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S.A.No.213 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 13.04.2022

PRONOUNCING ORDERS ON : 18.04.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Second Appeal No.213 of 2014
and MP No.1 of 2014

1.Chinnasami aged 65 years

2.Selvaganapathy aged 30 years

3.Manikandan aged 24 years

.. Defendants/Respondents/Appellants

..Vs..

Dhanasekaran aged 30 years

..Plaintiff/Appellant/Respondent

Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 13.9.2013 made in A.S.No.58 of 2012 on the file of the Subordinate Judge, Kallakurichi reversing the judgment and decree in OS.No.699 of 2008 dated 27.6.2012 on the file of the I Additional District Munsif, Kallakurichi.

For Appellants : Mr.M.Devaraj

For Respondent : Mr.V.Manohar
Mr.R.Kumaravel



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JUDGMENT

The present second appeal is a textbook case as to how a litigant can manipulate and agitate a suit before a Court by clever drafting creating an illusion as if there is a cause of action for one of the property which falls within the jurisdiction of the Court and whereas the real dispute is with regard to another property which does not fall within the territorial jurisdiction of the Court and which otherwise could not have been tried by the Court and will be hit by the principle of *coram non judice*.

2.The defendants are the appellants in this Second Appeal.

3.The respondent/plaintiff filed a suit on the ground that the 1st schedule of the suit properties are the self-acquired properties of the paternal grandfather of the plaintiff and the 2nd schedule properties are the ancestral properties of the paternal grandfather which fell to his share by virtue of a registered partition deed dated 24-11-1959. The further case of the plaintiff is that the paternal grandfather Raja Gounder executed a registered Will dated 17-8-1986 in favour of the plaintiff regarding the 1st schedule of properties. Similarly, he executed another Will dated 1-11-1990 in favour of the plaintiff regarding the 2nd schedule properties. The said Raja Gounder passed away on 29-3-1991 and the Wills executed by him came into force and thereby, the plaintiff became the absolute owner of the 1st and 2nd schedule properties.

4.The actual grievance as projected in the plaint and the cause of action for filing



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सत्यम् the suit is extracted hereunder for proper appreciation:

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3. *The plaintiff having stayed in Krishnapuram village, Kallakurichi, entrusted the 2nd schedule of suit properties with the defendants herein to take care on behalf of the plaintiff. However, the defendants recently colluded together to grab the suit properties from the plaintiff, and the plaintiff learns that the defendants have created sham and nominal documents regarding the suit properties as if they belonged to them. The plaintiff submits that what so ever the documents be, they will not bind the plaintiff. The plaintiff caused a legal notice dated 31.12.2007. to the defendants and the defendants received the notice and caused a vexatious reply dated 14.1.2008 stating false details as if they are the owners of the properties, denying the title of the plaintiff over the suit properties. Hence it is just and essential that the plaintiff's title ought to be declared and the defendants are to be restrained by means of a permanent injunction regarding the 1st schedule of the suit properties and recovery of possession by means of mandatory injunction regarding the 2nd schedule of the suit properties, or the plaintiff submits that he shall be put to irreparable loss and inconvenience. Hence the suit.*

5. The plaintiff therefore sought for the relief of declaration of title of the plaintiff over both the properties. Insofar as the 1st schedule properties, he sought for a consequential relief of permanent injunction and for the 2nd schedule properties, he sought for the relief of delivery of possession.

6. The defendants filed a written statement. They took a stand that the 2nd schedule properties originally belonged to one Chinna Gounder who had two sons namely Ponnu alias Chinna Gounder and Raja Gounder. The 1st defendant is the son of Chinna Gounder. The further case projected by the defendants was that Raja Gounder had two wives. The 1st wife Pavayee had a daughter and the 2nd wife Ponnayee had a son named Periyasamy. The plaintiff is the legal heir of Periyasamy.



