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A.S.No.16 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.01.2024

PRONOUNCED ON: 18.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

A.S.No.16 of 2021
and C.M.P.No.1481 of 2021

S.M.Mani
S/o.Munusamy

... Appellant/Plaintiff

Vs.

1.D.C.Elangovan
S/o.Late D.N.Chinnasamy

2.E.Meena
W/o.D.C.Elangovan

... Respondents/
Defendants 28 & 29

Appeal Suit filed under Section 96 r/w Order 41 Rule 1 of the Civil Procedure Code against the judgment and decree dated 16.10.2020 passed in I.A.No.4 of 2020 in O.S.No.8 of 2020 on the file of the Additional District Court, Dharmapuri.

For Appellant : Ms.S.P.Arthi

For Respondents : Mr.V.Raghavachari, Senior Counsel
for Mr.N.Umapathi



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JUDGMENT

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Challenging the judgment and decree dated 16.10.2020 passed in I.A.No.4 of 2020 in O.S.No.8 of 2020 on the file of the Additional District Court, Dharmapuri, the appellant / plaintiff has filed the present appeal suit.

2 (a). The plaintiff is the appellant herein and defendants 28 & 29 are the respondents herein.

2 (b). The plaintiff filed O.S.No.8 of 2020 seeking the reliefs of partition of 'A' schedule property into 11 equal shares by metes and bounds and allot one such shares to the plaintiff with separate possession and to declare the title of the plaintiff in 'B' schedule property and for permanent injunction restraining the defendants from in any way alienating or making any encumbrance on the suit properties and for permanent injunction restraining the defendants from putting up any construction in the properties. 'A' schedule property consists of two items of properties and an undivided share to an extent of 10885 sq.ft. 'B' schedule property is an agricultural property to an extent of 13600 sq. ft. in 50 cents in Survey No.253/2B1C.



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2 (c). After the service of summons, the defendants 28 & 29, who are husband and wife, filed I.A.No.4 of 2020 for rejection of the plaint under Order 7 Rule 11 C.P.C., in which counter was filed. After contest, I.A.No.4 of 2020 was allowed and consequently, the suit was dismissed and hence the present appeal.

3. For the sake of convenience, the parties are referred as per the litigative status before the trial Court.

4. The points for determination in this appeal are as follows:

(a) Whether the order passed by the trial Court is beyond the scope of Order 7 Rule 11 C.P.C.

(b) The learned counsel for the plaintiff contended that a) there is no bar for partition, since it is only dismissed for default and in the plea of partition, there is continuous cause of action and since it is a recurrent cause of action, there cannot be a plea of *res judicata*; (b) the agreement of sale and the compromise are only in respect of 'A' schedule property in the present partition suit and in respect of 'B' schedule property, in the present suit it is not the subject matter of the agreement of sale dated 22.01.2005.



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Since the 'B' schedule property in the present suit does not form part of the schedule of the property in A.S. and even assuming that there is a compromise decree in respect of B schedule property, the trial of the Suit has to go; (c) the framing of the present suit is for partition of properties in schedule A & B and hence, the plaint cannot be rejected in respect of one schedule and there cannot be any partial trial of the suit. If at all it has to be only striking of the pleadings and not striking of the plaint.

(c) In short, the contention of the plaintiff is that the properties involved in O.S.No.21 of 2004 and the present suit are not the same and the fate of the earlier suit has no significance to decide the maintainability of the suit.

5. *Per contra*, Mr.V.Raghavachari, learned Senior Counsel for defendant 28 & 29 contended that the memo of compromise filed in the suit for specific performance and the plaint suffers from non disclosure of facts and even if we go by the cause of action stated in the plaint, the compromise entered in the year 2012. However, the suit was filed in the year 2020 and therefore, the suit has not been filed either to challenge the memo of compromise or alleged that the compromise was obtained by collusion and



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by unlawful influence and hence it also barred by limitation. However the prayer was framed in such a manner to circumvent the law of limitation.

6. Heard Ms.S.P.Arthi, learned counsel for the plaintiff / appellant and Mr.V.Raghavachari, learned Senior Counsel representing Mr.N.Umapathi, learned counsel on record for the defendants 28 & 29 / respondents.

Factual position in nutshell:

7 (a). The plaint in O.S.No.8 of 2020 proceeds on the basis that the properties comprised in Survey No.253/2B1C measuring 93 cents and 50 cents originally belonged to one Appavu Gounder, who is the plaintiff's father-in-law. Both properties were his self acquired properties. The said Appavu Gounder had 6 sons and 5 daughters. The plaintiff married one of his daughters Lalitha Saraswathi.

