



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 7743 OF 2025
ARISING OUT OF SLP (C) No. 18230 OF 2025
DIARY No. 11882 OF 2021

PANDURANGAN

...APPELLANT(S)

VERSUS

T. JAYARAMA CHETTIAR & ANR.

...RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Delay Condoned.
2. Leave granted.
3. This appeal by the plaintiff arises out of the judgment of the High Court of Madras¹ dismissing the Civil Revision Petition against the order passed by the District Munsif cum Judicial Magistrate, Portonovo² allowing Defendant No. 1's objection to the plaint under Order VII Rule 11 of the Civil Procedure Code³ on the ground of res judicata. For the reasons to follow, we have allowed

¹ Judgment and order dated 20.03.2019 in CRP(PD) No. 1454/2014.

² Dated 27.01.2014 in I.A. No. 12 of 2010 in O.S. No. 60 of 2009.

³ Hereinafter "CPC"

the appeal and held that the objection of *res judicata* cannot be taken to bar the suit under Order VII, Rule 11, CPC.

4. The facts relevant for the adjudication of the present appeal are that the appellant had purchased the disputed property from one Mr. Hussain Babu in 1998, who had in turn purchased it from Ms. Jayam Ammal in 1991. Appellant contends that while being in peaceful possession of the property, when an advocate-commissioner sought to inspect his property he made necessary enquiries and came to know that defendant No. 1, claiming to be a co-owner filed a suit⁴ for partition against Ms. Jayam Ammal and others and also secured an *ex parte* decree⁵ in his favour. It is in execution of that *ex parte* decree that the advocate-commissioner was appointed by the Court. Compelled by these circumstances, the appellant instituted the present suit⁶ for declaration of title and permanent injunction. It is the specific contention of the appellant that the *ex parte* decree had been fraudulently and collusively obtained, and it is also not binding on him.

5. The defendant opposed the suit by filing a written statement. Pending disposal of the suit, the defendant filed an Interlocutory

⁴ O.S. No. 298 of 1996

⁵ Dated 29.07.1997 in O.S. No. 298/1996 passed by the Sub-Court, Cuddalore.

⁶ O.S. No. 60 of 2009

Application⁷ under Order VII, Rule 11 of CPC contending that the plaintiffs suit is barred by res judicata as the earlier *ex parte* decree has attained finality. The appellant countered it by contending that he was not a party to the earlier suit and therefore the principle of res judicata would not apply.

6. There is no doubt about the fact that the appellant is not a party to the suit decided on 29.07.1997. At the same time, there is also no doubt about the fact that the appellant claims title from Hussain Babu who was the third defendant in the earlier suit. However, the circumstances in which the *ex parte* decree came to be passed, the alleged collusion between the parties in that *ex parte* and also the reason for the *ex parte* suit attaining finality are all specifically raised and contested in the present suit by the appellant. It is for this reason that the appellant also sought a decree for declaration.

7. In order to appreciate the claim and contest of the appellant, the relevant portions of the plaint are reproduced herein for ready reference;

“7. When plaintiff has been in peaceful possession and enjoyment of the suit property his vendors brother Rasool informed him that an advocate-commissioner is going to inspect

⁷ I.A. No. 12 of 2010 in O.S. No. 60 of 2009

the property. Plaintiff was naturally shocked. When further probed he informed the plaintiff that one Jayarama Chettiar had filed a suit against one Jayam Ammal wife of Rangasami Chettiar and others for partition in O.S. No.298 of 1996 on the file of the subordinate judge, Cuddalore and Jayam Ammal died immediately after suit and her daughter Selvi did not contest the suit and allowed it to go ex parte. Hussain Babu who is a party defendant to the suit was away in Abu Dhabi and he honestly believed that Selvi will contest the suit and protest the interest of the purchaser. Plaintiff was kept in the dark about the pendency of the suit. At the time of purchase, he was not put on notice. If it has been done, he would not have ventured into the sale. Plaintiff's vendors father did not mention about the pendency of the suit at the time of sale. Plaintiff honestly believed that the property is free of any encumbrance and believed so he purchased the property.

8. Now plaintiff finds that the suit ended in an ex parte decree. The property was sold by Jayam Ammal on 13.10.1991 to Hussain Babu. At that time no suit was pending. Suit was laid much later in 1993 and Jayam Ammal died immediately after suit. Second defendant her daughter allowed an ex parte decree to be passed. Hussain Babu the purchaser from Jayam Ammal believed when second defendant promised that she will take care of the defence. Plaintiff has not been in the picture. As stated above everything was suppressed, plaintiff submits that the ex parte decree is collusive and after the ex parte decree a show of resistance was made by second defendant. It is quite apparent that the decree passed ex parte is a collusive one and so provisions of section 52 of the Transfer of property Act cannot be attracted.

9. Plaintiff came to know of all this when his vendor's representative told him a week ago that an advocate-commissioner is going to inspect the property. So, plaintiffs are filing the suit for declaration that the preliminary decree passed in O.S.No.298 of 1996 on the file of the subordinate judge, Cuddalore is not binding on the plaintiff.

