



A.S.No.85 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 03.06.2025

Pronounced on : 10.06.2025

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.85 of 2022

A.Palani Achari (died)

1. P.Devi, (F/30),
D/o.A.Palani Achari,
Residing at:
Vinayakar Street, Biyarnatham,
Pappireddipatti, Dharmapuri District. ... Appellants/Plaintiffs
/versus/

1. Mani,
2. Shanthi,
3. Elango,
4. Vennila,
5. Shanmugam, ... Respondents/Defendants, 1 to 4 and 13

Prayer: Appeal Suit has been filed under Section 96 of Code of Civil Procedure, 1908, praying to set aside fair and decreetal order dated 02.08.2021 in I.A.No.6 of 2021 in O.S.No.134 of 2019 passed by the Hon'ble Additional District Judge, Dharmapuri and allow the Appeal Suit.

For Appellant : Ms.P.Devi,
for Mr.V.Vinayagamoorthy.

For Respondents : Mr.V.Sakkarapani



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J U D G M E N T

The appeal has been filed by the plaintiffs. On being aggrieved by the rejection of their plaint pursuant to an application by the defendants filed under Order VII Rule 11 of the Code of Civil Procedure (C.P.C.).

For the sake of convenience, the parties are referred as per their status and ranking in the original suit.

2. The plaint in O.S.No.134 of 2019 which is the subject matter of the appeal was filed by Mr.A.Palani Achari (deceased) and his daughter, P.Devi in respect of the property purchased by the father of the first plaintiff Angachari in the year 1956. The said Angachari died on 03/04/2000 leaving behind five sons and two daughters. O.S.No.134 of 2019 filed by Palani Achari and his daughter Devi against the other legal heirs of Angachari for partition contending that Angachari during the lifetime gifted a portion of the property measuring 2616 sq.ft in S.No.27/1B1 to his son Palani Achari (1st plaintiff) upon which he had constructed a house and living along with his wife and daughter (2nd Plaintiff). Thereafter, on 11/04/2019, the first plaintiff had settled the said property in favour of his daughter the second plaintiff. After the demise of Angachari, the legal heirs



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were peacefully enjoying the remaining portion of the property as joint family property. However on 20.07.2019, due to quarrel over a chit transaction, the 13th defendant - Shanmugam who is one of the sons of Angachari and brothers of the plaintiff tried to interfere with the peaceful possession of the portion of the property upon which the plaintiff had constructed his house. Hence, the plaintiff filed O.S.No.85/2019 before the District Munsif Court, Pappireddipatty for bare injunction. Thereafter, 13th defendant - Shanmugam filed O.S.No.108/2019 contending that in view of misdescription of the property and in view of the civil Court decree dated 08/07/2005 in O.S.No.318 of 2000 declaring the Will of Angachari dated 01/06/1998 in favour of 13th Defendant - Shanmugam as valid. The settlement deed of the first plaintiff in favour of the second plaintiff is null and void. Then plaintiffs came to know about the Will and the declaration decree obtained behind their back.

3. Hence, the suit O.S.No.134/2019 to: i) divide the suit property by metes and bound and allot 1/8th share to the plaintiff. ii) declare the *Will* dated 01/06/1998 alleged to have been executed by Angachari as null and void ; and iii) to cancel the decree passed in O.S.No.318/2000 as collusive and voidable.



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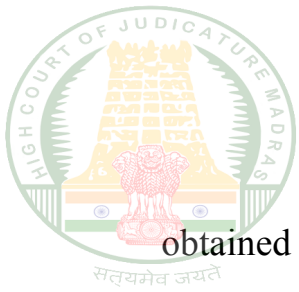
4. Shanmugam/the 13th Defendant, besides filing written statement along with the defendants 1 to 4, had also filed an application under Order VII Rule 11 of the C.P.C., to reject the plaint on the ground that the suit in O.S.No.134 of 2019 is barred by law, in view of the decree passed in O.S.No.318 of 2000 by the District Munsif Court, Harur on 08/07/2005, which was confirmed by Sub-Court, Harur in A.S.No.14 of 2009 on 23/03/2011. The earlier suit was in respect of the same property and parties are almost same. The first plaintiff in this suit was the second defendant in the earlier suit in O.S.No.318/2000. He know about the Will executed by Angachari in favour of Shanmugam (fifth petitioner/13th defendant) and remained *exparte* with knowledge. The bare injunction suit O.S.No.85/2019 filed by the plaintiffs was stayed by High Court on 27/08/2019 in C.M.P.No.18338/2019 in C.R.P.No.2801/2019. Hence, the later suit filed in respect of same property and same relief of declaration is barred by the principle of *resjudicata*.



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5. Though, it was contended by the plaintiffs that the cause of action for the subsequent suit is different and that the judgment and decree in the earlier suit will not act as *res judicata*, the Trial Court held that the subsequent suit O.S.No.134/2019 is barred by law in view of the earlier decree in O.S.No.318/2000 as confirmed in A.S.No.14/2009.

