioners in the execution petition along with the son by the 1<sup>st</sup> wife who was the*



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*co-plaintiff in the suit.*

*9. After reconveyance is executed, if there are any disputes inter se among the children as regards the extent to which they are entitled to share in the property, that is a matter which can be agitated separately.*

...

*11. The execution petition shall now proceed with the co-plaintiff's son by the first wife, as also the legal representatives of the deceased father who had been on record in the Supreme Court, namely, the second wife and children as co-petitioners, in the execution petition. The reconveyance will be in favour of all of them."*

(9) The appellant took the matter further before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the Special Leave Petition however with the following clarification:

*"It is clarified that if any suit is filed inter se the contending claimants to the ownership of the suit property, then the question of ownership, the number of owners and the extent of share shall be decided in*



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*that suit only."*

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(10) It is pertinent to mention that the appellant has raised all the contentions that are raised before this Court now when he challenged the judgment of learned Single Judge in OSA.No.372/2000 and before Hon'ble Supreme Court.

(11) Despite the first round of litigation, the second round of litigation was started by making false allegations before Learned Master questioning the manner in which respondents 1 to 4 were impleaded as petitioners in Execution proceedings to get reconveyance along with the appellant. Learned Single Judge passed a detailed order dealing with all issues raised by the appellant in a batch of application by order dated 16.02.2015. As against the common order dated 16.02.2015 in all the applications, rejecting the contentions of the appellant herein, a batch of appeals were filed by the appellant herein in OSA.Nos.73 to 77/2015. A Division Bench of this Court, referring to the daring attempt made by the appellant indulging in re-litigation on technical grounds, dismissed the appeals vide common judgment and decree dated 04.03.2006 with cost of Rs.50,000/-. The Division Bench further observed that successive relitigation is a clear



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case of attempt to overreach the decision concluded inter-se parties through a collateral proceedings. The Division Bench held that they were at loss to understand as to how, in law the appellant could raise objections to the inclusion of respondents 1 to 4 as co-decree holders. Reiterating the same/similar reasons that were assigned by the Division Bench earlier while disposing of OSA.No.372/2000, the Division Bench observed that the learned Master had adopted a hyper technical approach without due regard to the established legal principles.

(12)Meanwhile, one of the daughters of Mr.S.V.Ramakrishnan, earlier filed OP.No.367/2008 under Sections 232 and 276 of Indian Succession Act for grant of Letters of Administration of the Will executed by Mr.S.V.Ramakrishnan in favour of respondents 1 to 4. OP.No.367/2008 was converted as TOS.No.2/2009 showing the daughter and the appellant herein as the children born through the first wife of Mr.S.V.Ramakrishnan as defendants.

(13)The learned Single Judge of this Court held that the Will executed by the father Mr.S.V.Ramakrishnan dated 15.07.1970, is the last Will and



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testament of the testator. As regards the subject matter of this appeal, it was observed that those properties have to be treated as if the testator Mr.S.V.Ramakrishnan died intestate. Therefore, the Testamentary Suit was decreed as prayed for in respect of items No.1 and 2 of the suit properties and as regards the properties which are subject matter of the present appeal, the Testamentary Suit was dismissed however with a specific direction that the issue as to the entitlement of respondents 1 to 4 as legal heirs of the father Mr.S.V.Ramakrishnan, should be decided in a separate suit. Thereafter, in an application filed in A.No.3913/2017 in EP.No.48/1997 in CS.No.43/1962, the execution petition was withdrawn from the file of the learned Master and transferred to the file of the Original Side of this Court.

(14)After an attempt to complex and confuse the issues during the 2<sup>nd</sup> round, the third round of litigation by the appellant started by filing a fresh application in A.No.6685/2019 with a prayer to decide as preliminary issue, whether the respondents are entitled to intestate succession to the estate of late Mr.S.V.Ramakrishnan pertaining to the decree passed in CA.No.224/1974 which is the subject matter of the execution petition in



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EP.No.48/1997 and whether respondents 1 to 4 have any right after the judgment and decree passed in TOS.No.2/2009.

(15) Surprisingly, this application was filed under Section 47 of CPC. After a detailed counter affidavit was filed by respondents 1 to 4 explaining that there is no inconsistency in the findings in TOS.No.2/2009 with regard to suit properties, as the properties were to be treated as the properties of their father Mr.S.V.Ramakrishnan, the appellant filed a lengthy reply to the counter affidavit filed by respondents 1 to 4 raising almost all the issues which have been raised earlier.

