IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A.,B.L.,
DISTRICT MUNSIF, KATPADI

Friday, this the 02nd Day of June – 2023

I.A.No. 3 of 2022
In
O.S.No. 141 of 2018
(CNR.No.TNVL230002242018)

Lavanya

.....Petitioner/Plaintiff

-Vs-

1. The Tahsildar, Katpadi Taluk
2. The District Collector, Vellore District

.....Respondents/Defendants

3. Parthiban
4. Lokesh @ Bharanidharan

…..Respondents/Proposed Parties

This petition has come up today before this Court for orders, and upon hearing the arguments of Miss. S.Sugasini, the Counsel for the petitioner, and Tmt. J.Kanchana Arivazhagan, the Counsel for the 3 & 4-Respondents/Proposed parties, and even after granting time, the 1 & 2-Respondents/Defendants not filed their counter & set ex-parte on 10.03.2023, and upon perusing the petition, counter and the available case records, and having stood over for consideration till this day, this court delivers the following:

ORDER

This petition has been filed under Order 1 Rule 10(2) of Civil Procedure Code to implead 3 & 4-respondents/proposed parties as 3 & 4 defendants in the above suit.

1. **Brief averments of the affidavit filed by the petitioner is as follows:-**

a) The petitioner is the plaintiff in the above suit and she filed the suit for declaration to declare her as the legal heir of her deceased husband Anbarasan. The petitioner states that her husband Anbarasan, already married one Mohanambal, and there

was a situation, they could not live together and then, her husband filed H.M.O.P.No.33/1993 against said Mohanambal before the Hon'ble Sub-Court, Tiruvallur, and after contesting, in favour of her husband the said H.M.O.P. was allowed on 25.11.1993, and the marriage between her husband with the said Mohanambal was dissolved by an order of divorce.

b) The petitioner also married one Muralikrishnan and begotten one son namely Prasanna, and then, the petitioner was subjected to cruelty by him, hence, the petitioner filed divorce petition in H.M.O.P.No.2746/2008 before the Family Court, Chennai and the said H.M.O.P. was allowed and the marriage between the petitioner and the said Muralikrishnan was dissolved by a order of divorce. After she obtained the divorce from him, the petitioner married Anbarasan on 06.06.2010 at Arulmigu Sri Muthumari Amman Kovil, Arumbakkam, Chennai, in the presence of both sides elders, relatives. From the date of the said marriage, the petitioner, her child prasanna and her husband Anbarasan were lived together as a family. Petitioner husband was worked in Government, and the petitioner name was entered in the Service Register of her husband as Wife and Prasanna name as his Son. From the above facts, the petitioner & her son are the legal heirs of Anbarasan.

(c) In this situation, the petitioner husband Anbarasan died on 02.03.2018 due to heart problem leaving behind the petitioner as his legal heir. After the demise of her husband, the petitioner has given application to 1st respondent/defendant for obtain the legal heirship certificate of her deceased husband, but the 1st respondent rejected the said application as the petitioner is the 2nd wife of her husband, and directed her to approach the Court of law.

(d) At the time of filing of this suit, the petitioner not aware of the fact that the petitioner husband's first wife's children were also to be added as party to the suit. After came to know the said fact, the petitioner has filed petition to implead the proposed parties in the suit and the same was numbered as I.A.No.219/2019. At this stage, one Lokesh who is no way connected to the petitioner husband, and Mohanambal & Parthiban have filed 2 impleading petitions to implead them as the party in this suit. After filing of the said 2 impleading petition, the petitioner came to know that the petitioner has failed to implead Bharanidharan in the above said I.A.No.219/2019, hence the petitioner not pressed the said petition. Since, both the impleading petition enquiry in process, the petitioner not filed the present petition till then.

(e) Indeed, there was no connection between the Lokesh and the petitioner husband. Further, the petitioner husband already got divorce from Mohanambal before the Court of law and thereafter there is no connection between them. In the above judgment of divorce itself mentioned that there are 2 sons to the petitioner husband, i.e., Parthiban & Bharanidharan. In order to prevent the petitioner to obtain a decree of declaration, the said Lokesh has filed impleading petition with false allegaions. Hence, the proposed parties are the necessary parties and prayed to implead them as parties in the suit.

