



A.S.(MD).No.88 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on :20.11.2023

Delivered on: 05.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

A.S.(MD).No.88 of 2022
and
C.M.P.(MD)No.3109 of 2022

1.Vellaiamma

2. Subramanian

.. Appellants /8th & 9th Defendant

Vs.

1.Subbulakshmi

... 1st Respondent / Plaintiff

2.Subburam

3.Rajalakshmi

4.Poongodi

5.Rukkumani

6.Jeyaraj

7.Maheswari

8.Sowdeeswari

... Respondents 2 to 8 / defendants 1 to 7

9.The Collector,
Dindigul District,
Collector Office,
Dindigul Taluk,
Dindigul District.

... 9th respondent / 10th defendant



A.S.(MD).No.88 of 2022

WEB COPY

Prayer:- Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree, dated 01.12.2021, made in O.S.No.223 of 2018, on the file of the Principal District Judge, Dindigul.

For Appellants : Ms.Krishnaveni, Senior Counsel
for Mr.P.Dhanasekaran
For Respondents : Ms.G.Subbulakshi (Party-in-person) for R1
: R2 to R9- Dispensed with

JUDGMENT

P.B.BALAJI,J.

The unsuccessful 7th and 8th defendants, in O.S.No.223 of 2018, on the file of the Principal District Judge, Dindigul, are the appellants before us. The suit was filed by the first respondent herein / plaintiff for the reliefs of declaration of title, recovery of possession and for declaration to declare the sale deed, dated 09.05.2013 in Document No.1457/2013 in favour of the appellants as null and void and further, to declare the settlement deed, dated 05.06.2015, in document No.1758/2015 executed by the appellants also to be null and void.



A.S.(MD).No.88 of 2022

WEB COPY

2. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3. The plaint in brief as set out by the first respondent / plaintiff before the trial Court, is as follows:

The plaintiff is the daughter of one Rengasamy Gowder and the defendants 1 to 7 are the siblings of the plaintiff. During the life time of father – Rengasamy Gowder, a settlement deed was executed on 17.10.2012 and the plaintiff was put in possession of the property as well. However, in 2015, taking advantage of the ill-health of the father, the defendants 1 to 5 took away the plaintiff's father and brought about the cancellation of the settlement deed executed in favour of the plaintiff. The plaintiff filed a suit in O.S.No.285 of 2013, which was withdrawn in order to file a Writ Petition in W.P.(MD)No.18927 of 2015 and it was dismissed with liberty to the plaintiff to approach the competent civil Court. Thereafter, the present suit in O.S.No.223 of 2018 came to be filed.

4. The said suit was contested by the appellants. The 9th defendant filed a written statement, which was adopted by the defendants



A.S.(MD).No.88 of 2022

WEB COPY

5, 6 and 8 and the same, in brief, is as follows:

The defendants denied the fact that the plaintiff was put in possession and according to the defendants, the settlement deed was not valid as the plaintiff did not take steps to discharge the mortgage loan on the suit property. The 8th defendant alone had to discharge the mortgage loan and only thereafter, the property was settled by the defendants 8 and 9 and an earlier suit for the very same relief was withdrawn by the plaintiff and was also dismissed. The suit was therefore barred by principles of Order XXIII C.P.C. as well as the law of limitation.

5. Before the trial Court, the plaintiff examined herself as P.W.1 and 21 documents were marked as Ex.A1 to Ex.A21, on the side of the plaintiff. On the side of the defendants, 3 witnesses were marked as D.W.1 to D.W.3 and 9 documents were marked as Ex.B1 to Ex.B9.

6. The trial Court, after analysing the pleadings of the parties to the suit, framed the following issues:

1. Whether the plaintiff is absolute owner of the suit property?
2. Whether the plaintiff is entitled for possession?



A.S.(MD).No.88 of 2022

WEB COPY

3. To what relief?

7. On considering the oral and documentary evidence adduced by the parties, the trial Court held that the suit was neither barred by limitation nor hit by the principles of *res judicata* or Order XXIII C.P.C.; the Writ Court was approached only after withdrawing the earlier suit in O.S.No.285 of 2013 and in any event, a unilateral cancellation of the settlement deed in favour of the plaintiff was not valid in the eye of law and consequently, the trial Court decreed the suit and held that the plaintiff is entitled to a decree for possession as prayed for. However, the plaintiff was directed to pay a sum of Rs. 18,47,258/- to the 8th defendant.