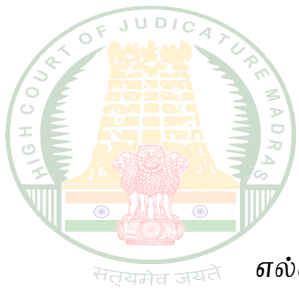
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7.The defendants further pleaded that there was a partition on 24-11-1959 whereby the 'A' schedule property in the partition deed fell into the share of Chinna Gounder, 'B' schedule fell into the share of the 1st defendant and the 'C' schedule fell into the share of Raja Gounder. It is stated that except the 2nd schedule properties, Raja Gounder sold all the properties and he migrated to Nainar Palayam village and purchased the 1st schedule properties and permanently settled in that village. The defendants took a specific plea that, the 1st defendant was enjoying the 2nd schedule properties along with the other properties allotted to the father of the 1st defendant during partition, openly and uninterruptedly for nearly 28 years and were cultivating the lands and this fact was known to the plaintiff and his father who never objected the enjoyment of the properties by the 1st defendant. The defendant's questioned the genuineness of the Will dated 1-11-1990 and took a stand that it was a fabricated document.

8.The defendants took a very specific plea that they never interfered with the possession of the plaintiff or questioned his right in the 1st schedule properties and the real dispute was only with regard to the 2nd schedule properties and hence they took a stand that the suit is not maintainable and the concerned properties viz., the 2nd schedule properties were outside the territorial jurisdiction of the Court. For proper appreciation, paragraph 6 of the written statement is extracted hereunder:

தாவா சொத்ர சேலம் மாவட்டம், ரெட்டிப்பட்டி கிராம



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எல்லைக்குட்பட்டதாகும். மேற் சொத்தினைப் பொறுத்து வாதி சேலம் மாவட்ட உரிமையியல் நீதின்றததில்தான் வழக்கை தாக்கல் செய்திருக்க வேண்டும். மேற்படி சொத்து இந்நீதிமன்ற அதிகார எல்லைக்குட்பட்டதல்ல. இம் அயிட்ட சொத்தைப் பொருத்து வாதியின் அனுபோகத்தை பிரதிவாதிகள் எக்காலத்திலும் தலையிட்டு தடை செய்ததில்லை. அவ்வாறு பிரதில் குறிப்பிட்டிருப்பது உண்மைக்கு புறம்பானது. தாவா 2-வது அயிட்டச் சொத்தைப் பொறுத்து வாதியின் வழக்கு நிலைக்கத்தக்கதல்ல. நீதிகன்ற அதிகார எல்லை காரணாக 2-வது அயிட்டச் சொத்தைப் பொறுத்து இவ்வழக்குஎடுத்த எடுப்பிலேயே தள்ளுபடிக்கு அருகமானதாகும்.

9.The defendants thus sought for the dismissal of the suit.

10.The trial Court on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence was pleased to dismiss the suit through judgement and decree dated 27-6-2012 with respect to the 2nd schedule properties. The suit was decreed with respect to the 1st schedule properties. The trial Court framed a specific issue on the territorial jurisdiction of the Court with respect to 2nd schedule properties and gave a finding that there was no cause of action for filing the suit with respect to the 1st schedule properties and that there was no territorial jurisdiction to deal with the suit with respect to the 2nd schedule properties. Having held so, there was no necessity for the trial Court to have gone into the merits of the case. However, the trial Court goes into the merits of the case and gave a specific finding to the effect that the plaintiff does not have a right over the 2nd schedule properties and accordingly, rejects the claim made by the plaintiff.

11.Aggrieved by the judgement and decree of the trial Court, the plaintiff filed an appeal in AS No.58 of 2012 before the Sub-Court, Kallakuruchi. The lower Appellate



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Court allowed the appeal through judgement and decree dated 13-9-2013 and thereby the judgement and decree of the trial Court was set aside with respect to the 2nd schedule properties and the suit was decreed in favour of the plaintiff in toto.

