

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

S.A.No.449 of 2016

A.E.Rathina Naicker .. Appellant/Appellant/
Plaintiff/Respondent
in I.A.No.15/2012

V.Thirumalai .. vs. Respondent/Respondent/
Defendant/Petitioner
in I.A.No.15/2012

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 01.04.2015 made in A.S.No.23/2013 on the file of the Principal District Judge, Thiruvallur dismissing the said appeal and thereby confirming the judgment and decree dated 05.07.2012 passed in I.A.No.15/2012 for rejection of the plaint in O.S.No.238/2010 on the file of the Sub-Court, Poonamallee restore the suit in O.S.No.238 of 2010 to the file.

For Appellant : Mr.N.R.Gopaalan

For Respondent : Mr.V.Lakshminarayanan

J U D G M E N T

The appellant is the plaintiff in O.S.No.238 of 2010 on the file of the Court of Subordinate Judge, Poonamallee, filed for the relief of declaring that he is the lawful owner of "C" Suit schedule mentioned property admeasuring to an extent of 3 ares (7.41 cents) comprised in Punja S.No.148/6. Paruthipattu Village, Poonamalle Taluk, Thiruvallur District and recovery of possession of the same from the defendant and handover vacant possession to the plaintiff and also for permanent injunction restraining the defendant, his men, agents, servants or any other person claiming under him not to alienate the "C" suit schedule property to any third party and also for costs of the suit.

2. The Suit was entertained and after receipt of summons, the defendant had entered appearance and filed I.A.No.15/2012 under Order 7 Rule 11(d) of Civil Procedure Code, 1908 to reject the plaint and the Court of Subordinate Judge, Poonamallee, vide

order dated 05.07.2012, has allowed the said petition and thereby rejected the plaint.

3. The appellant/plaintiff, aggrieved by the rejection of plaint, filed an appeal in A.S.No.23 of 2013 on the file of the Principal District Court, Thiruvallur and vide, impugned judgment and decree dated 01.04.2015, the Appeal Suit was also dismissed. The appellant/plaintiff, challenging the legality of the impugned judgment and decree passed by the Lower Appellate Court in A.S.No.23 of 2013, holding the order of rejection of plaint passed by the Trial Court, has filed this Second Appeal.

4. Facts leading to the filing of this Second Appeal, briefly narrated, are as follows:

4.1. The appellant/plaintiff would aver that land and property admeasuring to an extent of 0.78 cents, comprised in Punja S.No.148A situated at Paruthipattu Village, Poonamallee Taluk, Thiruvallur District originally belong to his paternal grandfather and he had purchased the same through registered Sale Deed dated 12.08.1909 and he has also purchased other items of property in S.No.129B from the very same person. The plaintiff would further aver that one Ponnappa Naicker had purchased a property admeasuring 0.32 cents from and out of 2.48 ares comprised in S.No.148/1 through a registered sale deed dated 11.09.2009. It is the case of the plaintiff that in the year 1911, resettlement of survey records took place in respect of the property in S.No.148/A, which was mistakenly referred as 0.78 cents instead of 0.70 cents and despite the said mistake, the entire extent of 0.78 cents was in possession and enjoyment by the plaintiff and his predecessor in title.

4.2. It is further averred by the appellant/plaintiff that in the year 1943 Mr.Raji Naicker, one of the legal heir of Ponnappa Naicker had created false document, laying his claim over 0.40 acres of land, though he had actually purchased 0.32 acres and in this regard, a Suit was also filed by the plaintiff and other legal heirs of Chella Perumal Naicker in O.S.No.1819/1981 on the file of the District Munsif Court, Poonamalle against the District Collector of Chengalpet and legal heirs of Ponnappa Naicker to rectify the revenue records and pending disposal of the same, the legal heirs of Ponnappa Naicker had sold 20 cents through registered sale deed. The said Suit in O.S.No.1819/1981 was decreed exparte on 10.01.1986, marked as Exs.P23 and P24 and as a result, S.No.145/5B1 was resurveyed by the Revenue Officials and 0.03 ares have been carved out from S.No.148/5B1 and new Survey Number was assigned

as 148/6 and patta was also issued in his favour. The plaintiff would further state that though the erroneous nature of the revenue records was rectified in 1997, by virtue of Court order, the local body did not carryout the same in the revenue records and taking advantage of the same, the defendant encroached and had put up a compound wall and therefore, the plaintiff came forward to file the Suit.