8. The present Appeal is at the instance of the defendants 8 and 9, who are admittedly third party purchasers of the suit property, after the deed of cancellation was executed by the father of the plaintiff and the defendants 1 to 6, thereby, cancelling the settlement deed in favour of the plaintiff.

9. The grounds of challenge in the appeal are that the reason for



A.S.(MD).No.88 of 2022

WEB COPY

executing the settlement deed was that one of the conditions for settling the property in favour of the plaintiff was that the father of the plaintiff had mortgaged the property and the trial Court failed to see that the plaintiff had not taken any steps to discharge the mortgage loan; the suit property was encumbered on the date of her settlement deed; the trial Court failed to see that it was only the 8th defendant, who had cleared the entire mortgage loan; Ex.A1-settlement deed was not proved by examining the attesting witnesses; the trial Court failed to see that the suit is barred by *res judicata*; the trial Court erroneously held that liberty granted in W.P.(MD)No.18927 of 2015 would save limitation for the plaintiff.

10. We have heard Ms.N.Krishnaveni, learned Senior Counsel for the appellants and Ms.G.Subbulakshmi, – party-in-person. We have also perused the records and also various decisions on which reliance has placed by the learned Senior Counsel for the appellants as well as the first respondent/ party-in-person.

11. The points for determination in the present appeal are as follows:



A.S.(MD).No.88 of 2022

WEB COPY

I. Whether the suit in O.S.No.223 of 2018 is barred by the principles of Order XXIII C.P.C as well as res judicata?

II. Whether the suit in O.S.No.285 of 2013 is barred by law of limitation?

III. Whether the observation by the Writ Court in W.P.(MD)No.18927 of 2015 would enure to the benefit of the plaintiff and save limitation for the present suit?

12. Admittedly, the plaintiff had filed an earlier suit in O.S.No. 285 of 2013, before the District Munsif cum Judicial Magistrate, Veda sandhur, on 30.09.2015. However, the suit was withdrawn without any liberty. The plaintiff has thereafter filed a Writ Petition in W.P. (MD)No.18927 of 2015 and the Writ Court dismissed the writ petition granting a liberty to the plaintiff to establish her right before the competent civil Court, in a manner known to law. Thereafter, the present suit has been filed, for identical reliefs that were originally prayed for in O.S.No. 285 of 2013.

13. We have gone through Ex.A11- plaint in O.S.No.285 of 2013 and also the present plaint. We have also gone through the order in



A.S.(MD).No.88 of 2022

W.P.(MD)No.18927 of 2015, which has been marked as Ex.A17.

WEB COPY

14. From Ex.A1-settlement deed executed by Rengasamy Gowder in favour of the plaintiff, we do not find that the father - Rengasamy Gowder has put the plaintiff on any conditions. The settlement deed is unconditional and therefore, the contention of the learned Senior Counsel of the appellants that the settlement deed itself was made only on the condition that the charge on the property would be cleared by the plaintiff. We are unable to see any merit in the arguments put forth by the learned counsel for the appellants, in this context.

15.(a) Coming to the more important contention raised by the learned Senior Counsel, namely, that is, a bar under Order 23 C.P.C, we have examined the said argument of the learned Senior Counsel in that. There is no difficulty with regard to the admitted position that the earlier suit in O.S.No. 285 of 2013 was withdrawn. The decree in O.S.No.285 of 2013 has been marked as Ex.A16. In Ex.A16, we find that the plaintiff did not seek for any liberty in the first place and her suit was withdrawn as dismissed simpliciter.



A.S.(MD).No.88 of 2022

WEB COPY

15(b). The more important and relevant document is the order of the Writ Court in W.P.(MD)No.18927 of 2015, which has been marked as Ex.A17. We find that the Writ Court took note of the fact that the plaintiff had filed a suit in O.S.No.285 of 2013 and the plaintiff allowed the suit to be dismissed on 30.09.2015 and thereafter, had approached the Writ Court and filed the said Writ Petition. The Writ Court, however, dismissed the writ petition as not maintainable, the observations regarding granting liberty to the plaintiff to establish her right before the competent civil Court, ***“in the manner known to law”***. The Writ Court has further observed that the observations in the order passed by the Writ Court were only for the disposal of the writ petition and the civil Court shall decide the issue on merits and in accordance with law.