2. **Brief averments of the counter filed by 4th respondent is as follows:-**

***(Adopted by the 3rd respondent)**

(a) The petition filed by the petitioner is not at all maintainable either at law or on fact and the same is to be dismissed in limine. The respondents denied the averments mentioned in the petition entirety and state that the petitioner herself admitted in the petition that she has already withdraw the petition in I.A.No.219/2019 which has been filed with the

same set of facts, and she categorically admitted in the suit as well as this petition that the said Anbarasan already married one Mohanambal through the wedlock they had two sons, which has been reflexes in the judgment, but she has not stated any valid reason after she knows well about the wife and sons of the said Anbarasan, why she has not initiated any steps to implead them as parties and the earlier petition merely withdraw without seeking permission of this Court to file another for the same cause of action, in such ground the petition is barred under section 11 of CPC.

(b) The respondents further states that no point of time the said Anbarasan got married with this petitioner, and this respondent already filed two I.A.No's. 12/2020 and 169/2021 for seeking permission of this Court to implead them as parties to the proceedings, without conducting the said I.A's, this petitioner without any foot has filed this present petition is basically not valid under eye of law.

(c) The 4th respondent herein namely Bharanidharan is also called as Lokesh and all his School records stands in the said name, to prove the same a certificate issued by the RDO, Thiruvallur dated 08.02.2023 after conducting proper enquiry and the report is there with the respondent. Hence, the petition filed by the petitioner is an unnessary one and vague in nature and prayed to dismiss the petition with costs.

3. Neither the petitioner nor the respondents have placed any oral or documentary evidence before this court.

4. With the consent of both sides counsels, while pendency of I.A.No.12/2020 and I.A.No.169/2021, this petition was taken up for consideration at first, as the above 2 petitions were filed by Lokesh, who failed to produce any proof to show that he is the Bharanidharan.

5. **Point for Consideration:-**

a) Whether this petition is entitled to be allowed or not?

6. **Answering to the point:-**

Both sides have been heard. Records perused. Upon careful perusal of petition, counter and the arguments of both sides and the case records, it is found that the suit has been filed by the plaintiff for declaration of legal heir of deceased Anbarasan and for mandatory injunction. This petition has been filed by the petitioner/plaintiff under Order 1 Rule 10(2) of Civil Procedure Code to implead 3 & 4-respondents/proposed parties as 3 & 4 defendants in the above suit, as they are the petitioner husband’s first wife's children. On contra, the the respondents contented that the petitioner already filed impleading petition in I.A.No.219/2019 and merely withdrawn the same without seeking permission of this Court to file another for the same cause of action, in such ground the petition is barred under section 11 of CPC.

7. Hence, it is necessary to decide the issue first and it is pertinent to explain the Res Judicata. The Doctrine of Res Judicata is based on three legal maxims:

a) Nemodebet bis vexari pro una et eademcausa

(No man should be punished twice for the same cause)

b) Interest reipublicaeut sit finis litium

(It is in the interest of the state that there should be an end to a litigation)

c) Res judicata pro veritate occipitur

(A judicial decision must be accepted as correct)

8. Further, the Rule of res-judicata is enshrined in Section 11 of the Code of Civil Procedure. Bereft of all its explanations, namely, Explanations I to VIII, Section 11 is quoted below:

"**Res judicata** – No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raise, and has been heard and finally decided by such court."