4.3. The defendant has entered appearance and filed I.A.No.15/2012 under Order 7 Rule 11(d) of CPC for rejection of the plaint, denying the averments made in the plaint and took a stand that the plaintiff's predecessor in title own only 0.70 cents and not 0.78 cents and the defendant's predecessor in title own 0.40 cents and the earlier Suit in O.S.No.190/1969 on the file of the District Munsif, Court, Poonamallee between the plaintiff and his family members and the defendants predecessors in title for recovery of possession was dismissed on merits, marked as Exs.P18 and P19 and challenging the same, A.S.No.116/1974 was filed before the Sub-Court, Chengalpattu and it was also dismissed on 01.08.1978, marked as Ex.P20 and as such, the present Suit is hit by the principle of resjudicata.

4.4. The defendant/petitioner in the said application contended that the plaintiff had deliberately suppressed the filing of the earlier Suit in O.S.No.190/1969 on the file of the District Munsif Court, Poonamallee and that apart, the present suit is also barred by limitation for the reason that in the Suit in O.S.No.190/1969 the defendant's predecessor in title had trespassed into the "C" Suit Schedule Property on 01.01.1969 and therefore, prays for rejection of the plaint.

4.5. It is the case of the plaintiff/respondent in the said application that Order 7 Rule 11(d) CPC cannot be invoked and in the Suit in O.S.No.1819/1981 on the file of the District Munsif Court, Poonamalle, facts relating to the filing of the earlier suit in O.S.No.190/1969 on the file of the District Munsif, Poonamallee has been stated and after framing of issues, the Suit came to be decreed exparte in favour of the plaintiff and though there was mutation of revenue records by one of the local bodies, the plaintiff faced certain difficulty and therefore, he was constrained to approach this Court and also took a stand that the prayer in the earlier suit and the present suit are entirely different and the application of the principle of resjudicata does not arise at all and prays for dismissal of the petition for rejection of the plaint.

4.6. During the course of enquiry in the application filed for rejection of plaint, on behalf of the petitioner/defendant, Exs.P1 to P25 were marked and on behalf of the respondent/plaintiff, Exs.R1 to R16 were marked.

4.7. The Trial Court, taking into consideration the petition, counter as well as the exhibits marked during the course of enquiry, had formulated the following points for consideration:

1. Whether the suit is hit by principle of res judicata?
2. Whether the suit is barred under Order 2 Rule 2 of CPC?
3. Whether the suit is barred by limitation?
4. Whether the suit amounts to abuse of process of law?
5. Whether the plaint is liable to be rejected?

The Trial Court found that even as per the case of the appellant/plaintiff, the extent of property purchased by Chella Perumal Naicker was entered as 0.70 cents instead of 0.78 cents and the said mistake has occurred at the time of resettlement in the year 1911 and thus, the dispute relating to 0.08 cents had arose already half a century back and the plaintiff along with others filed the Suit against the defendants vendors in O.S.No.190/1969 for declaration, recovery of possession and permanent injunction and the said Suit was dismissed, vide judgment and decree dated 18.01.1974, marked as Ex.P19 and the appeal preferred by them in A.S.No.116/1974 on the file of the Sub-Judge, Chengalpattu was dismissed vide, judgment and decree dated 01.8.1978, marked as Ex.P20 and no further challenge has been made to the said judgment and therefore, it has become final.