7 (b). The plaintiff's father-in-law Appavu Gounder died interstate on 17.08.1983. After his demise, the properties devolved on his children. During his lifetime, Appavu Gounder had executed a Will in favour of the plaintiff's wife Lalitha Saraswathi in respect of an extent of 50 cents in



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Survey No. 253/2B1C. Except the said 50 cents, the other properties were enjoyed by all the children of Appavu Gounder in common.

7 (c). The plaintiff's wife executed a settlement deed dated 02.01.2004 in favour of the plaintiff in respect of her 1/11th share in Survey No.253/2B1C measuring 93 cents and in respect of 13,600 sq.ft out of the 50 cents bequeathed to her by her father, which she had acquired under the Will executed by her father in her favour.

7 (d). Even since the date of execution of the settlement deed, the plaintiff has been in possession of the said gifted properties. Since the plaintiff's wife's siblings were not agreeable to an amicable partition of the 1/11th share in Survey No.253/2B1C, the plaintiff filed a suit in O.S.No. 21 of 2004 before the Subordinate Court at Dharmapuri for the relief of partition and separate possession. Since the plaintiff was not able to proceed with the case, the suit was dismissed for default on 10.08.2011.

7 (e). The defendants 28 & 29 have purchased few portions from



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the sons of Appavu Gounder. However, the sold portion is inclusive of any share under the settlement deed dated 02.01.2004. Since the sons have no right to alienate the plaintiff's share to which he is duly entitled to, the plaintiff filed the suit in O.S.No. 8 of 2020 before the Additional District Court at Dharmapuri seeking the relief of declaration in respect of the 13,600 sq.ft. ('B' schedule property) and partition of his 1/11th share in Survey No.253/2B1C measuring 93 cents ('A' schedule property).

8. After receipt of the summons, the defendants 28 & 29 filed the aforesaid I.A.No.4 of 2020 for rejecting the plaint as stated *supra inter alia* contended that the plaintiff had suppressed several material facts come forward with the above suit to grab the property.

9. The brief contention of respondent is,

(a) that the plaintiff has already filed a suit in O.S.No.21 of 2004 on the file of the Subordinate Court, Dharmapuri, seeking the same relief of partition and for separate possession in respect of 1/11th share in the suit property. The subject matter of the suit property in O.S.No.21 of 2004 and in the above suit is one and the same. The plaintiff has allowed the above



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suit in O.S.No.21 of 2004, in view of the compromise, for dismissal and accordingly, the said suit was dismissed on 10.08.2011.

9 (b). The defendants 28 & 29 filed a suit in O.S.No.53 of 2005 on the file of Subordinate Court, Dharmapuri, against the plaintiff for the relief of specific performance of the contract in respect of the suit property. The compromise petition was filed by the plaintiff and the defendants 28 & 29, in O.S.No.53 of 2005 before the Subordinate Court, Dharmapuri and the same were read over to both parties and accepted the same on 7.12.2011, the compromise decree was passed on 7.12.2011 as per terms of the compromise petition. The plaintiff has admitted and recognized the defendants title to the suit property and he also agreed that he did not derive any title through the settlement deed dated 02.01.2004 and considering the fact the plaintiff affirmed the right and title of the defendants' predecessors.

9 (c). The plaintiff has also ratified the sale deeds dated 08.05.2002, 02.05.2002, 23.05.2002, 03.07.2002 and 24.07.2002 executed by Mohan and others in respect of the suit property in favour of the defendants 28 & 29. Further, the plaintiff has admitted that the defendants



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28 & 29 are in possession and enjoyment of the suit property and he has given undertaking that he will not claim any right over the suit property and further he agreed that he will not prosecute the suit in O.S.No.21 of 2004 on the file of Subordinate Court, Dharmapuri and accordingly he has allowed it for dismissal on 10.08.2011.

9 (d). In view of the above said compromise, the plaintiff received a huge amount of Rs.4,75,000/- from the defendants 28 & 29, for which, he has executed a deed of undertaking dated 07.12.2011. Thus, the plaintiff has entered into the aforesaid compromise and the same has been recorded in the compromise petition filed in O.S.No.53 of 2005. The defendant 28 has executed a gift deed dated 05.12.2011 in respect of a portion of the property to his wife / defendant 29, in which, the plaintiff signed as 1st witness in the deed and also the identification witness. So, the plaintiff has no manner of right or title or interest over the suit property and he has already relinquished all the rights in the suit property through the court of law.

