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C.R.P.(PD)No.148 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.148 of 2023

and

C.M.P.No.1264 of 2023

1.Selvakumar

2.Kalvikarasi

.. Petitioners

Vs.

1.Venkatesan

2.Tamilarasi

3.Thamaraiselvi

4.Krishnaraji

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order and decretal order dated 17.08.2022 made in I.A.No.35 of 2020 in O.S.No.49 of 2019 on the file of the I Additional District Court at Tindivanam.

For Petitioners : Mr.R.Thirugnanam

For R1 to R3 : Mr.D.Babu Varadharajan

For R4 : Mr.R.Agilesh

ORDER



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This revision arises against an order, dated 17.08.2022, passed by the learned I Additional District Judge at Tindivanam in I.A.No.35 of 2020 in O.S.No.49 of 2019.

2. I.A.No.35 of 2020 is an application filed by 12th and 13th defendants seeking rejection of the plaint presented by respondent Nos.1 to 3 before me.

3. O.S.No.49 of 2019 is a suit for partition and for declaration that the sale deed, executed by defendant Nos.8 to 11 in favour of 12th and 13th defendants, is null and void.

4. Summons were issued in the suit and the same was served on the 12th defendant, who filed a detailed written statement. The written statement filed by the 12th defendant was adopted by the 13th defendant.

5. For the purpose of this revision, I need not travel into the scope of the defence that has been taken by the defendants. This is because, in a proceeding relating to rejection of plaint, being a plea in demurrer, I have to



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take the averments made in the plaint to be true and on reading the same, if I were to come to a conclusion that the plaint falls within the four corners of Order VII Rule 11 of the Code of Civil Procedure, then I will have to reject the same.

6. At the time of consideration of the plea of rejection of plaint, the Court is not concerned with the sterling defence that might be taken by the defendants or whether the suit, if it goes for trial, would end in success for the plaintiff or not. Having stated the principles of Order VII Rule 11 of the Code of Civil Procedure, I proceed now to deal with the contentions raised by Mr.R.Thirugnanam, appearing on behalf of the petitioner.

7. According to Mr.R.Thirugnanam, the property originally belonged to one Kannu Naicker, who had four sons and four daughters. The 1st plaintiff, in this suit, is the 1st son of Kannu Naicker. According to the 12th defendant, Kannu Naicker and his two then minor children, namely, Subramani and Panchanathan, sold the property in favour of one Ranganatha Naicker. The said Ranganatha Naicker was in enjoyment of the property from the date of purchase, namely, 29.12.1954. Thereafter, his



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sons were in possession and occupation of the same. His sons have been impleaded as defendants Nos.8 to 11.

8. On 27.01.1986, the sons of Ranganatha Naicker alienated the property in favour of one Iyyanar, the father of 12th and 13th defendants. The 4th son of Kannu Naicker, namely one Krishnaraj, attempted to disturb the possession of Iyyanar and constrained Iyyanar to file a suit in O.S.No.11 of 2008 on the file of the learned Additional Subordinate Judge at Tindivanam. The said suit was decreed on 29.08.2017. Krishnaraj, aggrieved by the said judgment and decree, filed an appeal in A.S.No.2 of 2010 before the District Court at Villupuram. The said appeal was dismissed on 30.08.2019. Challenging the concurrent findings in O.S.No.11 of 2008 and A.S.No.2 of 2010, a Second Appeal was preferred before this Court in S.A.No.199 of 2021. The said Second Appeal was dismissed on 17.03.2021.

9. Mr.R.Thirugnanam would further plead that during the course of an enquiry in O.S.No.11 of 2008, Krishnaraj had pleaded that he is representing the interest of all the children of Kannu Naicker.



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10. Taking this as a cue, Mr.R.Thirugnanam would submit that the present suit for partition and declaration is barred by the principles of *res judicata*. He would therefore state that the dismissal of the application for rejection of plaint by the learned District Judge on 17.08.2022 has to be set aside and the plaint has to be rejected on two primary grounds :

(1) it is hit by the principles of *res judicata* and,

(2) it is barred by limitation as the sale deed in favour of the father of defendant Nos.12 and 13 had been executed on 21.01.2008, but the suit itself came to be filed only in the year 2019.

11. Mr.D.Babu Varadharajan, appearing on behalf of respondent Nos.1 to 3, and Mr.R.Agilesh, appearing on behalf of the 4th respondent, would attempt to sustain the order passed by the learned I Additional District Judge stating that *res judicata* is a matter which requires evidence and it does not fall within the scope of Order VII Rule 11 of the Code of Civil Procedure.

12. They would further state that insofar as the alleged statement, that



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is said to have been made by Krishnaraj, who is the brother of the 1st plaintiff and the uncle of plaintiff Nos.2 and 3, is concerned, it has to be gone into only at the time of trial. They would also point out that for the principles of *res judicata* to apply, a person should have been a party to the proceeding and in the suit presented by Iyyanar as against Krishnaraj, Venkatesan or the other legal heirs had never been impleaded as parties.

13. In reply, Mr.R.Thirugnanam would submit that the principles of *res judicata* can be extended to situations where even one brother has contested the litigation and he is able to show that he had represented the proceeding for and on behalf of all of them. To that end, Mr.R.Thirugnanam would rely upon the Explanation VI to Section 11 of the Code of Civil Procedure.

14. Heard Mr.R.Thirugnanam and Mr.D.Babu Varadharajan and Mr.R.Agilesh for the respective parties. I have carefully considered the submissions made by the learned counsel on either side.