6. In the above said background, the instant Appeal suit is filed on the ground that, the decree passed in O.S.No.318/2000 is a collusive decree. The limitation will not apply to file suit to declare a collusive decree as void. The said decree is *ex parte* decree. It was not heard and decided on merits. Therefore, the principle of *resjudicata* will not apply. While considering application for rejection of plaint, the Court ought to consider only the pleadings as found in the plaint and nothing else. Adjudication of the plea of *resjudicata* requires consideration of pleadings, issues and decision in the previous suit namely, O.S.No.318/2000, such plea cannot be considered summarily in the application to reject the plaint. The issues involved in O.S.No.318/2000 is different from the issues in the instant suit O.S.No.134/2019. When the validity of the decree in O.S.No.318/2000 is the issue and subject matter of the subsequent suit O.S.No.134/2019, citing judgment



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obtained under a cloud plea of *resjudicata* cannot be raised.

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7. It was also contended that the revision petition filed to reject the plaint dismissed by the High Court suppressing the said fact the petition under Order VII Rule 11 C.P.C., filed for the same relief. The Court below failed to take note of the fact that the C.R.P.No.3653/2019 before High Court filed by the petitioner/defendant for rejection of plaint in O.S.No.134/2019 was dismissed.

8. The Learned Counsel for the appellant reiterated in her oral submissions that, to the facts of the instant case, neither law of limitation nor principle of *resjudicata* will apply. The decree in the earlier suit in O.S.No.318/2000 obtained in collusion cannot be a ground to deprive the right of the plaintiffs to prove their right/share in the suit schedule property. After the settlement of a portion of the property measuring 2616 sq.ft of land in S.No.27/1 B1, *vide* settlement deed dated 29/02/2000 by Angarchari in favour of Palani Achari/the first plaintiff, the *Will* dated 01/06/1998 executed by the Angachari has become implicitly cancelled. The relief and cause of action in the subsequent suit O.S.No.134/2019 is different, the trial Court ought not to have allowed the petition



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to reject the plaint particularly when High Court rejected the identical prayer in

WEB C.R.P.No.3653/2019.

9. Per contra, the Learned Counsel for the respondent/defendants submitted that, the matter directly and substantially in issue in the instant suit is the suit property held by Angachari and the devolution of the said property after his demise. The same matter been heard and decided finally in O.S.No.318/2000 wherein, the bequeath of the property to the 13th defendant (Shanmugam) through the *Will* dated 01/06/1998 held valid and confirmed in the appeal filed by one of the defendant by name Arumugam. The first plaintiff was a party to the earlier suit. He did not contest the case despite notice. Though he was set *exparte*, the other brother by name Arumugam contested the suit and it was heard and decided on merits. It was not an *exparte* decree as contended by the Counsel for the appellant/plaintiff. In a partition suit all the parties are plaintiffs. The matter in issue thus heard and decided finally between the parties. One of the issue in the earlier suit is whether the *Will* of Angachari dated 01/06/1998 is genuine. The trial Court as well as the First Appellate Court had answered this issue in affirmative.



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10. The first plaintiff in the instant case is a party to earlier suit. He cannot feign ignorance about the earlier suit or the decree passed therein. Therefore, the impugned plaint challenging a valid decree in a subsequent proceeds after 14 years is vexatious. By suppressing material facts, the vexatious suit filed seeking partition brushing aside the Will already proved in the manner know to law.

11. After filing suit for bare injunction in O.S.No.85/2019 they tried to interfere the peaceful possession hence the 13th defendant - Shanmugam was constrained to file O.S.No.108/2019 against this plaintiffs and others to declare the settlement deed executed by the first plaintiff herein in favour of his daughter the second plaintiff herein with false description of survey number. Hence, the suit O.S.No.134/2019 which is barred by law was rightly dismissed by the trial Court on merits. Hence to be confirmed.

Point for determination:-

Whether O.S.No.134/2019 is a subsequent suit between the parties for same matter which already heard and decided in O.S.No.318/2000, thereby attracts Order VII Rule 11 (4) of C.P.C ?



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12. The matter in dispute is the property left by Angachari. The real dispute is between his two sons one by name Mr.Palani Achari (first plaintiff in O.S.No.134/2019) and another by name Shanmugam (13th Defendant in O.S.No.134/2019). The case of Shanmugam is that, his father during his lifetime executed a Will on 01/06/1998 in respect of property morefully described in the earlier suit O.S.No.318/2000 filed by him against his 4 brothers for declaration of title over the property based on the Will and for perpetual injunction. In the earlier suit Palani Achari who was arrayed as second defendant remained *exparte*. Another brother Arumugam who was arrayed as 3rd defendant alone contested the suit disputing the genuinity of the Will of Angachari. The District Munsif Court, Harur allowed the suit declaring the Shanmugam the title holder of the suit property. The Will of Angachari in favour of Shanmugam and marked as Ex.A-1 was held genuine.