10. Plaintiff now finds that the 1st defendant has played a fraud on court in filing the suit in the sub court Cuddalore to suit his convenience when the Subordinate Judge's Court Cuddalore has no territorial jurisdiction to entertain the plaint. There are six items in the said suit. The plaint in O.S. No.298 of 1996 reasons that item 4 was allotted to his father in the partition, items 2,3, and 5 were purchased by his father in the name of Jayam Ammal item 6 is a saw will. Items 2 to 6 are situated in Parangipettai village. So, the suit should have been instituted in the sub court Chidambaram. But to suit his convenience a property desiring one cent item situate in Naduveerapattu is included to invoke the

jurisdiction of the sub court Cuddalore. This property does not belong to 1st defendant's father. This is a clear case of fraud. So the decree passed in O.S. No.298/96 by a court has no territorial jurisdiction is wholly invalid and 1st defendant has not derived any right to the property under a decree which is void.

11. The suit property as stated above belonged to Jayam Ammal by purchase and the 1st defendant has no claim over the same.

12. The preliminary decree in O.S. No. 298/96 on the file of the subordinate judge, cuddalore is not binding on the plaintiff as it is a collusive decree.”

8. In *Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors*⁸, this court held that the adjudication of the plea of res judicata is beyond the scope of Order VII, Rule 11 CPC, the court held:

“25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarised as follows:

25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

25.2. The defence made by the defendant in the suit must not be considered while deciding the merits of the application.

25.3. To determine whether a suit is barred by res judicata, it is necessary that (i) the "previous suit" is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.

25.4. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues, and decision in the "previous suit", such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused."

(emphasis supplied)

⁸ (2021) 9 SCC 99

9. Issue relating to whether the *ex parte* decree is obtained by collusion, or whether the defendant No. 1, as alleged, has played fraud by filing a suit in a court having no jurisdiction or whether the appellant is a bonafide purchaser or not need to be examined in detail. This Court has held that such circumstances require an in-depth examination of the previous decree, and its impact on the second suit. *Res judicata* cannot be decided merely on assertions made in the application seeking rejection of plaint. As held by this Court in *V. Rajeshwari v. T.C. Saravanabava*,⁹ identifying similarity in causes of action should be a matter for trial where documents from the first suit are studied and analysed. *Res judicata* cannot be a matter of speculation or inference. In *Keshav Sood v. Kirti Pradeep Sood*,¹⁰ this Court took a strong view against the plea of *res judicata* being raised in applications seeking rejection of plaint and held as follows:

“5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.

6. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves

⁹ (2004) 1 SCC 551.

¹⁰ Civil Appeal No. 5841 of 2023.

consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits.”

10. From the order passed by the Trial Court it is apparent that there is neither consideration nor analysis of the case set up by the appellant in plaint. Further, the Trial Court questioned the legality of plaintiff's action on the ground that, *“he did not raise any objection regarding the decree passed in O.S. No. 298/96. Therefore, this Court comes to the conclusion that the plea of fraud raised by the 1st respondent is not acceptable one.”* With this view of the matter, the Trial Court rejected the objection of the appellant to the applicability of Order VII, Rule 11 CPC by holding;

“12. The respondents counsel submitted that such a type of question cannot be decided as preliminary issue. In support of his contention. They have filed our Hon'ble court judgment 2009(4) LW 432, and 2007 A.L.W 580, 2000(3) MLJ 342,2002(1)LW 398. But those are dealing with regarding court fees. But as far as the case on hand is concerned. It is not regarding court fees. Therefore the above said citations is not apply to this suit.

For the above said reasons and explanations. The petition is allowed. No cost.”

11. We are not in agreement with the approach and reasoning adopted by the Trial Court. The appellant's revision under Article

227 was similarly dismissed by the High Court holding that the decision of the Trial Court does not warrant interference.

12. While we clarify that we have not expressed any opinion on the question as to whether the *ex parte* decree in O.S. No. 298/96 dated 29.07.1997 would or would not operate as res judicata barring the present suit, we hold that enquiry into this question could not have been decided under Order VII, Rule 11 CPC, particularly in the context of the specific averments made by the appellant in the plaint about the *ex parte* decree, the circumstances surrounding the said transaction and the prayer in the suit for declaration and the consequential relief.

13. For the reasons as indicated hereinabove, we allow the appeal, set aside the order passed by the High Court in CRP (PD) No. 1454 of 2014 dated 20.03.2019 and restore the suit O.S. No. 60 of 2009 before the District Munsif cum Judicial Magistrate Portonovo to its original number. In view of the fact that the suit is of the year 2009, there shall be a direction for expeditious disposal of the suit.

14. While concluding, we clarify that we have not expressed any opinion on the merits of the case and all the grounds raised by the

defendants, including those relating to res judicata are kept open for final determination.

15. With these observations, this appeal stands allowed. The parties shall bear their own costs.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[JOYMALYA BAGCHI]

**NEW DELHI;
JULY 14, 2025**