



S.A.No.756 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2025

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.No. 756 of 2019

and C.M.P.Nos.14649 of 2019 and 14454 of 2021

Rajamani,
represented by her Power of Attorney
V.Karuppannan, S/o. Veeraappa Thevar,
D.No.58-A, Angalamman Koil Street,
Perur, Coimbatore -10,
Present address at No.6/5,
West Car Street, Perur,
Coimbatore -641 010

...Appellant / Plaintiff

Vs.

U.Bhagyalakshmi

...Respondent / defendant

PRAYER:- This Second Appeal is filed under Section 100 of Code of Civil Procedure, 1908, to set aside the judgement and decree dated 25.03.2019 in A.S.No.31 of 2016 passed by the learned 1st Additional Subordinate Judge, Coimbatore reversing the judgement and decree dated 26.04.2016 made in O.S.No.831 of 2007 on the file of the III-Additional District Munsif, Coimbatore.

For Appellant : Mr.M.Balasubramanian

For Respondent : Mr.R.Ganesh Babu



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JUDGMENT

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This Second Appeal is filed by the plaintiff herein against the judgement and decree dated 25.03.2019 passed in A.S.No.31 of 2016 by the 1st Additional Sub Court, Coimbatore.

2. The parties are indicated herein as per the litigative status and ranking before the Trial Court.

3. According to the plaintiff, the defendant U.Bhagyalakshmi is the sister of the plaintiff. The schedule mentioned property originally belonged to R.V.Mariappan, father of the plaintiff and the defendant. He purchased the said property from one Maruthachalam by registered sale deed on 20.02.1976. Her father R.V.Mariappan died on 20.02.1993 leaving behind the plaintiff and defendant alone as legal heirs. After their father's demise, the plaintiff and the defendant entered into an oral partition of the suit property. The plaintiff is in possession and enjoyment of southern portion of the suit property and the defendant is in possession and enjoyment of northern portion of the suit property. As there is no partition effected between them, she could not develop the property. The plaintiff demanded for division of the suit property as per oral partition or by metes and bounds,



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by issuance of legal notice dated 14.03.2007 to the defendant. Despite the receipt of notice, she has neither come forward for an amicable partition of the suit property nor sent any reply notice. As the defendant and her tenants were causing disturbance to her, the plaintiff and her husband V.Karuppannan filed a suit in O.S.No.1301 of 2005 before the Principal District Munsif Court, Coimbatore for permanent injunction. The suit was decreed in favour of the plaintiff. Hence, the plaintiff filed the suit for partition.

4. Per contra, the defendant contends that the plaintiff has no locus standi to file the suit. The plaintiff has no right to claim half share in the property. The suit property was allotted to the defendant as per the partition settlement entered into between the plaintiff and the defendant in the presence of their father R.V.Mariappan. Thereafter, the defendant became the absolute owner of the suit property. The plaintiff was allotted a house property bearing Door No.5 at Perur Village. She mutated revenue records in her name, including the Property tax and house tax stands in her name. The plaintiff constructed multi-storied building upon the said land. Suppressing the said fact, this suit has been filed by the plaintiff. The plaintiff is claiming half share in the defendant's property. The plaintiff was never in possession of the schedule mentioned property. The plaintiff has



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admitted in the plaint that there was an oral partition for division of two properties of late R.V.Mariappan and not the present suit property. The plaintiff has filed a false suit in O.S.No.1301 of 2005 to create records for claiming right over the suit schedule property. The suit is liable to be dismissed.

5. Based on the rival pleadings, the Trial Court framed relevant issues. At trial, in order to substantiate the claim details, on the side of the plaintiff, the plaintiff's husband V.Karuppannan was examined as P.W.1 and one P.M.Subramanian was examined as P.W.2 and 31 documents were marked. On the side of the defendant, three witnesses were examined and 31 documents were marked. Copy of the sale deed executed in favour of R.V.Mariappan dated 20.02.1976 is Ex.A2.

6. The following substantial questions of law arose for consideration:

"i. Whether the first appellate court right in saying that the husband of the plaintiff as a power agent not competent to maintain a suit for partition, contrary to provision of section 120 of the Indian Evidence Act?

ii. In a suit for partition, the parties herein admitted the relationship, nature of property and share (½ share each as



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daughters of the deceased Mariappan) in the suit property, the First Appellate Court ought to have confirmed the preliminary for partition passed by the trial Court?

iii. Whether the First Appellate Court is right in saying that the suit for permanent injunction filed by the plaintiff/appellant in O.S.No.1301 of 2005 for preventive relief, the plaintiff/appellant herein non suited under Order II Rule 2 C.P.C since the present suit is for a comprehensive relief of partition of the suit property?"

