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C.M.S.A.No.53 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.02.2026

Pronounced on: 16.03.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.S.A.No. 53 of 2024 and C.M.P. No.17891 of 2024

Iyappan

...Appellant

Vs.

1. Chandra

2. Maithili

3. Gunasekaran

4. Selvaraj

5. Ramadoss

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 100 of the Code of Civil Procedure read with Order 41 Rule 1 & 2 of CPC, against the Fair Order and Decreetal order dated 11.03.2022 passed in C.M.A.No.1 of 2021 on the file of the Principal Sub Court, Tindivanam, confirming the fair order and decreetal order dated 23.01.2021 passed in I.A. No.1328 of 2018 in O.S. No.197 of 2016 on the file of the Principal District Munsif Court, Tindivanam.

For Appellant : Mr. A.R. Nixon

For Respondents : Served – no appearance.



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JUDGMENT

This Civil Miscellaneous Second Appeal is preferred against the order dated 11.03.2022 passed in C.M.A.No.1 of 2021 on the file of the Principal Sub Court, Tindivanam, confirming the fair order and decreetal order dated 23.01.2021 passed in I.A. No.1328 of 2018 in O.S. No.197 of 2016 on the file of the Principal District Munsif Court, Tindivanam.

2. The appellant as plaintiff filed the suit in O.S. No.197/2016 for the following reliefs:

- a) Declaring the Preliminary Decree passed in O.S.No.198/1997 dated 19.10.2001 by Hon'ble Principal District Munsif, Tindivanam, as null and void since it has been obtained by playing fraud, cheating impersonation and misleading the court;
- b) For a permanent injunction restraining the defendants, their men, agents, servants and or other anyone form any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.



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3. The case of the plaintiff is that, the 1st defendant in the present suit has filed a suit in O.S. No.198/1997 for partition claiming $\frac{1}{4}$ share in the suit property, for mesne profit and for costs and the same was decreed on 19.10.2001, which was confirmed by the first appellate court and by this Court in S.A. No.1510/2005 as per the decree and judgment dated 27.11.2006. At that time the plaintiff was a minor and was represented by his father, the 2nd defendant in the present suit. According to the plaintiff, the suit property belongs to his grandmother Rajambal and she has bequeathed the suit property in its entirety in favour of the plaintiff by virtue of a registered Will dated 25.01.1997. While so, his father, having adverse interest towards the plaintiff, represented him in the suit in O.S. No.198/1997 and therefore, the judgment and decree passed in O.S. No.198/1997 is not valid and not binding on the plaintiff. Hence, he was constrained to file the present suit to declare the preliminary decree passed in O.S. No.198/1997 dated 19.10.2001 as null and void, since it has been obtained by playing fraud, cheating, impersonation and misleading the Court and for permanent injunction.

4. The defendants 3 to 5 in the present suit took out an application in I.A. No. 1328/2018 under Order 7 Rule 11 of CPC to reject the plaint on the



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ground of Res judicata. The said application was allowed and the suit was rejected. Assailing the order passed by the trial court, the plaintiff preferred an appeal in CMA No.1/2021 before the Principal Sub Judge, Tindivanam and the same was also dismissed.

5. Mr.A.R.Nixon, the learned counsel appearing for the appellant would submit that, the suit property was originally owned by the plaintiff's grandmother namely Rajambal and she executed a registered Will on 25.01.1997 in favour of the plaintiff when he was a minor. The plaintiff had attained majority only on 06.03.2003. Meanwhile, a partition suit was filed in O.S. No.198/1997 including the minor plaintiff and the same was decreed on 19.10.2001. The appeal preferred in A.S. No.16/2004 was dismissed on 24.03.2004 following which the Second Appeal filed in S.A No.1510/2005 was also dismissed on 27.11.2006. Hence, the plaintiff filed the present suit. Pending suit, the defendants 3 to 5 preferred an application under Order 7 Rule 11 CPC to reject the plaint. The trial court and the first appellate court rejected the plaint on the ground of Res judicata, which is incorrect. He would submit that, it is settled law that the former suit has to be decided prior to the present suit. In the earlier suit, only a preliminary decree was passed and final



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decree proceedings are pending. Since the final decree is only a continuation of the suit, the principle of Res judicata will not apply. He would contend that the father of the plaintiff, in the earlier suit, acted against the interest of the minor and obtained a decree by playing fraud and he was negligent in contesting the earlier suit. The courts below, without considering the above facts, erroneously rejected the suit filed by the plaintiff.

6. Despite notice, there is no representation on the side of the respondents 1 to 5.

7. Admittedly, the validity of the Will was tested in the earlier suit in which the present plaintiff was arrayed as a party, represented by his father, since the plaintiff was a minor. In the earlier suit, the Will was held to be not genuine. If the validity of a Will has already been decided in a former suit by a Court of competent jurisdiction and the Will was held to be not genuine, a subsequent suit filed by the same parties based on the same Will is generally not maintainable. This is due to the legal doctrine of Res judicata, which prevents the same matter from being litigated twice, aiming to provide finality to disputes. However, a subsequent suit might be filed only if the



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circumstances fall under very narrow exceptions such as fraud in former suit, etc. Unless it is proved that the previous judgment itself was obtained by fraud or collusion, subsequent suit is not maintainable. In fact, the father of the plaintiff has contested the suit filed by the 1st defendant, on the ground that the suit property was bequeathed in favour of his son by Rajambal, grandmother of the plaintiff. However, the Court found that it was not genuine. Moreover, the father can defend the minor's property interest, contesting the partition suit if it does not serve the minor's best interest. Therefore, it is legally permissible for a father to contest a partition suit as natural guardian of his minor son, provided he acts in the best interest of the minor. It is the duty of the Court to see whether the next friend acts in good faith in the interest of minor. Unless fraud or negligence is established, the decree and judgment in the former suit binds on the plaintiff. A preliminary decree determines the rights and the shares of the parties in a dispute. A final decree concludes the suit entirely by acting upon the preliminary decree, puts those rights into effect. No doubt, a suit for partition remains active even after a preliminary decree until a final decree. But a preliminary decree in a former suit generally acts as a bar to a subsequent suit regarding the same subject matter under the principle of Res Judicata. In the present suit, the claim of the plaintiff is based



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on the alleged Will. Therefore, the genuinity of the Will cannot be re-agitated in a subsequent suit. On a perusal of records, it is seen that the plaintiff failed to establish that his father acted against the minor's interest and was careless in contesting the former suit. Moreover, the plaintiff failed to establish that the suit in O.S. No.198/1997 is a fraudulent suit.

8. In view of the above discussions, the Civil Miscellaneous Second Appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed. The Fair Order and Decreetal order dated 11.03.2022 passed in C.M.A.No.1 of 2021 on the file of the Principal Sub Court, Tindivanam, confirming the fair order and decreetal order dated 23.01.2021 passed in I.A. No.1328 of 2018 in O.S. No.197 of 2016 on the file of the Principal District Munsif Court, Tindivanam, is upheld.

16.03.2026

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Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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K.GOVINDARAJAN THILAKAVADI, J.

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To

1. The Principal Sub Judge, Tindivanam.
2. The Principal District Munsif, Tindivanam,

C.M.S.A.No. 53 of 2024 and

C.M.P. No.17891 of 2024

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