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AS No.1141 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

AS No. 1141 of 2024

& CMP No.29326 of 2024

1.Marathal,
2.Manonmani
3.Chitra
4.Lakshmi

Appellant(s)

Vs

1.Palanisamy
2.Vadivel

Respondent(s)

Prayer: This Appeal Suit has been filed against the fair and decreetal order of the II Additional District and Sessions Court at Tiruppur, dated 15.02.2024 in IA.No.1 of 2023 in O.S.No.603 of 2023.

For Appellant(s):

Mr.P.Valliappan, Senior Counsel, for Mr.S.Sithirai
Anandam

For Respondent(s):

M/s. N.S.Suganthan, for R1 & R2



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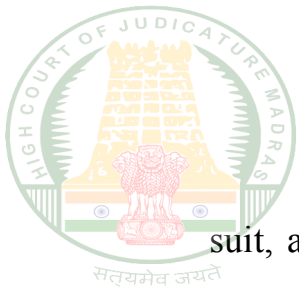
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ORDER

This Appeal Suit has been filed against the fair and decreetal order of the II Additional District and Sessions Court at Tiruppur, dated 15.02.2024 made in I.A.No.1 of 2023 in O.S.No.603 of 2023.

2.Challenge in this Appeal is made to the order of the trial Court rejecting the suit filed for partition. The suit has been filed by the appellants claiming partition of the first item of the suit properties and to divide the property into equal share and allot one share to the first plaintiff and also for a consequential declaration to declare the sale deeds executed in favour of the second defendant as null and void and similarly, a lease deed dated 03.02.2023 which was executed in favour of the third respondent.

3. To reject the said suit, an application in IA No.1 of 2023 has been taken out by the respondent/ first defendant. It is the contention of the respondent that the suit properties were already the subject matter of the earlier suit in O.S.No.8 of 1998, which was filed for partition. In the said

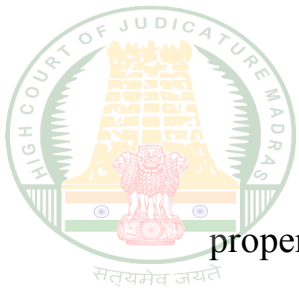


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suit, a final decree came to be passed on 11.11.2011. The plaintiff in the present suit is also one of the parties in the above suit. Therefore, once the decree has reached finality, the second suit is not maintainable for the same relief.

4. Resisting the said I.A., a counter has been filed by the appellants, contending that the judgment and preliminary and final decrees passed in the earlier suit in O.S.No.8 of 1998 are erroneous and there was no discussion in the judgment with respect to the origin of the properties and as to how the first petitioner is entitled to the suit properties and how the entire properties became ancestral in nature and that it is well settled law that limitation is a mixed question of law and the plea of *res-judicata* also has to be considered only during trial. However, the trial Court, considering the admitted fact that the present suit properties are the subject matter of earlier suit properties, which suit reached its finality, has rejected the suit. Challenging the same, the appellants have filed the present Appeal.

5.The learned Senior counsel for the appellants would submit that in fact, the appellants found registered a Will in respect of the subject



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properties which was in existence, but unfortunately, the same has not been brought to the notice of the trial Court on earlier occasion. Therefore, the present suit has been filed. According to him, the limitation aspect and the plea of *res-judicata* can be gone only at the time of the trial. Therefore, at this stage, the suit cannot be rejected at the threshold.

6. Heard the learned counsel on either side and perused the entire materials placed on record.

7. In the light of the above submissions, the point that arises for consideration is, 'whether the trial Court is right in rejecting the suit?

8. It is not denied by both the sides that the subject matter of the present suit in O.S.No.603 of 2023 is already the subject matter of the suit in the earlier suit in O.S.No.8 of 1998, wherein, a preliminary decree has been passed. An application was filed to set aside the preliminary decree in I.A.No.4 of 2004, which also came to be dismissed. Thereafter, it appears that the matter had reached finality and a final decree has been passed. The present suit is filed for the similar relief of partition. Though, the



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grounds for rejection of the plaint will not strictly apply, this Court is of the view that still the suit cannot be allowed to be continued and if the suit is allowed to be continued, it is nothing but a clear abuse of process of law. The suit can be rejected at the threshold on the ground of re-litigation. The Apex Court has held in the case of “**K.K.Modi Vs. K.N.Modi**” reported in **1998-3-SCC-573**, considering the fact that once the suit has already reached finality, the subsequent suit for similar relief, certainly can be rejected on the ground of re-litigation.

9. In this regard, it is relevant to refer the judgment in “**T.Arivanandam Vs. T.V.Satyapal**” reported in **AIR 1977 SC 2421**, wherein the Honourable Supreme Court has held that

“Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes decrees with judicial seals brutum fulmen. The long arm of the law must throttle such, litigative caricatures if the confidence and credibility of the community in the judicature is to survive.



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10. In the judgment in “**K.K.Modi Vs. K.N.Modi**” reported in **1998-3-SCC-573**, the Honourable Supreme Court has held as follows :

“One of the examples cited as an abuse of the process of the Court is re litigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against him. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. A proceeding being filed for collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the Court.”

11.Since the earlier suit is already reached finality and final decree has been passed, the present suit is nothing but an abuse of the process of the Court. The present suit is nothing but a re-litigation and it amounts to sheer abuse of process of Court and it is contrary to justice and public policy.

12.In view of the above, I do not find any merit in this Appeal.



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Accordingly, the Appeal is dismissed. No costs. Consequently, connected

miscellaneous petition is closed.

07.02.2025

Index : Yes/No
Speaking order: Yes/No
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To
The learned II Additional District and Sessions Judge at
Tiruppur,



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N.SATHISH KUMAR, J

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