12. Aggrieved by the judgement and decree of the lower Appellate Court, the defendants have preferred this second appeal.

13. When the second appeal was admitted, the following substantial questions of law were framed by this Court for consideration:

1. Where the trial Court had categorically found that there was no cause of action for filing the suit with respect to the first item of the suit property since the defendants were not denying the right of the plaintiff, whether the lower appellate Court was right in placing reliance upon Section 17 of the Code of Civil Procedure and entertaining the suit for the second item of the suit property which was outside the territorial jurisdiction of the Court?

2. Where the plaintiff has traced his right to a Will and the same has not been proved in accordance with Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act by examining the attesting witness, whether the lower appellate Court was right in acting upon the said Will only on the ground that the defendants did not have a caveatable interest to question the Will?



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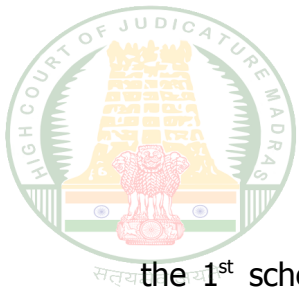
3. Where the trial Court had categorically found that the plaintiff was not in possession of the suit property for more than 28 years, whether the lower appellate Court was right in decreeing the suit as prayed for only based on Ex.A3 which was the un-registered Will pertaining to the second item of the suit property?

4. Whether the lower appellate Court had assigned cogent reasons while reversing the finding of the trial Court as mandated under Order 41 Rule 31 of the Code of Civil Procedure?

14. Heard Mr. Devaraj for the appellants and Mr. Manhoar and R. Kumaravel for the respondent.

15. This Court carefully considered the materials available on record and the findings rendered by both the Courts below.

16. In the present case, there is absolutely no dispute with regard to the fact that the 2nd schedule properties were outside the territorial jurisdiction of the trial Court. The plaintiff managed to bring the suit within the jurisdiction of the trial Court only by showing the 1st schedule properties. When there was absolutely no dispute on the entitlement of the plaintiff with respect to the 1st schedule properties and the defendants had made it very clear that they never interfered with the possession and enjoyment of the 1st schedule properties, there was actually no cause of action to institute the suit for



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the 1st schedule properties. Under such circumstances, the present suit must be seen only as a dispute between the parties with respect to the 2nd schedule properties. If the suit is seen from this perspective, there was no territorial jurisdiction for the trial Court to try the suit.

17.The defendants took a specific plea in their written statement on the maintainability of the suit by citing the territorial jurisdiction. It was framed as the 2nd issue by the trial Court and the trial Court answered the issue on the negative by rendering a finding that the suit is not maintainable with respect to the 2nd schedule properties. After having rendered such a finding, there was no necessity for the trial Court to go into the merits of the case. Such findings rendered by the trial Court which does not have the territorial jurisdiction, on the merits of the case, would be a nullity in the eye of law.

18.When the matter was taken on appeal, the lower Appellate Court did not even frame points for consideration. Unfortunately, the lower Appellate Court did not even deal with the issue of territorial jurisdiction and straight away went into the merits of the case and rendered its findings.

19.In the course of final hearing, this Court entertained a serious doubt on the maintainability of the suit since the actual cause of action was only for the 2nd schedule



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properties and the trial Court admittedly did not have the territorial jurisdiction to try the suit with respect to the 2nd schedule properties.

20.The learned counsel for the respondent submitted that the cause of action in the present case had arisen for both the 1st and 2nd schedule properties and that Section 17 of CPC., will apply to the facts of the present case and hence the suit can be instituted before the Court where one of the properties is situated and which falls within the territorial jurisdiction of the Court. The learned counsel in order to substantiate his submission relied upon the judgement of the Hon'ble Supreme Court in **Shiv Naryan (v) Maniklal**, made in **Civil Appeal No. 1052 of 2019, dated 6-2-2019**. The relevant portion relied upon by the learned counsel for the respondent is extracted hereunder:

28. Sections 16 and 17 of the C.P.C. are part of the one statutory scheme. Section 16 contains general principle that suits are to be instituted where subject-matter is situate whereas Section 17 engraf an exception to the general rule as occurring in Section 16. From the foregoing discussions, we arrive at following conclusions with regard to ambit and scope of Section 17 of C.P.C.