16. The learned Senior Counsel for the appellants would submit that the liberty granted by the Writ Court cannot be taken advantage of by the plaintiff, to file another suit, which would be clearly defeating the mandate of Order XXIII of the Code of Civil Procedure. That apart, according to the learned Senior Counsel, the suit was also barred by law of limitation as the suit has not been filed within a period of 3 years from the



A.S.(MD).No.88 of 2022

date of the cancellation of the deed, being executed by the father of the plaintiff and the defendants 1 to 6. The learned Senior Counsel would place reliance on the following decisions:

- (i) judgment of the Hon'ble Supreme Court in ***Bakhtawar Singh V. Sada Kaur*** reported in ***1996-11-SCC-167***; and
- (ii) judgment of the Hon'ble Supreme Court in ***Civil Appeal No. 8072 of 2010 (State of Orissa V. Laxmi Narayan Das (Dead))***

17. In ***Bakhtawar Singh's*** case, the Hon'ble Supreme Court held that where the plaintiffs had withdrawn an earlier suit with permission to file a fresh suit on the same cause of action, with regard to the permission under Order XXIII Rule 1(3) C.P.C., the plaintiffs were entitled to exclude the time for prosecuting the earlier suit under Article 14 of the Limitation Act, 1963. The Hon'ble Supreme Court while dealing with the issue, held that the Court can grant liberty, under Order XXIII Rule 1(3) C.P.C., when the Court is satisfied that a suit must fail by reason of some formal defect or there are sufficient grounds for allowing the part of the claim. However, on facts, the Hon'ble Supreme Court found that there was no evidence to show that the permission to



A.S.(MD).No.88 of 2022

withdraw the suit was on one of the two grounds mentioned in Order XXIII C.P.C and therefore, proceeded to hold that in the absence of such proof, the benefit of explanation under the Limitation Act cannot be extended to the plaintiff.

18. In *State of Orissa V. Laxmi Narayan Das (Dead)* case, the Hon'ble Supreme Court discussing the principles of constructive *res judicata*, held that the Writ Petition filed after withdrawal of the civil Court was not maintainable as no liberty was granted and in the facts of the case before the Hon'ble Supreme Court, the writ petitioner had filed a suit for the same relief and subsequently withdrew it without any liberty and thereafter filed a writ petition. In the writ petition also, he had suppressed the factum of filing the earlier suit and consequential withdrawal of the same.

19. Applying the ratio laid down in the Hon'ble Supreme Court in the above two decisions to the facts of the present case, we find that there is no suppression of filing of the earlier suit and in writ petition. However, the argument of the learned Senior Counsel is that the Hon'ble



A.S.(MD).No.88 of 2022

Supreme Court held that the writ petition was not maintainable since the suit was withdrawn, without any liberty. Therefore, the contention of the learned Senior Counsel is that admittedly, the plaintiff has not obtained leave or liberty from the Court to institute fresh proceedings and the plaintiff cannot take advantage of the liberty granted by the Writ Court. In any event, she would submit that the suit is clearly barred by the principles of Order XXIII C.P.C and also hit by law of limitation, namely, Article 14 of the Limitation Act.

20. The reasoning of the learned Senior Counsel for attacking the suit on the ground of limitation, is that the cancellation of the settlement deed which is under challenge in the suit, which is of the year 2013, however, the suit came to be filed only in the year 2017, which is clearly beyond the statutory period of 3 years. Further, when no liberty has been granted by the trial Court while allowing the plaintiff to withdraw the earlier suit, the plaintiff cannot take advantage of Article 14 of the Limitation Act and try to bring her within the law of limitation, by relying on Article 14 of the Limitation Act.

21. Per contra, the first respondent/party-in-person would submit



A.S.(MD).No.88 of 2022

that the plaintiff's father had no right to execute a unilateral cancellation of the settlement deed and therefore, the appellants, who are purchasers after the said cancellation deed are not *bonafide* purchasers. Further, she would also state that on the earlier suit tried on merits and finality has not been reached and therefore the principles of *res judicata* would not come into play. She would therefore, support the findings of the trial Court and pray for the appeal being dismissed.

22. Though on facts, as seen from the pleadings, the appellants denied the execution of the settlement deed in favour of the plaintiff in Ex.A1, the fact that the said settlement deed was subsequently cancelled by a registered instrument and only thereafter, the appellants have proceeded to purchase the property, it does not lie the mouth of the appellants to deny execution of the settlement deed, in favour of the plaintiff in Ex.A1.

23. The next point for consideration is as to whether the second suit filed by the plaintiff is hit by the principles of Order XXIII C.P.C or not. Order XXIII of the Code of Civil Procedure is extracted hereunder, for



easy reference:

WEB COPY

XXIII. 1. *Withdrawal of suit or abandonment of part of claim:*

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. (4) Where the plaintiff-



A.S.(MD).No.88 of 2022

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be preclude from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.