7. The learned counsel for the appellant would vehemently argue that the plaintiff and the defendant alone are the exclusive heirs of the deceased R.V.Mariappan, who died intestate on 20.02.1993 and the mother of the plaintiff and the defendant predeceased her husband. He would further contend that the suit property is the self-acquired property of the deceased R.V.Mariappan and the plaintiff and the defendant who are the exclusive heirs are entitled to half share each was rightly decided by the Trial Court.

8. It is not in dispute that the plaintiff and the defendant are the legal heirs of the deceased R.V.Mariappan and his wife predeceased her husband. It is also not in dispute that the suit property is the self-acquired property of the deceased R.V.Mariappan. Copy of the sale deed in the name



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of R.V.Mariappan dated 20.02.1976 is Ex.A2. The plaintiff pleaded an oral partition after the death of her father. But the defendant's case is that the suit property was allotted to the share of the defendant in the oral partition that effected between them in the presence of her father R.V.Mariappan. Hence, the defendant is the owner of the suit property.

9. On the plaintiff's side, the plaintiff's husband has been examined as P.W.1 on the strength of Ex.A1-Power of Attorney deed executed by the plaintiff in favour of her husband V.Karuppannan dated 07.04.2007. Besides that an application was taken out by the plaintiff under Order III Rule 1 of Code of Civil Procedure, 1908 seeking permission to appear through the Power of Attorney and it was ordered accordingly by the Trial Court. It is relevant to note that at the time of filing of the suit on 12.09.2007, upon application under Order III Rule 1 CPC, the husband of the plaintiff was permitted to appear as power agent of the plaintiff. The defendant did not take any steps to reopen such application. Without taking any steps to reopen such application, the defendant has raised objections that the plaintiff is not entitled to contest the case through her Power of Attorney. P.W1 is the husband of the plaintiff. As per Section 120 of the Indian Evidence Act, 1872 in the civil proceedings, the parties to the suit and the husband or wife of any party to the suit shall be competent witnesses. When the law itself gives full



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leverage to the husband or wife of any party to the suit, other person is a competent witness. Therefore, when the plaintiff can take advantage under Section 120 of the Evidence Act, it should not lie in the mouth of the defendant that oral partition took place between her and the plaintiff with their father, and the plaintiff's husband / P.W.1 does not have any knowledge about the same and his evidence lacks knowledge. As per Section 120 of the Evidence Act, P.W.1-Husband of the plaintiff is a competent witness.

10. P.W.1 has supported the case of the plaintiff. To support the plaintiff's contention that the plaintiff is in possession of southern portion of the suit property and the defendant is in possession and enjoyment of northern portion of the suit property, P.W2 - P.M.Subramanian would support the case of the plaintiff. He is the Archagar of the Angalamman Thriukovil, which is situated opposite to the suit property. During the cross-examination, P.W.2 pleaded ignorance in respect of the names of neighbours to the suit property, though he was residing nearby the suit property. From the cross-examination of P.W.2, it appears that he is a relative of the plaintiff's daughter's husband.

11. The defendant examined herself as D.W.1 and her daughter was examined as D.W.2. D.W.3 is the Assistant Director of Town Panchayat,



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through whom voter list Part No.77 for the year 2006 book was marked.

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12. The plaint copy pertains to O.S.No.1651 of 2009 is Ex.B17, wherein the deceased R.V.Mariappan executed a sale deed in favour of the plaintiff's husband on 29.04.1992 and this has been challenged by the defendant in the said suit. Whether the case has been disposed of or not is not known. The defendant's contention is that another property was settled in favour of the plaintiff. Therefore, the plaintiff is not entitled for share in the suit property is not correct. The defendant has put forward a false case in this regard, which is not appreciable. The plaintiff has pleaded oral partition, but the plaintiff has effectively failed to prove the same. Ex.A4 and Ex.A5 explicates that the property tax and electricity receipt stands in the name of the deceased R.V.Mariappan. With regard to the oral partition, it is the evidence of D.W1 that her father effected oral partition in the presence her cousin brother one Shanmugam ten months before his death and she would depose that the said Shanmugam is no more. From the exhibits marked by both sides, it is made clear that the suit property bears only one door number.