10 (a). It is the specific case of the defendants 28 & 29 in the rejection of plaint application that the plaintiff has deliberately, wantonly and knowingly suppressed the compromise recorded before the court in



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O.S.No.53 of 2005 and filed the suit and also received amount of Rs.4,75,000/- on 07.12.2011 and has abandoned his right over the suit property in the said compromise reached and recorded before the Court. Hence, the present suit is a second round of litigation and the same is not permissible in law.

10 (b). Counter has been filed in I.A.No.4 of 2020 and various decisions have been cited. In support of the said application, the defendants filed Ex.P1 – compromise decree in O.S.No.21 of 2004 dated 10.08.2011, Ex.P2 – compromise decree in O.S.No.53 of 2005 dated 07.12.2011, Ex.P3 – deed of understanding executed by the plaintiff and Ex.P4 – registered gift settlement deed dated 05.12.2011 executed by defendant 28 in favour of defendant 29, which was duly attested by none other than the plaintiff.

11 (a). Before advert to the rival submissions and the citations relied upon, this Court has perused the aforesaid four exhibits. The Ex.P1 filed by the defendants is the judgment in O.S.No.21 of 2004 dated 10.08.2011. The schedule mentioned property in O.S.No.21 of 2004 and the present plaint are same nature.



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11 (b). The suit for partition filed by the plaintiff S.M. Mani seeking relief for 1/11 share with his counterpart, 1)Vimalan, 2)Jayathilagan, 3)Vimaladhithan, 4)Nandhina kaleeswaran, 5)Mohankumar, 5)Sadhanandam, 7)Perumalsamy, 8)Kuthalingam, 9)Sabithadevi, 10)Sujatha, 11)Suganthi, 12) Revathi, 13) Arunakaran, 14) Srinivasa Jayaprakash, 15) Usha, 16) Jaganmohan, 17)Gayathri, 18)Parthiban, 19)Ashogan, 20)Kulothungan, 21)Valarmathi, 22)Lalitha Saraswathi @ Sarojini bai, 23)Manivannan, 23)Elangovan, 25)Ravindran, 26)Sundaramoorthy Nadar. The above suit came before the trial Court on 10.8.2011, the learned counsel M.D.Munusamy and R.Uma Maheswari were present and advocate Chandrasekaran, G.V.Prakasam also present for defendants, on that record, the trial court has dismiss the suit for default of plaintiff without cost. Now, the present plaint was filed by the plaintiff stating that on 02.01.2004, the daughter of Appavu Pillai, viz., Sarojini bai @ Lalitha Saraswathi, who is the wife of the plaintiff S.M.Mani has executed a gift settlement deed in favour of her husband regarding share 1/11 in 'A' schedule property and 'B' schedule property. On that basis the plaintiff filed the suit for partition to divide 1/11 share in 'A' and 'B'



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schedule property for his share and separate possession. The said Sarojini bai @ Lalitha Saraswathi is 22nd defendant in O.S.No.21 of 2004.

11 (c). The terms of compromise which were mentioned along with Ex.P2 are as follows:

"TERMS OF COMPROMISE - 1. Thirumathi.sarojini Bai @ Lalitha Saraswathi, the settler of the defendant who executed Gift Settlement Deed dated 2-1-2004 in favour of the Defendant had no right over the suit properties in view of the Family Seulement allocating the properties to male Members in her family 1. Mohan, 2. Jayuthilagan, 3. Perumalsamy, 4. Kuthalingam, 5. Sadhanandam and the Defendant also derive no right through the Settlement Deed dated:2-1-2004 and considering this fact, the Defendant affirms the right and title of the preceator in title of Thiru Elangovan, the plaintiff. Hence the Defendant ratifies the Sale Deeds dated 08-05-2002, 02-05-2002, 23-05-2002, 03-07-2002, 24-07-2002 made respectively in favour of the plaintiff by 1.Mohan, his son Santhanakumar and his Minor sons, 2. Jayathilagan and his son Vimalathithan, 3. Perumalsamy, 4. Kuthalingam and his Minor son Senthilkumar, 5.Sadhananthan and his Minor son Srinivasan in respect of subject matter,



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comprising the suit properties.

2. The Defendant, recognising the right, possession and enjoyment of the plaintiff over the suit properties, does not claim any right, whatsoever.

3. Pursuant to compromise, it is agreed that the defendant will not prosecute O.S.21/2004 on the file of Sub-Court, Dharmapuri which was already dismissed for default."

11 (d). The plaintiff has ratified the sale deeds and he recognized the right and possession and enjoyment of D.C.Elangovan, who is defendant 28 and he also agreed that he will not prosecute the O.S.No.21 of 2004.