4.8. The Trial Court further found that the plaint in the present Suit does not disclose about the Suit in O.S.No.190/1969 as well as A.S.No.116/1974 which went against the plaintiff and others. Insofar as the plea put forward by the plaintiff as to the exparte decree in O.S.No.1819/1981, the Trial Court found that in pursuant to the exparte decree, necessary corrections were also carried out in the revenue records and found that Order 2 Rule 2 of Civil Procedure Code is having application to the facts of the case for the reason that though in the earlier Suit, the plaintiff was having right to ask for recovery of possession, he did not do so and there is no pleadings in the present Suit and also placed reliance upon the decision in *Baja Auto Limited v. TVS Motor Company Limited* [2010 (6) CTC 225]. The Trial Court further held that the present Suit filed for recovery of possession after 8 years is patently barred by limitation and having found that the plaintiff is guilty of

suppression as to the filing of the earlier suit and there is a clear abuse of process of law, has allowed the said petition and consequently, rejected the plaint.

4.9. In the Appeal preferred by the plaintiff in A.S.No.23 of 2013, the Lower Appellate Court, taking into consideration the earlier decision in O.S.No.190/1969 and A.S.No.116/1974 [Exs.P19-P20], found that the dispute relating to 0.08 cents was heard and contested before the competent Court as early as on 01.08.1978 and simply because the Civil Court directed the Tahsildar to rectify the revenue records will not confer any title upon the plaintiff and there is no cause of action to file the present suit also. The Lower Appellate Court also dealt with the pleadings put forward by the plaintiff in O.S.No.1819/1981, marked as Exs.P22 to P24 and found that the written statement was filed in the said Suit by Arjun Naicker/second defendant and he had pointed out the judgment and decree passed in O.S.No.190/1969 as confirmed in A.S.No.116/1974 and the subsequent Suit in O.S.No.1/1997 was filed by the plaintiff for the very same relief and the said Suit was withdrawn without leave from the Court to file a subsequent Suit and found that it was hit by resjudicata under Order 2 Rule 2 of CPC and dismissed the appeal, vide impugned judgment and decree dated 01.04.2015. Challenging the legality of the same, the present Second Appeal is filed by the plaintiff.

4.10. In the Memorandum of Grounds of Appeal, the following substantial questions of law are raised by the appellant:

1. Whether the Trial Court and the First Appellate Court were right in not taking the allegations in the plaint alone into consideration while disposing off the petition under Order 7 Rule 11 CPC and the appeal there from respectively?

2. Whether the Trial Court and the First Appellate Court were right in having rejected the Plaint even though when the defendant had taken the plea of limitation in the written statement?

3. Whether the Trial Court and the First Appellate Court were right in ignoring the principle of Constructive Resjudicata as envisaged by Explanation IV of Section 11 CPC on the face of the judgment OS.1819/1981 filed as Exhibit P-23/ Exhibit R-4?

5. Mr.N.R.Gopaalan, learned counsel appearing for the appellant/plaintiff has drawn the attention of this Court to the typed set as well as the additional typed set of documents containing documentary evidences and would contend that the Courts below had committed a grave error in arriving at a finding that the present suit is hit by res judicata, barred by limitation and also abuse of process of law for the reason that the suit questions involve adjudication of disputed questions of fact and it can be thrashed out only during the course of trial. It is the further submission of the learned counsel appearing for the appellant that the prayer in the present suit is entirely different and in the light of the findings given by the Civil Court, he approached the Tahsildar and since there was some difficulty in mutating the revenue records, appellant/plaintiff was constrained to approach this Court by filing a writ petition and would contend that in the plaint in OS.No.1819/1981, marked as Ex.P21, dismissal of the suit in OS.No.190/1969 marked as Ex.A19 has been stated and therefore, it cannot be said that the plaintiff has suppressed the material fact and would further contend that the exparte decree came to be passed on 10.01.1986 after formulating the issues and since no steps have been taken to set aside the exparte decree, it has become final and as such, the present suit is maintainable. Lastly, it is contended by the learned counsel appearing for the appellant that the fact remains that 0.08 cents of land still remains as vacant and taking advantage of the rejection of plaint, the defendant had taken emergent steps and put up a compound wall in the year 2000 and as such, cause of action arose for filing the suit and the Suit is filed within the period of limitation and therefore, prays for setting aside the decree passed by the Lower Appellate Court, in confirming the judgment and decree passed by the Trial Court and prays for interference. The learned counsel appearing for the appellant has placed reliance upon the following decisions:

- (i) M/s.K.D.Menon and Another v. M/s.Panchitra, rep by its partner Potti Srinivasalu Chetty and Others [2003 (3) CTC 671]
- (ii) Vasagam v. Jothi and another [2013 (1) TLNJ 469 (Civil)]
- (iii) V.Sridhar v. M/s.K.K.P. Securities Ltd., Chennai-4 [2014 (4) TNLJ 31 (Civil)].

