

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2015

CORAM

THE HONOURABLE Mr.JUSTICE S.NAGAMUTHU

S.A.No.1164 of 2008

and

M.P.No.1 of 2008

K.Gnanasekaran .. Appellant/Plaintiff

-Vs-

D.Neelavathi .. Respondent/Defendant

Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 26.06.2007, made in A.S.No.101 of 2005, on the file of the Additional Sub-Court at Virudhachalam, confirming the judgment and decree dated 09.06.2004, made in O.S.No.376 of 2000 on the file of the Principal District Munsif Court at Virudhachalam.

For Appellant : Mr.K.Srinath Sridevan

For Respondent : Mr.R.Margabandhu

JUDGMENT

The plaintiff in O.S.No.376 of 2000, on the file of the learned Principal District Munsif, Virudhachalam, is the appellant. The defendant in the suit is the sole respondent herein. The appellant filed the said suit for permanent injunction restraining the defendant from in any manner interfering with the alleged peaceful possession and enjoyment of the suit property. On appearance, the defendant filed an interlocutory application in I.A.No.2191 of 2003, purportedly, under Section 11 of the Code of Civil Procedure for rejection of the plaint on the ground that the suit is barred by res judicata. The learned Principal District Munsif, Virudhachalam allowed the said interlocutory application and consequently, rejected the plaint in O.S.No.376 of 2000 by decree dated 09.06.2004. As against the same, the appellant filed an appeal in A.S.No.101 of 2005 before the learned Additional Subordinate Judge, Virudhachalam. By decree and judgment dated 26.06.2007, the lower appellate Court dismissed the appeal thereby, confirming the order and decree of the trial Court.

Challenging the same, the appellant has come up with this second appeal.

2.1 The case of the plaintiff, in brief, is as follows: The suit property was originally owned by the father of the plaintiff. He died intestate leaving behind the plaintiff as his legal heir. Accordingly, the plaintiff inherited the suit property and he has been in possession and enjoyment of the same all along. It is his further case that the plaintiff's father Mr.Kuppursamy and the father of the defendant were brothers. Earlier the defendant's mother Mrs.Pappa Ammal, filed a suit as against the father of the plaintiff in O.S.No.1413 of 1969 before the learned District Munsif, Virudhachalam, for partition and according to the plaintiff, the said suit was dismissed as against the mother of the defendant. Thus, according to the plaintiff, the defendant has got no right whatsoever over the suit property, since she attempted to disturb his possession, according to the plaintiff, he filed the present suit for bare injunction.

2.2. The defendant in her written statement submitted that it is true that the suit in O.S.No.1413 of 1969 was originally dismissed. But, the said suit was later on restored and thereafter, a compromise was reached between the parties and accordingly, a compromise decree was passed by decree and judgment dated 01.09.1975. As per the compromise decree, the suit property was allotted to the mother of the defendant and after her demise, the defendant had inherited the suit property and thus, she has been in possession and enjoyment of the same.

3. The above facts are not now in dispute. Though in the plaint, the plaintiff has contended that the suit in O.S.No.1413 of 1969 was dismissed initially, now he has admitted that there was a compromise and a compromise decree was passed, in which, the suit property was allotted to the mother of the defendant.

4. The plaint was rejected on accepting the plea of res judicata raised by the defendant. According to the learned counsel for the appellant, the decree was obtained by means of compromise and not on contest and therefore, the same will not act as res judicata in terms of Section 11 of the Code of Civil Procedure. In this regard, the learned counsel for the appellant relies on a judgment of the Honourable Supreme Court in Tulsan Vs. Pyare Lal & Others reported in CDJ 2006 SC 847. In that case, the Honourable Supreme Court, of course, following the judgment of the Honourable Supreme Court in Venkata Reddy and others Vs. Pethi Reddy reported in AIR 1963 SC 992, in paragraph No.15, has held as follows:

15. Respondent could not, thus, disclaim
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the said consent decree by filing a suit for declaration. We may, however, hasten to add that the same would not mean that their right in relation to the other land, as for example, abadi land could be denied. We may record that in fact it was accepted at the bar that they are entitled thereto."