11 (e). The Ex.P3 is an unregistered document executed by the plaintiff. The Ex.P4 is a document dated 05.12.2011 executed by the D.C.Elangovan (D28) in favour of his wife E.Meena (D29). The plaintiff has signed as a witness in that document. The plaintiff has not marked any document in favour of him. Further, this court considered the plaintiff's averment along with the documents.

12. Before the trial Court, the defendants appear to have filed a



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tabular column containing cause of action stated in the present plaint, which is extracted as under in paragraph nos.10 & 11 of the impugned order:

“It is an illustrative example for suppressing of fact by the respondent / plaintiff.

11. The cause of action.

Sl.No.	Cause of action	Remarks
1	Appavu pillai has acquired the self property under registered Sale deed, 13.7.1947.	So, the property is self acquired property of said Appavu pillai.
2	The said Appavu pillai constituted a hindu joint family along with 6 sons, 5 daughters.	So, the self acquired property of Appavu pillai converted to joint family property.
3	The said Appavu pillai died 17.8.1963 and the sons and daughters succeeded his estate and jointly enjoying the property except the Will property, an extent of 50 cents in S.No.253/2B1C.	So, the Will property is subject to the B schedule property and the A schedule property jointly enjoyed by sons and daughters of said Appavu pillai after his death 17.8.1963.
4	S.No.253/2B1C was duly executed by Appavu pillai dated 14.4.1963.	The plaint document No.1 the Settlement, dated 2.1.2004, the B schedule property is subject to the 50 cents subject to the Will property. The A schedule property 1/11 share. But in the settlement deed it was stated that the two properties were owned by her father in self acquired nature. After the demise of her father, it was received by legal succession. Therefore no averment about the Will either in the settlement deed, dated:2.1.2004 and the plaint document No.10, unregistered will, dated 14.4.1963 stated that “ என் சுய வருவாயில் கிரயம் மூலம் பாத்தியப்பட்ட மற்றும் நெம்பர் எக்ஸ் 2009 மெட்ரர்ஸ் கோபரேட்டிவ் உறவுஸ் கன்ஸ்ட்ரக்ஷன் சொசைடி லிமிடெட் ஒதுக்கீடு செய்து இன்னும் என்மீது



		பத்திரம் பதிவு செய்யப்படாத தற்போது நீயும் உன் கணவரும் குடியிருந்து வரும் 18ஏ கதவு எண்.46 இந்த சொத்தையும் கொடுப்பதாக உயில் சாசனம் சொல்லப்பட்டு இருக்கிறது.
5	On 2.1.2004 the plaintiff's wife executed Gift settlement deed 1/11 in A schedule property in the total extent of B schedule property.	The point is as per the averment in para-3 of the plaint it was stated that the suit mentioned property was owned by one Appavu pillai, after that he constituted joint hindu family property. Further the B schedule property is subject to the Will property of the 1st defendant. So, relating to B schedule property the plaint averments are hot and cold nature.

13. After perusing the documents filed and the plaint averments and plaint documents and also the submissions made by the learned counsel on both sides, this court finds that:

(i) The plaintiff is the husband of one Sarojini bai @ Lalitha Saraswathi, who is the daughter of late Appavu pillai. So, the plaintiff is not having any right as a joint family member of late Appavu pillai, his sons and daughters. Now, he claims his share in the 'A' schedule property 1/11 share and full extent of 'B' schedule property by way of gift settlement deed, but, the plaintiff has filed the suit for partition relating to 'A' and 'B' schedule property in O.S.No.21 of 2004 and that suit was dismissed for default.

(ii) Further, he entered into agreement for sale with the defendants, which was subject to O.S.No.53 of 2005. The compromise



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decree was happened on 07.12.2011. The Gift settlement, dated 02.01.2004.

Therefore, as per the Gift settlement, he has entered into agreement for sale subject land in O.S.No.53 of 2005. On 07.12.2011 the plaintiff has owned 1/11 share in 'A' schedule property and total extent of 'B' schedule property as per Gift settlement dated 02.01.2004. Therefore, the terms of compromise agreed by the plaintiff is binding to him. In the terms of compromise, he agreed that he has no right through the settlement, dated 02.01.2004. He further agreed and ratified the sale deeds, dated 8.5.2002 2.5.2002, 23.5.2002, 3.7.2002, 24.7.2002 made respectively in favour of the defendants executed by 1) Mohan, his son Santhakumar, and minor sons 2) Jayathilagan and his sons 3) Perumalsamy 4) Kuthalingam and his minor son 5) Sadhananthan and his minor son. Further he recognised the right of possession and enjoyment of the defendants 28 & 29 over the suit properties.