6. Per contra, Mr.V.Lakshminarayanan, learned counsel appearing for the defendant/respondent has drawn the attention of this Court to Exs.P19 and P20 - judgment and decree made in O.S.No.190/1969 and A.S.No.116/1974 and would submit that the properties which are the subject matter of dispute pertains to 0.08 cents of land, which is also a schedule mentioned property

and the claim made by the plaintiff and others came to be rejected outright and the appeal filed, challenging the same, was also dismissed and therefore, the plaintiff had filed O.S.No.1/97, which was also dismissed as withdrawn without the leave of this Court to file a fresh suit and the dismissal of the above Suit as well as the appeal has been deliberately suppressed. Insofar as the claim made by the appellant/plaintiff in O.S.No.1819/1981, it is the submission of the learned counsel appearing for the respondent/defendant that though the Trial Court had framed issues, did not adjudicate on the same and by a cryptic judgment, has granted exparte decree and therefore, it cannot be termed as judgment on merits and in any event, the claim made by the petitioner is hopelessly barred by limitation as even according to him, the mistake has crept at the time of re-settlement in the year 1911 and would further contend that the Courts below, on a thorough consideration and appreciation of the facts and documentary evidence, has rightly reached the conclusion to reject the plaint on the ground of resjudicata, abuse of process of law, limitation and there are no substantial questions of law arises for consideration and prays for dismissal of this Second Appeal with exemplary costs.

7. This Court paid its best attention and anxious consideration to the rival submissions and also perused the materials placed before it.

8. It is not in serious dispute that the center point of adjudication is with regard to 0.08 cents of land. Even as per the own admission of the appellant/plaintiff, at the time of re-settlement in the year 1911, mistake had crept in with regard to the property purchased by Chella Perumal Naicker and it was wrongly entered as 0.70 cents instead of 0.78 cents and in respect of the property purchased by Ponnappan, it was entered as 38 cents instead of 40 cents and the plaintiff, on realising the same, filed O.S.No.190/1969 on the file of the District Munsif Court, Poonamallee in respect of the said 0.08 cents of lands and the Trial Court having gone into the merits of the same, dismissed the Suit, vide judgment and decree dated 18.01.1974/Ex.P19 and the plaintiff, aggrieved by the dismissal of the Suit in O.S.No.190/1969, filed an Appeal Suit in A.S.No.116/1974 before the Sub-Court, Chengalpattu and it was also dismissed, vide judgment and decree dated 01.08.1978/Ex.P20 and no further challenge has been made to the said judgment and decree in the form of Second Appeal and therefore, it has become final.

9. The plaintiff subsequently filed O.S.No.1819/1981 on the file of the District Munsif Court, Poonamalle against the

Collector of Chengalpattu District, defendant's predecessor in title and the defendant, praying for a direction to the first defendant to rectify the figure of 0.70 cents to 0.78 cents in S.No.148A in the revenue records. A written statement was also filed and thereafter, the Trial Court had framed the following issues:

1. Whether the plaintiff, as per the plaint, is entitled to rectification of an extent of land of 78 cents ?
2. Whether the judgment and decree passed in O.S.No.190/1969 and A.S.No.1/1967 operate as resjudicata?
3. To what other relief, the plaintiff is entitled?

The defendants were called absent and set exparte and the third plaintiff was examined as PW1 and through him the Registered Sale deed dated 12.08.1909- Ex.P1, Lawyer's Notice dated 03.02.1981- Ex.P2 and Endorsement of the Tahsildar, Sriperumbudur-Ex.P3 were marked. The Trial Court had reached a conclusion that the claim has been proved and accordingly, granted an exparte decree on 10.01.1986.

10. It is very pertinent to point out at this juncture that though the plaint in O.S.No.1819/1981 and the present suit state about the dismissal of the Suit in O.S.No.190/1969 and A.S.No.116/1974, curiously the documents pertaining to the said judgments have not been produced.

