



S.A. No.925 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2025

CORAM:
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.925 of 2024
and
C.M.P.No. 29635 of 2024

Krishnaraj

... Appellant

Vs.

Seenuvasan

.. Respondent

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 30.10.2024 passed in A.S.No. 49 of 2023 on the file of the Addl. District Judge, Tindivanam confirming the fair and decreetal order passed in I.A.No.520 of 2022 in O.S.No.60 of 2022 dated 16.06.2023 on the file of Sub-Court, Gingee.

For Appellant : Mr.G.Palani



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JUDGMENT

Challenging the concurrent findings of the courts below rendered in judgment and decree passed in A.S.No. 49 of 2023 by the Addl. District Judge, Tindivanam arising out of trial court findings rendered in judgment and decree passed in I.A.No.520 of 2022 in O.S.No.60 of 2022 on the file of Sub-Court, Gingee, this Second Appeal was preferred by the defendant.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit seeking for the relief of declaration and consequential relief of permanent injunction not to cause interference in the enjoyment of suit property. On receipt of notice, the defendant filed an application in I.A.No. 520 of 2022 under Order 7 Rule 11 of C.P.C. seeking to reject the plaint as there is no cause of action. The said application was contested by the plaintiff, inspite of that, it was dismissed on the ground that the plaintiff suppressed the earlier suit proceedings in respect of the suit property, which was filed by the plaintiff's



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father, however for the same relief, those suits were already disposed in favour of defendant. But suppressing all the earlier proceedings, he filed the present suit without any cause of action. Accordingly, on the ground of suppression of facts as well as on the ground of no cause of action, the application was allowed and the suit was rejected. Challenging the said findings, the plaintiff preferred an Appeal Suit in A.S.No. 49 of 2023 before the II Addl. District Judge, Tindivanam and the same was also dismissed by confirming the findings of the trial court holding that the documents produced by the defendant would clearly evolves earlier suit proceedings in respect of suit property with the same prayer. Though it was initiated by the plaintiff's father, but based on the settlement deed executed by his father, now the plaintiff claimed right over the suit property. Therefore, the earlier suit proceedings would bind him, but suppressing all the earlier suit proceedings, the present suit was filed, as such have no cause of action. Accordingly, the first appellate judge dismissed the said appeal suit holding that it is a clear case of abuse of process of law. Challenging the concurrent findings of courts below, now the plaintiff preferred this Second Appeal by raising the following grounds for consideration :-



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- (a) The appellate court and the trial court failed to appreciate the totality of the circumstances that the appellant herein has filed the suit for declaration and injunction as the respondent/defendant attempted to interfere with the suit schedule property. The lower court without considering the counter filed in I.A.No.520 of 2022 seeking to reject the plaint, ordered the petition filed under Order 7 Rule 11 of C.P.C. and the lower appellate court has also confirmed the fair and decreetal order without appreciating the appellant contention.
- (b) The courts below failed to consider the fact that the appellant/plaintiff herein is not a party to any of the earlier proceedings as alleged by the respondent/defendant and the same are not binding on him to hold the title and enjoyment of the suit schedule property.
- (c) The court below also failed to take into account the prayer in I.A.No.2 of 2024 and I.A.No.3 of 2024 seeking permission to produce additional documents including the subsequent sale deed



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made by the defendants, pending the suit and the same are in collusion among the defendants to defeat the interest of appellant herein.

(d) The courts below also failed to consider the cause of action, parties to the proceedings and the schedule of properties are totally different in the previous suits and therefore the order passed in I.A.No.520 of 2022 in O.S.No.60 of 2022 on the ground of doctrine of res-judicata is unsustainable.

4. By submitting the above grounds, the learned counsel submitted that the following substantial question of law arose for consideration :-

“(1) Whether the plaint of the appellant in O.S.No.60 of 2022 can be rejected on the ground of res-judicata, when the appellant/plaintiff is not at all a party to the earlier proceedings, as alleged by the respondent/defendant by filing rejection of plaint under Order 7 Rule 11 of C.P.C.?”

“(2) Whether the lower appellate court can dismiss the application in I.A.No.2 of 2024 and I.A.No.3 of 2024 seeking to



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produce the additional documents without looking into the facts and circumstances of the case?

(3) Whether the appellate court is right in ignoring the physical possession and enjoyment of the suit schedule property by the appellant/plaintiff as its lawful owner and when there is no claim of recovery of possession by the respondent/defendant till date?

5. Considering the arguments advanced on the side of appellant and on perusal of records, it reveals that before the trial court, the appellant/plaintiff filed a suit seeking for the relief of declaration with consequential relief of injunction in respect of the suit property claiming that it is absolutely belongs to him based on the partition held in the family on 04.10.2017, in which the suit property along with other properties were allotted to him. The 1st defendant caused interference claiming right over the property. Therefore, he approached the court for the relief of declaration and injunction.



