

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.06.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.566 of 2009

and

M.P.No.1 of 2009

1. S.Manoharan

2. Appachi

... Plaintiffs/Respondents 1 & 2/Appellants

Vs.

1. Marayammal

2. Chinnasamy

3. Mani @ Bhoopathi

... Defendants 4 to 6/Appellants/Respondents

4. Sumathi

5. Sengottian

6. Sinna Gounder

... Defendants 1 to 3/Respondents 3 to 5

(RR4 to 6 - Given up)

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 22.08.2007 passed in A.S.No.18 of 2007 on the file of the Additional District Court-Fast Track Court No.IV, Bhavani, reversing the judgment and decree dated 05.07.2004 made in O.S.No.380 of 2004 on the file of the I Additional District Munsif Court, Bhavani.

For Appellant : Mr.T.Murugamanikkam

For Respondents 1 to 3 : Mr.A.K.Kumarasamy

J U D G M E N T

The Second Appeal is filed by the plaintiffs against the judgment and decree dated 22.08.2007 passed in A.S. No.18 of 2007 passed by the Additional District Court-Fast Track Court No.IV, Bhavani, wherein and by which the judgment and decree dated 05.07.2005 recorded in a suit in O.S.No.380 of 2004 on the file of the I Additional District Munsif Court, Bhavani, were reversed, allowing the first appeal at the instance of the defendants.

2. The suit properties bearing resurvey No.98/3 belonged to the plaintiffs and defendants 1,2 and 4 jointly. During the resurvey, it was sub-divided as R.S.No.98/3D. The lands were originally belonged to Thalayari Minor Inam, for which, nobody has got right. The plaintiffs' male predecessors had been enjoying the Gudivarar right for generations. After coming into force of Tamilnadu Minor Inams

Abolition Act 1963, the said Inam was abolished and the lands were taken over by the Government on 15.02.1965. However, on the basis of possession and enjoyment and Gudivarar rights, patta was issued jointly on 11.10.1967 in the names of Malaisamy Gounder, Palanisamy, Chinnaasamy Gounder, Rasa Gounder and Kumarasamy Gounder. After the Inam Abolition, they had orally divided the suit property, as per which, 585 sq.mts was allotted to Malaisamy Gounder and 275 sq.mts was allotted to Chinnaasamy Gounder. The said Malaisamy Gounder died 20 years ago. Thus, the plaintiffs and the defendants 1 to 3 had been in enjoyment of the suit properties. While so, the defendants 4 to 6 had denied the rights of the plaintiffs and trespassed into the suit property on 10.12.2003, which was successfully stopped by the plaintiffs. As the defendants 4 to 6 have got no right over the property, the suit has been filed for declaration of right and permanent injunction.

3. The suit was resisted by the defendants contending that the 5th defendant's father purchased the property from one Karnam Narayana Iyer. After the said purchase from the said Karnam Narayana Iyer, even mutation of the records was also effected and patta was issued jointly in the name of Marappa Gounder and Karuppa Gounder. The said Marappa Gounder had been in possession from the date of his purchase on 21.03.1942. After his death in the year 1994, the daughter of Marappa Gounder has been in possession of the suit property. The patta issued wrongly by including the names of second defendant's husband Malaisamy Gounder has been taken advantage by the plaintiff. Based on the patta issued wrongly, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and the second defendant's sister one Akilandeswari had filed in O.S.No.599 of 1995 on the file of the District Munsif, Bhavani for declaration of their title. The said suit was dismissed on 25.01.2000. An appeal in A.S.No.15 of 2000 against the same was also dismissed on 21.01.2002 by learned Sub Judge, Bhavani, the same had become final. In view of the judgment and decree passed in O.S.No.599 of 1995 which was confirmed in A.S.No.15 of 2000, the present suit is barred by principles of res judicata. Hence, the defendants prayed for dismissal of the suit.

4. On the pleadings of both the parties, necessary issues were framed by the Trial Court. Before the Trial Court, the Plaintiff had marked Exs.A1 to A13 and PW.1 and P.W.2 were examined on the side of the plaintiffs. D.W.1 was examined on the side of the Defendants and Exs.B1 to B7 were marked on the defendants' side.

5. The Trial Court, after considering the available documents and evidence, decreed the suit, passing a preliminary decree as prayed for by the plaintiffs. Aggrieved by the same, A.S.No.18 of 2007 was filed by the defendants 4 to 6. The appeal was allowed and the Judgment and decree were set aside. Aggrieved by the same, the above second appeal is filed by the plaintiffs.

6. Heard Mr.T.Murugamanikkam, learned counsel appearing for the appellants and Mr.A.K.Kumarasamy, learned counsel for the respondents 1 to 3 and perused the records.

7. At the time of admission, the following questions of law were formulated as under:

(i) Whether the suit is barred by Res Judicata?

(ii) Whether the validity of Ryotwari patta said to have been issued in favour of the predecessors of appellants can be challenged before the Civil Court in the presence of documentary evidence to show the possession and in the absence of any contra evidence by the defendants?