(1) The word property occurring in Section 17 although has been used in singular but by virtue of Section 13 of the General Clauses Act it may also be read as plural, i.e., properties.

(ii) The expression any portion of the property can be read as portion of one or more properties



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WEB COPY *situated in jurisdiction of different courts and can be also read as portion of several properties*

situated in jurisdiction of different courts.

(iii) A suit in respect to immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

(iv) A suit in respect to more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts.

21.This Court has to necessarily deal with this issue even at the outset since it touches upon the very jurisdiction of the Court and the Hon'ble Supreme Court in ***M/s.Dhodha House and Others v. S.K.Maingi and Others*** reported in ***2006 3 law weekly 96*** has held that, judgement or order passed by a Court having no territorial jurisdiction would be a nullity. The first substantial question of law framed by this Court also relates to this issue. If this Court ultimately holds that the trial Court did not have the territorial jurisdiction, there will be no necessity to go into the merits of the case since the suit itself will be hit by the principle of *coram non judice*.

22.The pleadings as found in the plaint has already been extracted supra. The



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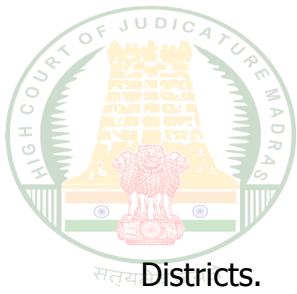
main focus of the pleadings was only on the 2nd schedule properties and there is a passing reference with regard to the 1st schedule properties. The defendants never raised an issue with respect to the 1st schedule properties at any point of time and they had made it very clear in their written statement. In view of the same, there was no cause of action for the plaintiff to institute the suit with respect to the 1st schedule properties. A specific finding in this regard has also been rendered by the trial Court.

23. For proper appreciation, Section 17 of CPC., is extracted hereunder:

17. Suits for immovable property situate within jurisdiction of different Courts.—Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate :

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

24. The above Section was intended for the benefit of suitors and to prevent multiplicity of suits. It provides that where a suit is to obtain a relief in respect of property situated in the jurisdiction of different Courts, the suit can be brought in any one of the Courts and such Court can deal with the whole of the property though some portion of it is situated outside its jurisdiction. This Section is applicable whether several properties are situated in different districts or the same property extends over several



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25. Where a plaintiff has two or more causes of action in the suit, he can take advantage of the provision of Section 17 of CPC, if the joinder of such causes of action is permitted by the provisions of the Code.

26. The sine qua non to take advantage of Section 17 of CPC., is that there must be a cause of action for the plaintiff with respect to all the properties which forms part of the suit. If Section 17 is not interpreted in this manner, a suitor can easily hoodwink the Court by just citing one property which falls within the jurisdiction of the Court and agitate the actual cause of action with respect to other properties which falls outside the territorial jurisdiction of the Court. Let us take a hypothetical case where there is a dispute regarding properties at Chengalpattu District. A suitor just to suit his convenience can file a suit in the City Civil Court at Chennai, by showing one property belonging to him falling within the territorial jurisdiction of the City Civil Court, Chennai and add all the other properties at Chengalpattu and file a suit at Chennai. If this is allowed, it will defeat the very purpose of Section 17 of CPC. That is the reason why this Court started this judgement by stating that clever drafting of a counsel should not lead to a situation where the suit is tried by a Court which actually does not have the territorial jurisdiction to deal with the properties for which alone there is a cause of action and the parties are actually agitating only with respect to those properties.