9. **RES JUDICATA** is a latin word. It means "a thing decided". It is a common law doctrine meant to bar re-litigation of case between the same parties in Court. The doctrine of res judicata has been explained in the simplest manner by Hon'ble Mr. Justice. Das Gupta, Former Judge of Supreme Court of India, in the case **Satyadhyan Ghoshal Vs. Deorjin Debi** reported in **AIR 1960 SC 941** in the following words:

"The principle of Res Judicata is based on the need of giving finality to Judicial decisions. What it says is that once a res is Judicata. It shall not be adjudged again. Preliminary it applies as between past litigation and future litigation. When a matter whether on a question of fact or a question of a decision is final, either because no appeal was taken on higher court or because the appeal was dismissed, or no appeal lies, neither party will lies, neither part will be allowed in future suit bar proceeding between the same parties to canvass the matter again"

10. Under the Code of Civil Procedure, 1908 the conditions for Res Judicata to apply are: The matter which is directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue, either actually

or constructively in the former suit. This applies to execution proceedings as well. It is necessary that the parties to the subsequent suit be the same parties as were in the former suit, or are parties who claiming under the parties to the former suit. The parties should have been litigating under the same title, i.e., in the same capacity as the former suit.

11. In order for the bar of Res Judicata to apply to the subsequent suit, or the issues therein, the same (matters directly and substantially in issue) should have been heard and decided by a Court in the former suit. It is important to note that the Court which decided the former suit should have been competent to decide such former suit, and had done so on merits.

12. In this case, the respondents raised the plea of Res-judicata and contended that there was a earlier petition and the same was withdrawn without leave of the court to file the present petition with same cause of action. Keeping in mind with the above discussions in respect of Sec.11 of CPC, this court finds that this petition is not barred by the principles of Res-judicata and no judicial application of mind applied in the earlier petition and it was simply not pressed by the petitioner, and further the said principles applies only to the former suit decided by the competent court with regard to the issues directly and substantially in issue have been heard and decided by a Court in the former suit. Hence, this Court of the view that this petition is not barred under sec.11 of CPC and the plea raised by the respondents is hereby rejected.

13. It is useful to refer Order 1 Rule 10(2) of Code of Civil Procedure;

“**1. The Court may at any stage of the proceedings,**

a) either upon or

b) without the application of either party,

c) and on such terms as may appear to the court to be just,

order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added." - Which clearly shows that at any stage of the proceedings if the party is necessary to the suit the court may either by an application or Suo Moto can be add or strike out the parties.

14. In this case, it is admitted by both sides that Anbarasan was married one Mohanambal, and through the said wedlock, two sons were born to them, i.e., Parthiban & Bharanidharan, and the said marriage was duly dissolved by the Court vide divorce decree, and the petitioner/plaintiff has filed the above suit for the declaration to declare her as the legal heir of deceased Anbarasan as his wife, and while pending the suit, the petitioner filed one impleading petition to implead one Parthiban as the necessary party in the suit proceedings, and the same was numbered in I.A.No.219/2019, and then, the petitioner voluntarily not pressed the said petition, hence, it was dismissed by this Court.

15. After that one Lokesh has filed petition to implead himself & his mother Mohanambal as the party to this suit proceedings, and while the same is pending for consideration, the said Lokesh filed another petition to implead his brother Parthiban as the party to this suit proceedings, and those are pending in I.A.No.12/2020 and I.A.No.169/2021. When those 2 petitions is pending, the present petitioner/plaintiff has come forwarded with this petition to implead only Parthiban & Bharanidharan @ Lokesh as they are the petitioner husband-Anbarasan's first wife's children.

16. Since, both parties are not disputing the relationships between the deceased Anbarasan and the respondents-3 & 4, this Court is of the view that the respondents-3 & 4/proposed parties are the necessary party in order to enable the Court effectually and completely to adjudicate for the suit, and no prejudice will be caused if the proposed parties are added as 3 & 4-defendants in the suit. Therefore, this court is inclined to allow the petition. Accordingly, the point is answered.

17. **Result:-**

From the above discussions, in the interest of justice, this petition is allowed. No costs.

-//Dictated by me to the steno-typist, who directly typed the same, corrected and pronounced by me in the open court, on this the 02nd Day of June – 2023.//-

K VENKATESAN Digitally signed by K VENKATESAN

DISTRICT MUNSIF
KATPADI

Both side documents and witnesses: **Nil**

K VENKATESAN Digitally signed by K VENKATESAN

DISTRICT MUNSIF
KATPADI