13. The next contention putforth by the learned counsel for the appellant is that, the plaintiff is precluded from filing the suit for partition as



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per Order II Rule 2 CPC. For better understanding, Order II Rule 2 CPC is extracted hereunder:-

“2. Suit to include the whole claim.

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

14. The provision of Order II Rule 2 of CPC indicates that if the plaintiff is entitled to several reliefs against the defendant in respect of the same cause of action, he cannot split up the claim so as to omit one part of the claim and sue for the other. If the cause of action is the same, the plaintiff has to place all his claims before the Court in one suit, as Order II Rule 2 of CPC is based on the cardinal principle that the defendant should not be vexed twice for the same cause.



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15. The main object of Order II Rule 2 of CPC is to avoid multiplicity of proceedings. From the oral and documentary evidence of both sides, it is pellucid that the cause of action arose in O.S.No.1301 of 2005 is different from the cause of action arose in this suit. Therefore, when the cause of action in both the suits are different, then the bar under Order II Rule 2 of CPC will not apply to the plaintiff. The correct test in cases falling under Order II Rule 2 CPC is whether the claim in the new suit is, in fact, founded upon the cause of action distinct from the cause of action mentioned in the former suit.

16. My views are fortified by the observations of the Honb'le Supreme Court in *Gurbux Singh Vs. Bhoorala* reported in (1964) 7 SCR 831, wherein, it has been held that:-

“7. In order that a plea of a bar under O. 2. r. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.



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From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar.

No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider a plea of a bar under O. 2. r. 2, Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits.

It is common ground that the pleadings in C.S.No.28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under O. 2. r. 2, Civil Procedure Code.”

17. A careful perusal of the written statement, the defendant has not pleaded that the suit is barred under Order II Rule 2 of CPC. The Trial Court has also not framed relevant issue to that effect, would explicate that this issue was not raised before the Trial Court by the defendant. The pleadings



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in the former suit shall have to be evaluated by the Court and both the parties should have opportunity to demonstrate that the second suit is based on the same or different cause of action. As mentioned supra, no objection was ever taken by the defendant to the effect that the suit is barred by Order II Rule 2 CPC. In the absence of the same, it shall not become cause for the rejection of the suit.

18. It is also not in dispute that the suit property is the only property left by the deceased R.V.Mariappan and he died intestate. It is also not in dispute that he left the plaintiff and the defendant, his two daughters as legal heirs and his wife Mrs.Pappammal pre-deceased him. The defendant's strong contention is that another property was settled in favour of the plaintiff and therefore, the plaintiff is not entitled to any share in the suit property is watered down totally as per Ex.B17, namely, the plaint copy in O.S.No.1651 of 2009, wherein the defendant has challenged the sale deed executed by her father R.V.Mariappan in favour of the plaintiff's husband V.Karuppannan dated 29.04.1992. As per Ex.B17, a property sold by R.V.Mariappan in favour of plaintiff's husband (P.W.1). In consideration of the above said details, the Trial Court has decreed the suit by granting preliminary decree to the effect that the plaintiff and the defendants are entitled to half share in the suit property.

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19. When Section 120 of the Indian Evidence Act gives full leverage to the plaintiff to examine her husband as a witness, the First Appellate Court has drawn adverse inference against the plaintiff is not sustainable in law. Furthermore, the cause of action in the earlier suit (O.S.No.1651 of 2009) and the cause of action in the present suit are not one and the same and the First Appellate Court has concluded that the present suit is hit by Order II Rule 2 CPC has to be interfered with. In the light of the aforesaid discussions and observations, the substantial questions law are answered in favour of the plaintiff.

20. Based on the observations and discussions, this Second Appeal stands allowed. Consequently, the judgement and decree dated 25.03.2019 passed by the I-Additional Subordinate Court, Coimbatore stands set aside and the judgement and decree dated 26.04.2016 passed by the III-Additional District Munsif, Coimbatore in O.S.No.831 of 2007 stands confirmed. Considering the relationship between the parties, there is no order as to costs throughout. Connected C.M.P.No.14454 of 2021 stands dismissed. Connected civil miscellaneous petition stands closed.



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Index :Yes/No
Speaking/Non-speaking order
Internet :Yes
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2. The III-Additional District Munsif, Coimbatore

R. KALAIMATHI, J.

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