27. In the present case, there was no cause of action for the plaintiff to file the suit



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with respect to the 1st schedule properties since the defendants never questioned the right, title and possession of the 1st schedule properties. If this suit had been filed only for the 1st schedule properties, the plaint would have been rejected under Order 7 Rule 11(a) of CPC., since the plaint does not disclose a cause of action. The consequence of the same is that the present suit must be taken only as a suit filed for a cause of action with respect to the 2nd schedule properties. There was really a dispute between the parties regarding the 2nd schedule properties. If this suit is looked from that perspective, the trial Court lacked jurisdiction to try the suit since it did not have the territorial jurisdiction with respect to the 2nd schedule properties. Section 17 of CPC., does not really come to the rescue of the plaintiff.

28.This crucial factor has been lost sight of by the lower Appellate Court. It is quite unfortunate that the lower Appellate Court without dealing with this preliminary issue, has proceeded to deal with the merits of the case. Even the trial Court was wrong in dealing with the merits of the case with respect to the 2nd schedule properties after finding that it had no territorial jurisdiction. Such finding will be considered as a nullity in the eye of law. There was absolutely no requirement for the trial Court to have decreed the suit for the 1st schedule properties since there was no cause of action to maintain the suit for these properties. The suit should have been simply dismissed by holding that the Court before which the suit has been filed is *corum non jndice* The first substantial question of law is answered accordingly.

29.The lower Appellate Court proceeded to deal with the appeal even without



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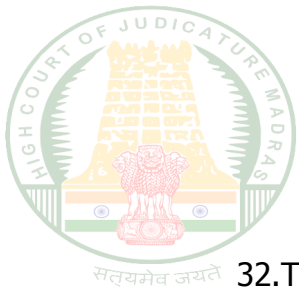
framing the points for consideration which is mandatory under Order 41 Rule 31 of CPC.

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The lower Appellate Court also did not deal with the issue of *coram non judice* and on that ground alone the judgement and decree of the lower Appellate Court is liable to be set aside. The fourth substantial question of law is answered accordingly.

30.This Court has held that the trial Court lacked territorial jurisdiction to try the suit and hence the decree passed by the lower Appellate Court with respect to 2nd schedule properties must be held to be a nullity. The judgement and decree of the trial Court even with respect to the 1st schedule properties is liable to be interfered by this Court since there was no cause of action for the plaintiff to file the suit with respect to the 1st schedule properties. As a result, the entire suit is liable to be dismissed.

31.The suit was instituted in the year 2008 and the dispute is pending for nearly 14 years. If only the Courts below had been careful enough while dealing with the preliminary issue and had dismissed the suit then and there, on the ground of maintainability, there would have been no requirement to waste the time in litigation on merits for the last 14 years. It is high time that the subordinate Courts come into grips with the fundamental principles of CPC., and nip in the bud those suits which are not maintainable. There are sufficient provisions in CPC., to undertake such an exercise and what is required is the awareness about the availability of such provisions and invoking the same in a pro-active manner.



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32. There is no requirement for this Court to answer the second and third substantial questions of law since it deals with the merits of the case. This Court has already held that the suit is hit by the principle of *coram non judice* and hence it will not be appropriate to deal with the merits of the case.

33. In view of the above discussion, the judgement and decree of the lower Appellate Court made in AS No.58 of 2012, dated 13-9-2013 is hereby set aside. The decree granted by the trial Court with respect to the 1st schedule properties in OS No.699 of 2008 through judgement and decree dated 27-6-2012 is also set aside. Accordingly, the suit filed in OS No. 699 of 2008 is dismissed on the ground of maintainability and by applying the principle of *coram non judice*.

34. In the result, the Second Appeal is allowed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.04.2022

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To

- 1.Subordinate Judge, Kallakurichi.
- 2.I Additional District Munsif, Kallakurichi.
- 3.The Section Officer
V.R.Section,High Court, Madras.



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N.ANAND VENKATESH,J.
KP

Pre-Delivery Judgment in
Second Appeal No.213 of 2014

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