(iii) For the discussion in the above mentioned paragraphs, it reveals that the right in 'A' schedule property for 1/11 share and full extent of 'B' schedule property of plaintiff, he agreed the terms of compromise in O.S.No.53 of 2005 dated 07.12.2011 he had relinquished / waived his right, which he was acquired as per the settlement deed executed by his wife as



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per settlement deed 2.1.2004.

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(iv) The said compromise decree is still in force. The plaintiff has not initiated any legal proceedings against the said compromise decree. Anyhow, unless otherwise the compromise decree set aside by any competent court, it holds good, it is still valid and binding upon the parties. So, the plaintiff having relinquished / waived his right by way of compromise in O.S.No.53 of 2005, so, the plaintiff is not competent to file a fresh suit based on the settlement in favour of him, which he has extinguished by his voluntary act.

14 (a). This court considered the doctrine of *res judicata* and doctrine estoppel. It remains to be stated that the plaintiff appears to have taken legal advise with person of legal acumen, so as to draft, a plaint to avoid all the judicial proceedings that has ended between the parties and has filed the fresh suit as second round of litigation.

14 (b). On a perusal of the compromise decree in O.S.No.53 of 2005, this Court finds that the plaintiff who had acquired right through his gift / settlement deed executed from his wife and such right has also been extinguished, as he waived the right by way of terms of compromise in



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O.S.No.53 of 2005. Admittedly, the said compromise was signed by both the parties and both the Advocates and the learned Judge, in the presence of both the parties, passed the order of compromise decree and the said judgment passed upon the compromise memo filed by both the parties, has dismissed the suit. That being the case, this Court finds that the judgment in O.S.No.53 of 2005 (Ex.P2) dated 07.12.2011 is clearly an operating property rights between the parties and therefore, the plaintiff is not competent to file the present suit after relinquished of right accrued on his wife's settlement.

15. It is further remains to be stated that at the risk of repetition and however, for the sake of convenience, the right of the plaintiff has generated on the basis of the gift / settlement deed dated 02.01.2004, he had entered into compromise deed with the defendant 28 in O.S.No.53 of 2005 and compromise was entered and in the said compromise, both the parties have agreed on the basis of the arrangement entered between all the family members, the very same plaintiff has waived his right generated from his wife's settlement deed and the scope of the specific performance has been extended and other properties has also been included and settled once for



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all. Now the plaintiff is trying to reopen the very same right in the present suit by way of second round of litigation, is clearly demonstrated.

16. The learned Senior Counsel Mr.V.Raghavachari filed additional typed set of papers showing compromise deed entered between the very same parties on 10.04.2012, wherein, the plaintiff's wife Lalitha Saraswathi had executed consent deed for all the sale deeds executed by the defendants and the said consent deed was also admitted by the plaintiff in the earlier round of litigation assumes significance. Furthermore, the settlement deed executed by defendant 28 in favour of his wife defendant 29, wherein, the subject matter of the suit is involved, the very same plaintiff has attested the contents of the documents and hence, I find that on the factual basis, as extracted supra, the plaintiff had entered into settlement of compromise in an comprehensive manner in the year 2011 and also received huge amount of money and thereafter, has chosen to file the present suit in 2020 after the entire building construction was put up and hence, I have hesitation to hold that it amounts to re-litigation, which is impermissible in law. The learned District Judge, Dharmapuri, has considered the undisputed documents filed by the defendants, which are



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nothing but decree in O.S.No.21 of 2004 and compromise decree in O.S.No.53 of 2005 entered between the very same parties in respect of the very same property and further, a deed of understanding executed by the plaintiff with regard to acceptance of the memo of compromise under Ex.P3 and the plaintiff has attested the contents of the gift deed executed by defendant 28 in favour of defendant 29 and hence, the present round of litigation is nothing but clear an abuse of process of law.

17. The point No.1 is answered in negation against the appellant.

18. In such view of the matter, I do not find any error in the order passed by the learned trial Judge, as the same does not suffer from any illegality or perversity warranting interference at the appellate stage under Section 96 r/w Order 41 Rule 1 C.P.C.

Accordingly, the present appeal suit stands dismissed. No costs.

Connected C.M.P. is closed.

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Index : Yes / No

Speaking / Non-speaking order

Neutral Citation : Yes / No

nsd

To

The Additional District Judge, Dharmapuri.



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RMT.TEEKAA RAMAN, J.
nsd

Pre-delivery judgment made in
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