(iii) Whether the first Appellate Court was right in refusing the relief of injunction.

8. The suit has been filed by the plaintiffs for division of 5/12 share in the suit property and for injunction restraining the respondents herein from interfering with the suit property. It was contended by the plaintiffs that the suit was hit by the principles of res judicata as they had earlier filed suit in O.S.No.599 of 1995 with respect to the same property for the relief of declaration of title and for permanent injunction. The said suit was dismissed which was also confirmed in appeal. Therefore, the relief asked for by the plaintiffs seeking right over the same properties is barred by res judicata.

9. In the earlier suit, an additional issue was framed viz. whether all the plaintiffs have got a right and title over S.F.Nos.98/2 and 98/3, based on the patta issued under Inam Abolition Act. The same S.No.98/3 is the subject matter in the present suit which has been sub divided into 98/3B and 98/3D as could be seen from Exs.B4 and B6, which are the judgments of the Trial court as well as the Appellate Court in O.S.No.599 of 1995 and A.S.No.15 of 2000 respectively. It is clear that the right claimed by the plaintiffs herein had already been negated by the Courts in the previous proceeding. In such circumstances, the lower Appellate Court has held that when the plaintiffs' fathers themselves had got no right in the suit property, the plaintiffs claiming under them, cannot have any better right or title. When the decisions of the earlier suits have negated the claim of the plaintiff's father, the same claim made by the plaintiffs in the present suit is barred by res judicata.

10. The learned counsel appearing for the appellants contended that the method followed in deciding the question of res judicata is not correct and therefore he prayed for allowing the appeal.

11. The learned counsel for the appellant had also placed his reliance in V.Rajeshwari(SMT) vs T.C.Saravanabava (2004) 1 Supreme Court Cases 551, wherein it has been held as follows:

13. Not only the plea has to be taken, it has to be substantiated by producing the copies of the pleadings, issues and judgment in the previous case. Maybe, in a given case only copy of judgment in previous suit is filed in proof of plea of res judicata and the judgment contains exhaustive or in requisite details the statement of pleadings and the issues which may be taken as enough proof. But as pointed out in Syed Mohd. Salie Labbai v. Mohd. Hanifa the basic method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as res judicata. It is risky to speculate about the pleadings merely by a summary of recitals of the allegations made in the pleadings mentioned in the judgment. The Constitution Bench in Gurbux Singh v. Bhooralal placing on a par the plea of res judicata and the plea of estoppel under Order 2 Rule 2 of the Code of Civil Procedure, held that proof of the plea in the previous suit which is set to create the bar, ought to be brought on record. The plea is basically founded on the identity of the cause of action in the two suits and, therefore, it is necessary for the defence which raises the bar to establish the cause of action in the previous suit. Such pleas cannot be left to be determined by mere speculation or inferring by a process of deduction what were the facts stated in the previous pleadings. Their Lordships of the Privy Council in Kali Krishna Tagore vs. Secy. State for India in Council pointed out that the plea of res judicata cannot be determined without ascertaining what were the matters in issue in the previous suit and what was heard and decided. Needless to say, these can be found out only by looking into the pleadings, the issues and the judgment in the previous suit.

12. In view of the above decision, the learned counsel for the appellant contended that the plea of res judicata has not been substantiated by producing the copy of the proceedings, issues and judgment in the previous suit. In the present suit, admittedly, the plea of res judicata was taken by the defendants even in the Trial Court and before the first Appellate Court. The judgments and decrees of the previous suit and appeal were brought on record at the trial stage itself to show that the predecessors-in-title of the plaintiffs were parties to the proceeding.

13. The defendants urged that in the previous proceeding, it was decided that the present plaintiffs' predecessors had no title to the suit property. As the defendants had raised the issue of res judicata even at the trial stage, the Appellate Court had gone into the same in detail by considering the documents and not by speculating as to what was the matter in issue and what was decided in the previous suit. The issue as to title was determined by the Courts below in the previous proceedings on the basis of evidence adduced.

14. It is not the case of the plaintiffs that the earlier suit was confined to a small extent or not covering the suit property. Therefore, this Court is constrained to hold that the present suit is barred by res judicata, as the same question has been directly and substantially in issue in the earlier suit. In view of the above findings, I am inclined to hold that the decision of the Lower Appellate Court is correct and there is no reason to interfere with the same.

15. Accordingly, the questions of law are answered in the negative, confirming the judgment and decree of the lower Appellate Court.

16. In the result, the Second Appeal is dismissed and the judgment and decree dated 22.08.2007 passed in A.S.No.18 of 2007 on the file of the Additional District Court cum Fast Track Court No.IV, Bhavani, reversing the judgment and decree dated 05.07.2004 passed in O.S.No. 380 of 2004 on the file of the I Additional District Munsif Court, Bhavani, are confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

srn

s/d-  
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Additional District Court - Fast Track Court No.IV,  
Bhavani

2. The I Additional District Munsif Court, Bhavani

+ 1 cc to Mr.T.Murugamanickam, Advocate SR 31351

cnr(co)  
prk10/7

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