"(5) Where the plaintiff in a suit instituted or conducted under the provisions of rule 8 of Order 1 of this Code or all plaintiffs therein if there are more plaintiffs than one, apply for the permission to withdraw the suit, notice of such application shall be given in the manner prescribed by sub-rule (3) of Order 1 of this Code for issue of notice of institution of the suit, and the cost of such notice shall be borne by the plaintiff or the plaintiffs, as the case may be. If upon such application being made a defendant in the same suit having the same interest as that of the plaintiffs applies for permission to be transposed a plaintiff to conduct the suit further, he shall be permitted to do so and the plaintiffs application dismissed." (w.e.f. 30-3-1967)



WEB COPY



A.S.(MD).No.88 of 2022

1A. When transposition of defendants as plaintiffs may be permitted.-

Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.

2. Limitation law not affected by first suit.- *In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.*

3. Compromise of suit.- *Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall Order such agreement, compromise satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-*



A.S.(MD).No.88 of 2022

matter of the suit:]

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

[Explanation-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule;]

3A. Bar to suit.—No suit shall lie to set aside a decree on the ground that the compromise on which the cc is based was not lawful.

3B. No agreement or compromise to be entered in a representative suit without leave of Court.—(1) (1)No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court as recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation.—In this rule, “representative suit”



means,—

- (a) a suit under Section 91 or Section 92,*
 - (b) a suit under rule 8 of Order I,*
 - (c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,*
 - (d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.]*
- 4. Proceedings in execution of decrees not affected.—Nothing in this Order shall apply to any proceedings in execution of a decree or order.*

24(a). From the above, it is clear that when the plaintiff chooses to abandon the suit, without any inclination to file a fresh suit, then the question of leave does not arise. However, when the plaintiff intends to pursue the legal remedy, after withdrawing the suit, then prior leave of the Court is mandatory, if the plaintiff desires to sue on the same cause of action.

24(b). The plaintiff in the earlier O.S.No.285 of 2013 as well as the present suit is the same and both the suits are on the same cause of action, excepting for an additional consequential relief seeking



A.S.(MD).No.88 of 2022

WEB COPY

cancellation of the settlement deed executed by the 8th appellant in favour of the 9th appellant. In all other aspects, they are one and the same and the reliefs in the earlier suit have also been sought for in the subsequent suit.

24(c). As contended by the learned Senior Counsel, Ms.Krishnaveni, even the Writ Petition that was filed after withdrawing the suit was itself not maintainable, in view of the ratio laid down by the Hon'ble Supreme Court. However, we do not wish to go into that aspect as the Writ Court has chosen to entertain the writ petition and the appellants are also parties to the Writ Petition. The only factor that remains to be seen is as to whether the liberty granted by the Writ Court can be taken advantage of by the plaintiff or not.

We hereby extract the relevant portion of the order in W.P. (MD)No.18927 of 2012, dated 13.10.2017, for easy reference:

20. For the reasons stated above, the writ petition fails and the same is dismissed as not maintainable. However, with liberty to the petitioner to establish her right before the competent civil Court in the manner known to law. It is needless to say that the above observations have been made only for the disposal of the writ petition and the civil Court shall decide the issues on merits and in accordance with law.



WEB COPY

(emphasis supplied)

25. The Writ Court has also clearly mentioned in the order that the plaintiff has to establish her right before the competent Court only in the manner known to law. Thus, the said observation cannot be said to be overriding the Rules of procedure under Order XXIII C.P.C or the mandate of Article 14 of the Limitation Act.

26(a). The subsequent suit filed by the plaintiff is challenged on two grounds, viz., (i) the suit has been filed beyond the period of limitation and (ii) the second suit without liberty being obtained at the time of withdrawing the suit was hit by the mandate of Order XXIII C.P.C.

26(b). Article 14 of the Limitation Act, 1963 is extracted hereunder, for easy reference:

14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the



WEB COPY



A.S.(MD).No.88 of 2022

defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it



WEB COPY



A.S.(MD).No.88 of 2022

ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

27(a). The said Article provides for exclusion of time spent *bonafide* in a proceeding in a Court without jurisdiction. Subsection 3 of Article 14 make subsection (1) applicable to the provisions of Order XXIII C.P.C, where a fresh suit is instituted on the permission granted by the Court under Order XXIII Rule 1 C.P.C.