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15. A memo has also been filed by the learned counsel for the petitioners stating that the 1st respondent died on 23.02.2023 leaving behind the 2nd and 3rd respondents as his legal heirs. The said memo is recorded.

16. For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

17. I have already premised the scope of an application under Order VII Rule 11 of the Code of Civil Procedure. As held by the Supreme Court in ***Syed Mohd. Salie Labbai (dead) by LRs and Others vs. Mohd. Hanifa (dead) by LRs. and Others [(1976) 4 SCC 780]***, in order for the party to succeed in a plea of *res judicata*, the parties would have to file before the Court, the respective pleadings, the issues as well as the judgments that have been rendered by the Courts in the previous proceeding.

18. This very fact shows that in an order for a party to succeed in a plea of *res judicata*, it requires evidence to be recorded on the merits of the case. If evidence is required for the purpose of dealing with the issue, then, certainly it will not fall within the scope of Order VII Rule 11 of the Code of



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19. With respect to the argument on Explanation VI to Section 11 of the Code of Civil Procedure is concerned, Mr.R.Thirugnanam would refer to the judgment of the Supreme Court in ***Singhai Lal Chand Jain (Dead) vs. Rashtriya Swayamsewak Sangh, Panna and Others [(1996) 3 SCC 149]***. He would hammer in a point that when Krishnaraj has stated that he is representing on behalf of all the sons of Kannu Naicker, Explanation VI to Section 11 of the Code of Civil Procedure would apply and therefore, this suit has to be rejected on the grounds of *res judicata*.

20. Insofar as this plea is concerned, a careful perusal of the judgment that has been relied upon by Mr.R.Thirugnanam would show that it was a case factually different from the case before me. That was a case, where a suit for ejection had been filed against an organization called “Rashtriya Swayamsewak Sangh”. The organization had been represented by its Manager, the President, the Head Master of the Institution as well as by an Advocate. The ejectment suit was decreed, the appeal, there from, was dismissed. The Special Leave Petition preferred to the Supreme Court also



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ended in a dismissal.

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21. Thereafter, an Execution Petition was levied to execute the decree of eviction that had been obtained. At that stage, an objection was taken by the judgment debtor stating that “Rashtriya Swayamsewak Sangh” is an unregistered body and therefore, the proceeding under Order I Rule 8 of the Code of Civil Procedure would have to be followed. This objection seems to have found acceptance with the Division Bench of the High Court of Madhya Pradesh in a Civil Revision Petition against which a civil appeal was preferred to the Supreme Court. Dealing with the objection that the decree is inexecutable, the Supreme Court held that the “Rashtriya Swayamsewak Sangh” had been properly represented by its Manager, the President and other office bearers and therefore, Explanation VI to Section 11 of the Code of Civil Procedure will apply and consequently, allowed the appeal and set aside the order of the Division Bench.

22. I am not in a position to understand how this judgment will apply to the facts of the present case. Krishnaraj cannot be said to be the legal representative or even the Kartha of the family or the trustee on behalf of the



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other sons. Each of the sons of Kannu Naicker would have a separate share.

Therefore, the suit filed against one brother i.e., Krishnaraj cannot be held, in the circumstances of this case, as binding on the other brother, namely, the 1st plaintiff, Venkatesan. Each individual is entitled to a share in the property and in order to enforce that share, that the plaintiffs have presented the suit for partition.

23. It is here, I have to recollect the principle that the plaint cannot be rejected in part. The plaint either stands in full or rejected in full. If I were to accept the argument made by Mr.R.Thirugnanm, then I would be rejecting the plaint only insofar as prayer 'B' is concerned. Leaving the plaint intact insofar as prayer 'A' is concerned. Such a dissection of the plaint is impermissible in terms of Order VII Rule 11 of the Code of Civil Procedure. Therefore, I do not find any merit in the argument that, on *res judicata*, the suit that has been presented has to be rejected.

24. Now, turning to the second plea that has been raised by Mr.R.Thirugnanam. He would state that the sale deed had been executed in January 2008 but the suit came to be filed only in the year 2019 and



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therefore, it is hopelessly barred by the limitation. He would rely upon Article 59 of the Limitation Act, which states that, for setting aside a sale deed, a period of limitation is three years from the date of knowledge. For the purpose of rejection of a plaint on the grounds of limitation, a reading of the plaint must disclose that the plaint is barred. Unfortunately for Mr.R.Thirugnanam, my reading of the plaint does not show that the plaint is barred.

25. On the contrary, being non parties to the document, which is sought to be set aside, the cause of action would commence from the date of knowledge of execution of the said document. Whether the plaintiffs had prior knowledge of the sale deed is a matter which has to be gone into at the time of recording evidence.

26. With both the pleas failing, I am not in a position to come to the rescue of the defendants. Consequently, I am constrained to confirm the order of the learned I Additional District Judge at Tindivanam in I.A.No.35 of 2020 in O.S.No.49 of 2019, dated 17.08.2022.

27. I make it clear that I have not discussed the merits of the case,



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which would have to be gone into after the evidence is recorded in the suit.

In fact, if there is a statement as alleged by Mr.R.Thirugnanam, it would be open to the parties to make it admissible in terms of Section 33 of the Indian Evidence Act. I have only dealt with the application filed for rejection of the plaint. It is left open to the parties to raise all such contentions legitimately open to them at the time of hearing of the suit.

28. With the above observations, the Civil Revision Petition stands dismissed. No costs. The connected Civil Miscellaneous Petition is closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

To

The I Additional District Court,
Tindivanam

V. LAKSHMINARAYANAN, J.



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