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6. On receipt of notice, the 1st defendant filed an interlocutory application in I.A. No.520 of 2022 under Order 7 Rule 11 of C.P.C. praying to reject the plaint stating that the suit property was purchased by him from one Jayalakshmi on 19.10.1989. Her vendor Jayalakshmi derived title based on the settlement deed executed by her father Gopal Pillai on 12.05.1981 and he purchased the suit property from one Karuppayee ammal. After that, the plaintiff's father Govinda Pillai caused interference against the 1st defendant. Hence, he filed a suit in O.S.No. 108 of 1998 and the said suit was decreed in favour of 1st defendant against plaintiff's father. Thereafter, the execution petition in E.P.No.54 of 2011 was filed. Against which, a Civil Revision Petition in C.R.P.No.3605 of 2011 was filed by the plaintiff's father and the same was also dismissed on 31.01.2012 and decree was also passed in the suit in O.S.No. 108 of 1998. As it was an exparte decree, along with condone delay petition, the plaintiff's father taking steps to submit the decree, but the same was challenged in C.R.P.No. 3257 of 2014 and consequently, the said C.R.P. was dismissed. Therefore, as on date, by way of purchase as well as through the decree passed in O.S.No.108 of



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1998, the 1st defendant is in possession and enjoyment of property. Thereafter, the plaintiff's father also filed a suit in O.S.No.305 of 2017, however, pending suit, the plaintiff's father executed a partition deed. While so, the 1st defendant appeared in the suit and filed an interlocutory application, in I.A.No. 907 of 2017 seeking to reject the plaint and the same was allowed. Therefore, as on date, the plaintiff's father initiated all the suit proceedings and the same were ended in favour of this defendant, but suppressing all the facts and proceedings, the plaintiff approached the court without any cause of action. Hence, he prayed to reject the plaint and the same was allowed by the trial court by relying the ratio laid down by the Apex Court, which reads as follows :-

(i) *Reported in AIR 1998 SC 1297 in the case of K.K.Modi vs.*

K.N.Modi and others

“abuse of process of the court, thus, this terms connotes that the process of the court must be used bonafide and properly and must not be abused. The court will prevent its machinery from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not



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closed, but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interest of justice may be very material.

One of the examples cited as an abuse of process of 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-agitation may or may not be barred as resjudicata. But, if the same issue is sought to be re-agitated, it also amount to an abuse of process of the court. A proceeding being filed for a 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. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The Court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.”

*(ii) Reported in 1999 5 SCC 590 in the case of **Hope Plantations***

Ltd. vs. Taluk Land Board, Peermade and another

“It is settled law that principles of estoppel and resjudicata are based on public policy and justice. Doctrine of resjudicata is often treated as a branch of the law of estoppel though these



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two doctrines differ in some essential particulars. Rule of resjudicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation.”

(iii) Reported in **1977 4 SCC 467** in the case of **Arivanandam vs.**

T.V.Satyapal

“The pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must



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remember that if on a meaningful not formal reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining party searchingly under Order 10 C.P.C. An activist Judge is the answer to irresponsible law suits.”

The proposition laid down in the above referred case would clearly indicate that if any frivolous and vexatious proceedings being made in litigation would amount to abuse of process of court and if any adjudication was made in respect of property between the parties, again he cannot litigate on the same cause of action. So also, the case in hand, in the earlier proceedings initiated between this respondent/1st defendant as well as plaintiff's father clearly denotes that for the same suit property already the 1st defendant initiated suit proceedings against plaintiff's father and all the proceedings were ended in favour of 1st defendant and the suit filed by the plaintiff's father was also dismissed. But, suppressing all the earlier suit proceedings, now the plaintiff came forward with the present suit as if suit



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property was allotted to him by way of partition.

7. Admittedly, in the year 1989, the 1st defendant purchased the property and as on date, sale deed is in force. Therefore, there is no cause of action to initiate the present proceedings because the suit initiated by the plaintiff's father in respect of the same suit property with same relief was already dismissed, which would also bind the his son/plaintiff. So, again for the same relief, he is not entitled to relitigate. Therefore, the proposition laid down by the trial judge is well-reasoned one and the first appellate judge also rightly confirmed the findings, which needs no interference. Furthermore, plaintiff's father was very well aware that the 1st defendant purchased the suit property from Jayalakshmi and the plaintiff's father behind the back of this defendant obtained a compromise decree, but the same was not accepted by the court in O.S.No. 108 of 1998. Considering the possession of the defendant, injunction relief was also granted. Thereafter, as on date, based on the sale deed, the 1st defendant is in possession and enjoyment of suit property and suppressing the earlier proceedings, the present suit was filed without any cause of action. Therefore, both the courts rightly appreciated the facts in proper



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perspective, which needs no interference of this court. Thus, there is no question of law is involved for consideration. Furthermore, the plaintiff had approached the court without clean hands and hence, he is not entitled for the relief as he claimed. Accordingly, this Second Appeal is dismissed as no merit. Thus, suit dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

02.01.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

The II Addl. District Judge,
Tindivanam.



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T.V.THAMILSELVI, J.

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