The learned counsel would take me through the entire judgment to say that the decree will not act as a res judicata.

5. The learned counsel appearing for the respondent would vehemently oppose this appeal. According to him, though a decree obtained in the earlier suit by consent may not *stricto sensu* be construed to act as res judicata, it will have all the effects of a decree on contest and therefore, the same would act as res judicata for all practical purposes. In this regard, the learned counsel has relied on a judgment of the Honourable Supreme Court in *Sunderabai Vs. Devaji* reported in AIR 1954 SC 82 and another judgment of a Constitution Bench of the Honourable Supreme Court in *Raja Sri Sailendra Narayana Bhanja Deo Vs. State of Orisa* reported in AIR 1956 SC 346 and also a judgment of the Kerala High Court in *Kesavan Namboothiri Krishnarum Mamboothiri Vs. Padmanaban Velayudhan and others* reported in AIR 1971 Ker 234.

6. From the submissions made by the learned counsel appearing on either side and from the records, I find the following substantial question of law:

"Whether a decree obtained by consent in an earlier suit will bar a subsequent suit?"

7. Let us now commence our journey from the earliest judgment of the Honourable Supreme Court in *Sunderabai Vs. Devaji* reported in AIR 1954 SC 82. The precise question before the Honourable Supreme Court in that case was, as to whether a decree obtained in an earlier suit by means of a compromise would act as a res judicata for a subsequent suit. In that case, the Honourable Supreme Court has extensively quoted the commentary of Sir Dinshaw Mulla on Section 11 of the Civil Procedure Code at P.84 of the 11th Edn., and held in paragraph Nos.12 to 14 as follows:-

"12. The bar of res judicata however, may not in terms be applicable in the present case, as the decree passed in Suit No. 291 of 1937 was a decree in terms of the compromise. The terms of Section 11 of the Civil Procedure Code would not be strictly applicable to the same but the principle of estoppel would still

apply. Vide: the commentary of Sir Dinshaw Mulla on Section 11 of the Civil Procedure Code at p. 84 of the 11th Edn. under the caption Consent decree and estoppel':

"The present section does not apply in terms to consent decrees; for it cannot be said in the cases of such decrees that the matters in issue between the parties 'have been heard and finally decided' within the meaning of this section. A consent decree, however, has to all intents and purposes the same effect as res judicata as a decree passed in invitum. It raises an estoppel as much as a decree passed in invitum."

13. The contention which was very strenuously urged before us by the learned Attorney General on behalf of Defendant 1 therefore was that the Plaintiff was estopped from contending that Gangabai had a right to adopt him as a son to her deceased husband Shankar, on 12th December, 1943.

14. Estoppel is a rule of evidence and the general rule is enacted in Section 115 of the Evidence Act which lays down that when one person has by his declaration act or omission caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. This is the rule of estoppel by conduct as distinguished from an estoppel by record which constitutes the bar of res judicata. The estoppel in this case was pleaded by Defendant 1 in the manner following in para 8 of her written statement:

"The plaintiff's claim is also barred by estoppel as he received Rs 8000 as a consideration for accepting the terms of compromise from the defendant. As the compromise was lawful and as he induced the defendant to pay Rs 8000 on the understanding that Gangabai lost her right to adopt and he would never raise any dispute, he is estopped from contending that Gangabai had not lost her right to adopt."