27(b). In the case on hand, admittedly the plaintiff did not seek any liberty from the Court and Article 14(3) of the Limitation Act would come into play only where the Court had granted permission under Order XXIII Rule 1 of the Code of Civil Procedure, finding that the earlier suit fails by reason of a formal defect in jurisdiction or at least for any other substantial cause. In the instant case, no such issue arises, as the plaintiff herself did not seek liberty of the Court under Rule 1 Order XXIII C.P.C.



A.S.(MD).No.88 of 2022

WEB COPY

28. Thus, as rightly contended by the learned Senior Counsel for the appellants, the relief of declaration, insofar as the cancellation of the settlement deed is clearly barred by the law of limitation. The relief of declaration of title and recovery of possession is only consequent to the relief of declaration of the cancellation deed, being null and void. Therefore, when the main relief of cancellation of the settlement deed itself is not available to the plaintiff, being barred by law of limitation, the question of the plaintiff maintaining the suit in respect of the other reliefs, does not arise for consideration.

29. On perusal of Ex.A.1/settlement deed issued in favour of the plaintiff, there is no recital in the said Ex.A.1 stipulating any conditional clause. However, a reason appears to have been assigned as a recital under Ex.A.12/cancellation of the settlement deed. The plaintiff has admitted that on the date of the settlement deed, Ex.A.1, in her favour, her father has obtained mortgage loan from the Primary Agricultural and Rural Co-operative Bank Limited, Vedsantur. On facts, we find that there was a subsisting mortgage on the date of Ex.A.1/settlement deed, in favour of the



A.S.(MD).No.88 of 2022

respondent/plaintiff.

WEB COPY

30. It is also seen that, after cancellation of the settlement deed / Ex.A2 on 09.05.2013, on the same day, the property was sold to the 9th respondent/ the appellant herein by a registered document. On 10.05.2013, the settlor has repaid Rs.18,47,258/- to discharge the loan amount and after the settlement of the entire dues, the co-operative society had issued the receipt for discharge/clearance of the mortgage loan on 13.05.2013. Hence, we find that the recital in Ex.A2/settlement deed in favour of the appellant herein that there was a subsisting mortgage deed and on the failure of the first respondent/plaintiff to repay the said dues, it was brought to auction and the same was the cause for cancellation of the settlement deed. However, we do not propose to deal with these facts since, on the question of law, we have decided as stated supra.

31. The next issue that arises for consideration is as to: whether the liberty granted by the Writ Court can be taken advantage of? We are conscious that the earlier suit filed was not prosecuted and was allowed to be dismissed. However, while dismissing the Writ Petition, the Writ Court



A.S.(MD).No.88 of 2022

WEB COPY

had merely stated that the plaintiff can approach the competent civil Court to ventilate her grievance, in accordance with law. An observation in order of the Writ court would not amount to permission being granted under Order XXIII C.P.C or having an effect of overriding the provisions of the Code of Civil Procedure or the Limitation Act. Therefore, merely because the plaintiff was given a liberty to approach the competent Court, it would not clothe her with a right to file a subsequent suit in gross violation of the Order XXIII Rule 1 C.P.C and without regard to the provisions of the Limitation Act.

32. The trial Court, unfortunately, has not appreciated the said legal contentions and proceeded to decree the suit. The case of the appellants merits consideration and they are entitled to relief.

33(a). In fact, one of us (**RMT.TEEKAA RAMAN,J.**) in *V.Gowri shankar V. S.Balakumar in C.R.P.(PD)No.937 of 2019*, dated 05.01.2021, has elaborately discussed the question of second suit being filed without liberty. Therein, it has been held that no party can be allowed to re-litigate the matter and the Court ought to reject the plaint as it was a



A.S.(MD).No.88 of 2022

clear abuse of process of Court.

WEB COPY

33(b). Applying the ratio of the said order of the present case, we find that the present suit is nothing but re-litigation. After withdrawing the earlier suit, without any liberty to file a fresh suit on the same cause of action, the plaintiff cannot file another suit on the same cause of action, praying for the very same reliefs.

34. In fine, we answer all the points determined for consideration in favour of the appellants and the Appeal Suit is allowed and the decree in O.S.No.223 of 2018, on the file of the Principal District Judge, Dindigul, dated 01.12.2021, is hereby set aside. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
05.01.2024

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
Ls



A.S.(MD).No.88 of 2022

WEB COPY

To

1.The Principal District Judge,
Dindigul.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD).No.88 of 2022

RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

Ls

Pre-delivery judgment in
A.S.(MD).No.88 of 2022
and
C.M.P.(MD)No.3109 of2022

05.01.2024