(16) In addition to what has been stated all along by the appellant in the earlier rounds of litigation, the appellant contended that as per the judgment in TOS.No.2/2009, respondents 1 to 4 have no title or right over the property and therefore, the Court should hold that respondents 1 to 4 have no right to seek reconveyance of the suit schedule properties based on the decree of the Trial Court as restored by Hon'ble Supreme Court dated 17.04.1995. The appellant raised several issues which have not been canvassed in the prior litigations. Novel arguments were advanced before the learned Single Judge stating that the earlier direction of learned



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Single Judge to the learned Master to implead respondents 1 to 4 herein as co-petitioners is *per incuriam* as the application itself is barred by limitation.

(17)The first submission of the appellant before the learned Single Judge was almost in tune with what has been canvassed by the appellant in the second round of litigation. It was further contended by the appellant that the respondents are not entitled to the benefit of the decree in CS.No.43/1962, since they did not file the Execution Petition within three years of the judgment and decree. It is also contended by the appellant that in the absence of a suit which was required to be filed by respondents 1 to 4, there cannot be a conveyance in favour of respondents 1 to 4. Stating that respondents 1 to 4 failed to establish their right under the Will, they cannot be permitted to make a claim on the basis of intestate succession. It was also contended by the appellant that respondents 1 to 4 are not entitled to get any right in view of the fact that the testator has admitted that there was no marriage between Mr.S.V.Ramakrishnan and Saroja / 1st respondent /mother of respondents 2 to 4, Stating that respondents 2 to 4 being illegitimate children, are not entitled to succeed



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to the estate of testator in the absence of a marriage, the appellant submitted that respondents 2 to 4 are not entitled to inherit any properties as legal heirs of father Mr.S.V.Ramakrishnan. It was also contended by the appellant that the appellant who did not participate in the proceedings, is entitled to the benefit as per Order 41 Rule 4, 22 and 33 of CPC.

(18)Learned Single Judge, after considering every issue elaborately, found that there is no bona fides in the litigation and found that it was re-litigation and examined whether re-litigation is an abuse of process of law and ultimately, the application filed by the appellant under Section 47 of CPC was dismissed with cost of Rs.50,000/- after holding that the application itself is not maintainable under Section 47 of CPC. Aggrieved by the order of the learned Single Judge dismissing the application filed under Section 47 of CPC in A.No.6685/2018 in EP.No.48/1997, the above appeal is preferred by the appellant, co-plaintiff in the suit in CS.No.43/1962.

(19)Learned Senior Counsel appearing for the appellant reiterated almost all the points that were raised before the learned Single Judge. Learned Senior counsel made the following submissions:-



- (a) Respondents 1 to 4 cannot be considered as legal heirs in view of the admitted fact that there was no marriage between Mr.S.V.Ramakrishnan and Tmt.Saroja / mother of respondents 2 to 4. In the absence of any marriage, the illegitimate children of Mr.S.V.Ramakrishnan have no right to inherit any property.
- (b) Referring to the decision rendered by the learned Single Judge in TOS.No.2/2009, he submitted that the suit for grant of Letters of Administration was specifically dismissed in respect of items No.3 and 4 of the suit schedule properties.
- (c) The learned Judge committed a serious error by dismissing the application when the Court is required to decide the issue whether respondents 1 to 4 are entitled to intestate succession to the properties of Mr.S.V.Ramakrishnan.
- (d) On the admitted facts, the Court cannot reject the application.

(20) The learned Senior Counsel again reiterated the question of limitation and other points which have been negated by this Court in the earlier rounds of litigation. It is contended by the learned Senior counsel that



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after dismissal of the testamentary suit in TOS.No.2/2009, respondents 2 to 4 are not entitled to any right over the suit properties.

(21)The Court heard the submissions of the learned counsel appearing for respondents 2 to 4 and perused the records.

(22)This Court is unable to find any error or irregularity in the order of the learned Single Judge dismissing the application.

(23)First of all, the maintainability of an application under Section 47 of CPC is questionable.

(24)Section 47 of CPC reads as follows:-

**"Section 47:-Questions to be determined by the Court executing decree .-**

*(1)All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.[\* \* \*]*

*(3)Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be*



*determined by the Court.*

***Explanation I .-For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.***

***Explanation II :-***

*(a)For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and*

*(b)all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section."*

(25)When a question does not arise between the parties to the suit, an application under Section 47 of CPC is not even maintainable. In the suit, the *lis* is between father and son on one hand as plaintiffs and judgment debtors on the other hand who have been directed to execute a Sale Deed and hand over possession to the appellant herein. An application under Section 47 of CPC is intended to give finality to the *lis*. When there is no



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dispute between the parties to the suit itself, the other issues that may arise between joint decree holders or among the judgment debtors, cannot be considered in an application under Section 47 of CPC. The judgment debtors in the execution proceedings are no way connected with the dispute that is raised by the appellant. Therefore, the nature of issues raised by the appellant cannot be considered in an application under Section 47 of CPC.