8. Subsequently, the similar issue arose before a Constitution Bench in Raja Sri Sailendra Narayana Bhanja Deo Vs. State of Orisa reported in AIR 1956 SC 346. In paragraph No. 8, the Constitution Bench of the Honourable Supreme Court

has held as follows:

"8. The plea of estoppel is sought to be founded on the compromise decree, Ex. 'O' passed by the Patna High Court on 2nd May, 1945 in FA, No. 15 of 1941. The compromise decree is utilized in the first place as creating an estoppel by judgment. In *In re. South American and Mexican Company, Ex parte Bank of England* it has been held that a judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the court exercises its mind on a contested case. Upholding the judgment of Vaughan Williams, J., Lord Herschell said at p. 50 -

"The truth is, a judgment by consent is intended to put a stop to litigation between the parties just as much as is a judgment which results from the decision of the court after the matter has been fought out to the end. And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in a subsequent action."

To the like effect are the following observations of the Judicial Committee in *Kinch v. Walcott*:

"First of all Their Lordships are clear that in relation to this plea of estoppel it is of no advantage to the appellant that the order in the libel action which is said to raise it was a consent order. For such a purpose an order by consent, not discharged by mutual agreement, and remaining unreduced, is as effective as an order of the court made otherwise than by consent and not discharged on appeal."

The same principle has been followed by the High Courts in India in a number of reported decisions. Reference need only be made to the case of *Secretary of State for India-in-Council v. Ateendranath Das, Bhaishanker Nanabhai v. Morarji KeKeshavji and Co. and Raja Kumara Venkata Perumal Raja Bahadur, Minor by guardian Mr. W. A. Varadachariar Bhanja v. Thatha Ramasamy Chetty*. In the Calcutta case after referring to

the English decisions the High Court observed as follows:

"On this authority it becomes absolutely clear that the consent order is as effective as an order passed on contest, not only with reference to the conclusions arrived at in the previous suit but also with regard to every step in the process of reasoning on which the said conclusion is founded. When we say "every step in the reasoning" we mean the findings on the essential facts on which the judgment or the ultimate conclusion was founded. In other words the finding which it was necessary to arrive at for the purpose of sustaining the judgment in the particular case will operate as estoppel by judgment."

The correctness of these principles laid down in these decisions is not disputed by Mr P.R. Das. Proceeding on the basis that there is such a principle of estoppel by judgment, he contends that the test laid down in the decisions referred to above is whether the judgment in the previous case could have been passed without the determination of the question which was put in issue in the subsequent case, where the plea of estoppel by the previous judgment is raised. This leads us to a consideration of the facts, which are material to this question."

9. A reading of the above two judgments would go to show that the plea of estoppel founded on a compromise decree and the plea of res judicata on the basis of a decree obtained in a contested suit serve one and the same purpose viz., to put an end to the litigation and to avoid further litigation between the parties. It is on this footing, the Honourable Supreme Court in the above two judgments has held that though a compromise decree may not *stricto sensu* act as a res judicata for a subsequent suit, it will have the effect of a decree on contest and have the effect of res judicata.

10. But, in the judgment relied on by the learned counsel for the appellant in *Tulsan Vs. Pyare Lal & Others* reported in CDJ 2006 SC 847, to my understanding, the Honourable Supreme Court has not precisely dealt with the said issue. This judgment is from a Bench of three Honourable Judges of the Honourable Supreme Court. The judgment in *Sunderabai* case (cited supra) was also from a co-equal Bench of three Honourable Judges. But the judgment in *Raja Sri Sarendra Narayan Bhanja Deo* case (cited supra) is

from a Constitution Bench of the Honourable Supreme Court. In Tulsan's case (cited supra), the Honourable Supreme Court had no occasion to consider the earlier judgement of the Constitution Bench of the Hon'ble Supreme Court in Raja Sri Sailendra Narayan Bhanja Deo's case (cited supra). Therefore, in my considered view, the judgment of Raja Sri Sailendra Narayan Bhanja Deo's case (cited supra) has binding force on me. Looking at the judgment of Honourable Supreme Court in Tulsan's case (cited supra), I do not find any contrary view expressed in the said judgment against the law laid down by the Constitution Bench in Raja Sri Sailendra Narayan Bhanja Deo's case (cited supra). It is evident from what is stated in Paragraph No.13 of the judgment of the Honourable Supreme Court in Tulsan's Case (cited supra), which reads as follows:

"13. Respondents had filed a suit. It may be a suit for injunction, but therein, the parties resolved their disputes and differences. A compromise petition was filed. A decree was passed in terms thereof. The parties were bound thereby. A consent decree in terms of Order 23, Rule 1 of the Code of Civil Procedure need not be confined only to the reliefs prayed for. It may not be confined to the subject matter of the suit. Although, the consent decree was passed in a suit for injunction, for all intent and purport it was a preliminary decree passed in a suit for partition. A fresh proceeding could not be initiated for giving effect thereto, even if Respondents' contention that their right to possess under the consent decree were not found to be enforceable by the Revenue Authorities was to be accepted. A consent decree, it is trite, remains valid unless it is set aside. It would be binding on the parties. Although, the principles of res judicata strict sensu would not apply, the principles of estoppel would. In the plaint it was accepted that a compromise decree was passed. The High Court while passing its judgment in the second appeal also noticed the same. Thus, in the subsequent suit, the effect of the consent decree could not have been ignored."

11. From the above, it is crystal clear that in the said judgment also, the Honourable Supreme Court has only reiterated that in the subsequent suit, the effect of the consent decree could not have been ignored. In paragraph No.14 of the judgment, the Honourable Supreme Court has only extracted the observations made by the Supreme Court in Venkata Reddy and others Vs. Pethi Reddy reported in AIR 1963 SC 992. At any rate, in all these judgments the consistent

view is that the decree obtained by means of consent in the earlier suit though *stricto sensu* will not act as *res judicata*, but still it will have the effect of *res judicata*. In other words, as I have already pointed out that the estoppel founded on the compromise decree and the *res judicata* founded on a contested decree serve more or less the same purpose viz., to put an end to the litigation and to avoid any further litigation.

12. Similar view has been taken by the Kerala High Court in *Kesavana Namboothiri Krishnaur Namboothirir Vs. Padmanabhan Velayudhan and others* reported in AIR 1971 Kerala 234. In paragraph Nos.4 to 9 of the judgment, the Kerala High Court has held as follows:

''4. The main contention raised in the suit was that it was barred by *res judicata* on account of the compromise decree in O.S.No.125 of 1124 of Attingal Munsiff's Court. This plea was rejected by the Munsiff as in his opinion the principles of *res judicata* would not apply to a compromise decree. The Munsiff, however, dismissed the suit on his finding that Ext.D-1 was supported by consideration and necessity. The decision on the question of *res judicata* was upheld by the lower appellate Court, but the learned District Judge reversed the decree holding that the document was not supported by consideration and necessity. In second appeal, a learned single Judge of this Court held following the decision in *Shankar Sitaram v. Balkrishna Sitaram*, AIR 1954 SC 352, that the principles of *res judicata* were applicable to compromise decree also. It is the correctness of this decision that is now canvassed.

5. On behalf of the appellant, the learned counsel has brought to our notice the decision in *Sunderabai v. Devaji*. AIR 1954 SC 82, as also the decision in *Subba Rao v. Jagannadha Rao*. AIR 1967 SC 591. In the first of these decisions, the Supreme Court has observed that the bar of *res judicata* may not be applicable in the case of a compromise decree as the matter in issue has not been heard and finally decided as required under Sec. 11 of the Code of Civil Procedure. But the Supreme Court has in the same decision observed that the party would be estopped from raising the same contention in a subsequent suit.

[Sailendra Narayan v. State of Orissa](#). AIR 1956 SC 346, make the position clear. It has been explained in that decision, that the compromise decree creates an estoppel by judgment and a judgment by consent is as effective an estoppel between the parties as a judgment whereby the Court exercises its mind on a contested case. The Supreme Court quoted with approval the observations of Lord Hershell in *in re South American and Mexican Co. Ex parte Bank of England*. (1895) 1 Ch 37. which runs as follows:

"The truth is, a judgment by consent is intended to put a stop to litigation between the parties just as much as is a Judgment which results from the decision of the Court after the matter has been fought out to the end.