13. Against the Judgment and decree dated 08/07/2005 in O.S.No.318/2000, Arumugam filed A.S.No.14/2009 on the file of Sub-Court, Harur and same was dismissed on 23/03/2011. Hence, the subsequent suit in



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O.S.No.134/2019 filed by Mr.Palani Achari and his daughter Devi for division of

the properties left by Angachari by metes and bound into 8 parts and allot 1/8th share to the plaintiffs is barred.

14. The contention that, during his lifetime Angachari settled 2616 sq.ft of land in S.No:27/1B1 in favour of his son Palani Achari on 29/02/2000 and, he, in turn had settled it in favour of his daughter Devi on 03/04/2000, partition suit excluding a portion does not change the character or cause of action.

15. The schedule of property in O.S.No.318/2000 refers lands in 5 different survey numbers in Pappireddipatty village, with extend and Kist as under:-

<i>Sl.Nos.</i>	<i>Survey Number</i>	<i>Extend</i>	<i>Kist</i>
1	26/2	2.81 Acres	Rs.2.81
2	27/1B1	0.69 ½ acres	Rs.0.68
3	27/4A	0.02 ½ acres	Rs.0.06
4	19/2	4.67 acres	Rs.5.84
5	27/1A3A	0.10 Acres	Rs.0.11



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16. The judgment in O.S.No.318/2000, deals with issues whether the

Will dated 01/06/1998 is genuine?; whether the suit is bad for non-joinder of the daughters of Angachari and whether the plaintiff (Shanmugam) entitle for declaration of title and injunction. Based on the evidence, all were held in favour of the plaintiff in that suit namely, Shanmugam.

17. Mr.Palani Achari in the instant suit who was a party to the earlier suit had not participated in the suit and he had not brought to the notice of the Court about the settlement deed dated 29.02.2000 executed in his favour by Angachari. He contrarily, after settling the 2616 sq.ft of land in S.No.27/1B 1 in favour of his daughter Devi on 11.04.2019 had first instituted O.S.No.85/2019 for bare injunction in respect of the entire 5 items of properties mentioned above without disclosing the fact that he suffers a declaration decree passed in favour of Shanmugam in O.S.No.318/2000 and not even disclosed the settlement deed alleged to have executed by his father Angachari to an extend of 2616 sq.ft in S.No.27/1B1. Not stopping, the said Palani Achari and his daughter Devi had filed the instant suit in O.S.No.134/2019, declaration of title and permanent injunction for the very same properties which are subject matter of the bare



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injunction suit in O.S.No.85/2019. Conveniently, suppressing the suit institution of the suit in O.S.No.85/2019.

18. The trial Court, after perusal of the record has rightly rejected the plaint assigning reasons.

19. The Courts had consistently held that, the previous suit which has reached its finality even if it is *exparte* decree, same cannot be reagitated. If such practice is entertained, Section 11 of C.P.C., which has a strong basis of public policy will become redundant.

i) ***R.Govindasamy (died) and others -vs- Kasthuri ammal and others*** reported in ***AIR 1998 Mad 218***.

ii) ***In Vishnu Sugar Mills Ltd., -vs- I.S.P. Trading Co.,*** reported in ***AIR 1984 Cal 246***.

iii) ***P.Kaliammal -vs- V.Rathinammal*** reported in ***2017 (2) CTC 160*** are referred and relied.



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20. As a result, the irresistible conclusion would be, the judgment and decree in the earlier suit O.S.No.318 of 2000 binds Mr.Palani Achari since he is one of the party in that suit and it is a decree passed after contest, by other defendant though not by Palani Achari. The Principle of *resjudicata* squarely applies to the facts of this case. That apart, it is also noted that, the suit in O.S.No.134/2019 is filed after filing a bare injunction suit in O.S.No.85/2019, without disclosing it or without obtaining any leave to file a title suit subsequently. Presumable the suppression of earlier suit filed for bare injunction is to overcome the bar under Order II Rule (2) of C.P.C.

21. In the considered view of this Court, the facts narrated above, Section 11 r/w explanation IV of C.P.C., which bars institution of fresh suit for the same subject matter already heard and decided principle known as *resjudicata* is clearly attracted. Hence due to the legal bar, the suit in O.S.No.134/2019 is rightly rejected by the trial court.



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22. The point for determination is answered accordingly. In the result,

Appeal Suit No.85/2022 stands dismissed. No order as to costs.

10.06.2025

Index :Yes.

Internet :Yes.

Speaking order/Non Speaking order
bsm

To:-

1. The Additional District Judge, Dharmapuri.
2. The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Delivery judgment made in
Appeal Suit No.85 of 2022

10.06.2025