(26) Be that as it may, the appellant who has neither filed a Special Leave Petition before Hon'ble Supreme Court nor participated in the proceedings before Hon'ble Supreme Court, has made several attempts to establish his absolute right over the property all along. This is third round of litigation despite this Court and Hon'ble Supreme Court have specifically held that the inter-se dispute between the appellant and contesting respondents should be decided in a separate suit. Even when an application is filed under Section 47 of CPC, the Court may also relegate the parties to file an independent suit for reasons. Despite the issue whether the execution proceedings should be at the behest of both appellant and respondents together or it is the exclusive right of the appellant, has already been



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considered and this Court and Hon'ble Supreme Court has held that the issue raised by the appellant cannot be decided in the execution petition filed by the appellant and the other children of the joint decree holder, Mr.S.V.Ramakrishnan. Since the very object behind the previous litigation and the present litigation is one and the same, the issue considered and ultimately decided by the Courts in the previous proceedings will certainly operate as *res judicata*. It is in the said context, this Court finds that this re-litigation is nothing but an abuse of process of law.

(27) This Court has already extracted the operative portion of the orders passed by this Court and Hon'ble Supreme Court in the previous litigations where the case of the appellant was exactly the same as is now been projected by the learned Senior Counsel for appellant. On the bare facts admitted, this Court is of the view that this sort of re-litigation should not be encouraged which is against the well settled principles and opposed to public policy. Though some of the arguments of learned Senior counsel for the appellant are attractive, we are unable to appreciate the contentions at this stage. He vehemently contended that there is no



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scope for projecting any sustainable claim before the Civil Court on the facts admitted. This Court is unable to appreciate the said contention in view of several judgments of Hon'ble Supreme Court. This Court is not inclined to go further as this Court has no option but to reiterate the reasons already held by this Court and Hon'ble Supreme Court earlier, giving liberty to the parties to work out their inter-se dispute in a separate proceedings.

(28)The suit is of the year 1962. After the thirty year battle, the respondents succeeded before the Hon'ble Supreme Court by getting the decree restored. But for the respondents prosecuting the Civil Appeal before Hon'ble Supreme Court, the fate of the litigation may be otherwise. A specific contention is also raised by the respondents that the appellant had relinquished all his rights in favour of his father. We are not examining here, the correctness of the contention. However, the right of respondents to claim right over the properties as legal heirs of Mr.S.V.Ramakrishnan, cannot be negated merely because TOS.No.2/2009 was dismissed as regards the suit property. When a property is not owned by the testator, Letters of Administration cannot be granted. When the Will executed by



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Mr.S.V.Ramakrishnan is upheld and its due execution is proved, the respondents are entitled to succeed to the property of Mr.S.V.Ramakrishnan.

(29)From the reading of the judgment and decree in TOS.No.2/2009, this Court has recognised the respondents as legal heirs of the deceased Mr.S.V.Ramakrishnan through his second wife. In TOS.No.2/2009, this Court has held that suit properties are not covered under the Will as they are not specifically stated.

(30)For the present, this Court need not go into further controversies as the parties who are joint decree-holders, are not supposed to settle their inter-se dispute in the execution petition filed and prosecuted by them as against the judgment debtors. As pointed out earlier, after the judgment of Hon'ble Supreme Court in 1995, the appellant has successfully dragged the proceedings at different stages by raising several issues which had been answered in the first round of litigation. Therefore, this is an appropriate case where the appeal should be dismissed with an exemplary cost.

(31)Accordingly, the Original Side Appeal stands **dismissed with cost of**



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**Rs.2,00,000/- [Rupees Two Lakhs only] payable by the appellant to respondents 2 to 4 and other legal heirs of the deceased 1st respondent.** The appellant shall deposit the said sum to the credit of Execution Proceedings in EP.No.48/1997 in CS.No.43/1962 within a period of two weeks from the date of receipt of a copy of this order. On such deposit being made by the appellant, it is open to respondents 2 to 4 to withdraw the same.

[S.S.S.R., J.] [P.D.B., J.]  
22.11.2024

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S.S. SUNDAR, J.,  
and  
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