And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in a subsequent action."

7. The Judicial Committee in *Kinch v. Walcott*, 1929 AC 482 at p. 493. has also taken the same view.

8. In [Secretary of State v. Ateendranath Das](#), (1936) ILR 63 Cal 550. the Calcutta High Court observed:

"On this authority it becomes absolutely clear that the consent order is as effective as an order passed on contest, not only with reference to the conclusions arrived at in the previous suit but also with regard to every step in the process of reasoning on which the said conclusion is founded."

9. It is clear that the earlier compromise decree, to which the present plaintiff is a party, acts as an estoppel by judgment against the plaintiff-appellant from questioning the validity of the sale deed Ext. D-1. The decision of the learned single Judge is correct.'

13. In view of the above settled position, in the instant second appeal, I find that the trial Court as well as the first appellate Court were right in rejecting the plaint. Accordingly, the substantial question of law is answered.

<https://hcservices.ecourts.gov.in/hcservices> result, the second appeal fails and the same is

accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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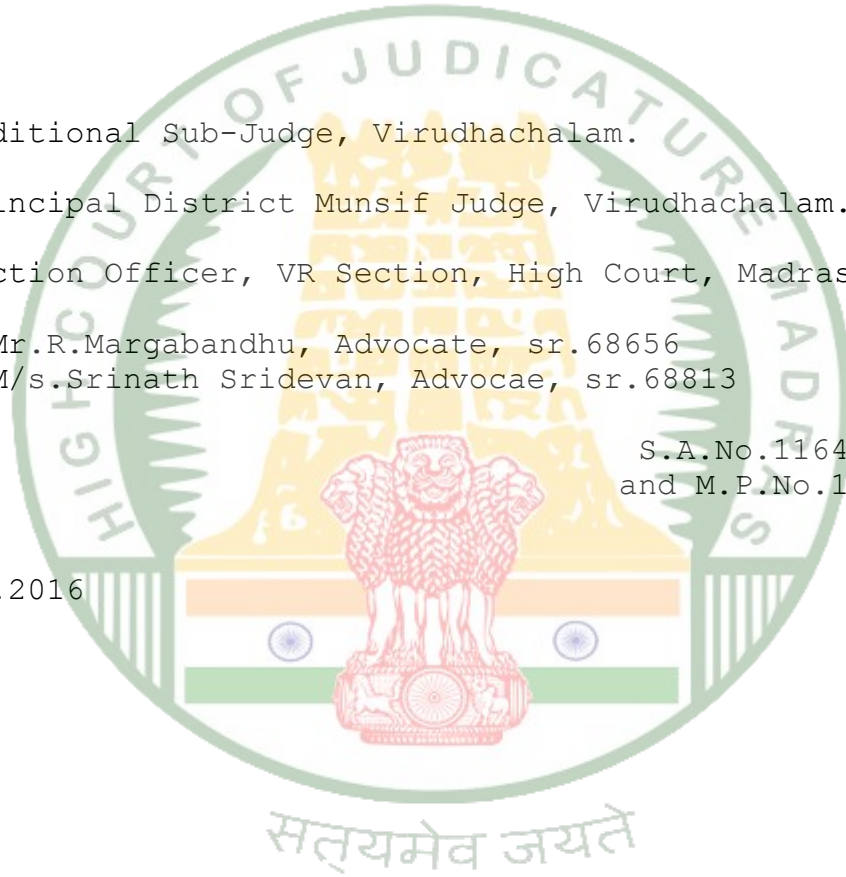
1. The Additional Sub-Judge, Virudhachalam.
2. The Principal District Munsif Judge, Virudhachalam.
3. The Section Officer, VR Section, High Court, Madras.

+1 cc to Mr.R.Margabandhu, Advocate, sr.68656

+1 cc to M/s.Srinath Sridevan, Advocae, sr.68813

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