11. In G.Selvam and Others v. Kasthuri (deceased) and Others [2015-3-L.W. 705], the scope of Order 20 Rule 4 and 5 of Civil Procedure Code, 1908 came up for consideration and a Single Bench of this Court, after taking into consideration the various decisions, held that as per Order 20 Rule 4 of Civil Procedure Code, judgments of the Courts shall contain a concise statement of the case, the points for determination, the decision thereon and the reason for such decision and on going through the facts of the case, found that the defendants were set exparte and the Trial Court did not frame any issue for deciding the Suit and the Trial Court simply examined PW1 and found that the claim made by him is proved and the said judgment pronounced by the Trial Court is clearly contrary to the provisions of Order 20 Rule 4 and Rule 5 of Civil Procedure Code. In the considered opinion of the Court, the said judgment is squarely applicable to the facts of this case. It is to be pointed out at this juncture that one of the contesting defendants had filed the

written statement and simply took a plea as to the application of the principle of resjudicata in the light of the decision in O.S.No.190/1969 and A.S.No.116/1974 and though the Trial Court has framed three issues and examined PW1, did not go into the said issue at all and without assigning any reasons, by a cryptic judgment, had granted exparte judgment and decree and the said judgment does not satisfy Order 20 Rule 4 and Rule 5 of Civil Procedure Code.

12. Now coming to the substantial questions of law raised by the appellant in the memorandum of grounds of appeal, this Court is of the view that the said questions have been considered and answered by the Trial Court as well as by the Lower Appellate Court by assigning proper and sufficient reasons.

13. The earlier suit filed by the plaintiff in O.S.No.190/1969 on the file of the District Munsif Court, Poonamalle pertains to the very same property and after contest, the suit came to be dismissed, vide judgment and decree dated 18.01.1974/Ex.P19 and the appeal filed in A.S.No.116/1974 on the file of the Sub-Court, Chengalpattu was also dismissed, vide judgment and decree dated 01.08.1978/Ex.P20 and that apart, the plaintiff has also filed one more Suit in O.S.No.1/1967 for the very same relief and it was dismissed as withdrawn without the leave of this Court to file another suit on a fresh cause of action.

Substantial Questions of Law Nos.1 and 2

14. A Single Bench of this Court in the decision in Nesammal and another v. Edward and another [1998 (III) CTC 165] has taken into consideration the decisions rendered in T.Arivanandam v. T.V.Satyapal and another [1977 (4) SCC 467], ITC Limited v. Debts Recovery Appellate Tribunal [1998 (2) SCC 70], Ashar Hussain v. Rajiv Gandhi [1986 Supp. SCC 315], held that "the provisions of Order 7 Rule 11 of Civil Procedure Code are not exhaustive and the Court has got inherent powers to see that vexatious litigations are not allowed to take or consume the time of the Court and in appropriate cases, directions can be given by this Court as well as the Court in which the Suit is filed not to entertain the Suit, if on reading the allegations in the plaint it reveals that the same is abuse of process of law; In this case all the grounds are made out and the very same plaintiff who got defeated in the litigation has agitated the very same issued by filing the present plaint....."

15. The very same view has been taken in a subsequent decision in M.V.Jayavelu v. E.Umapathy [2011 (1) MWN (Civil) 113].

16. In Bhagirath Prasad Singh v. Ram Narayan Rai and Another [AIR 2010 Patna 189], very same issue, especially with regard to suppression of material facts viz-a-viz rejection of plaint came up for consideration and it is relevant to extract the following paras of the said judgment:

"10. I find no force in the submission raised on behalf of the plaintiffs-opposite parties. No doubt, as per the provisions of Order VII, Rule 11 of the Code of Civil Procedure, for the purposes of determining the question of rejection of plaint on the other grounds mentioned therein, it is the plaint that has to be looked into, but the question is that if the plaintiffs have deliberately suppressed the material facts, the disclosure of which is required by law to be made in terms of Order VI, Rule 2 of the Code of Civil Procedure, whether it was open for the Court concerned to proceed with the trial and decide the suit after framing issues. The order dated 20-11-2006 was challenged by the plaintiffs-judgment-debtors themselves before this Court and the civil revision was dismissed by a reasoned order dated 1-5-2008. Thus, this fact was well known to the plaintiffs and they were duty bound in law to disclose the same which they have not done. Order VI, Rule 2(1) of the Code of Civil Procedure clearly stipulates that the pleadings should contain the material facts. It has been observed by the Apex Court in *Sopan Sukhdeo Sable v. Assistant Charity Commissioner*, (2004 (3) SCC 137 : AIR 2004 SC 1801 that omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. Order VII, Rule 11 of the Code of Civil Procedure lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The real object of Order VII, Rule 11 of the Code of Civil Procedure is to keep out of Courts irresponsible law suits and in case Court is prima facie persuaded of the view that the suit is an abuse of the process of the Court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII, Rule 11 of the Code of Civil Procedure can be exercised.

11. Law is well settled that dexterity of the draftsmen whereby the material facts are camouflaged in a cleverly drafted plaint and illusionary cause of action is set out, cannot defeat the right of the defendant to get the plaint rejected. In this regard

it would be pertinent to quote the relevant passage of the observation of the Apex Court in T. Arivandandam v. T.V. Satyapal, (1977) (4) 467 : (AIR 1977 SC 2421) (SCC p. 470, para 5 as under).

"We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif Court must remember that if on a meaningful – Not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power and Order 7, Rule 11, CPC, taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits."

In the considered opinion of this Court, a perusal of the plaint in the present suit would disclose that, filing of the earlier Suit in O.S.No.190/1969 and A.S.No.116/1974 has been suppressed and though there is an averment with regard to O.S.No.1819/1981, this Court is of the view that still the appellant/plaintiff is guilty of suppression of material facts and it is a clever method of drafting the pleadings. As already pointed out, the judgment and decree made in O.S.No.1819/1981 is not in consonance with Order 20 Rule 4 and 5 of Civil Procedure Code and as such, the said decision would not come to the aid of the appellant/plaintiff.

17. The decision in Punjab National Bank, represented by its Manager and Others v. J.Samsath Beevi and Others [(2010) 3 MLJ 439], which was also confirmed by a Division Bench of this Court, vide judgment dated 30.03.2010 in O.S.A.Nos.64 and 65 of 2010, the defendants in the Civil Suit namely Punjab National Bank, filed an application under Order 7 Rule 11 of CPC seeking rejection of plaint on the ground of fraud and collusion and a defence was taken that the allegations alone to be proved for

the purpose of deciding the issue relating to rejection of plaint. The Single Judge of this Court, taking into consideration the decision reported in ITC Limited v. Debts Recovery Appellate Tribunal [(1998) 2 MLJ 79 (SC)] and other decisions held in para 8 that "..... If by clever drafting, the plaintiff creates an illusion of a cause of action, the Court is duty bound to nip it in the bud. To find out if it is just a case of clever drafting, the Court has to read the plaint, not formally, but in a meaningful manner..... The ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order 7 Rule 11(a)."

18. The judgment rendered in O.S.No.190/1969, as confirmed in A.S.No.116/1974 and the facts relating to the said dismissal has been suppressed and the Trial Court was right in rejecting the plaint, which was also confirmed by the Lower Appellate Court. Insofar as the plea of limitation is concerned, even as per the plaint averments, the plaintiff predecessor in title is very well aware of the fact that mistake with regard to 0.08 cents had occurred at the time of re-settlement in the year 1911 and such a plea was also taken in the earlier round of litigation and having lost and suppressed the same, the plaintiff came forward to file the present suit.

19. In the earlier suit in O.S.No.1819/1981, which came to be decreed exparte, the plaintiff did not ask for recovery of possession and during the year 2010, he became aware of the same and came forward to file the present suit and here again, the plaintiff is guilty of suppression of material fact, while drafting the pleadings in O.S.No.1819/1981 and thus, the appellant/plaintiff has developed the habit of suppressing the material facts to get unfair advantage. Therefore, substantial questions of law Nos.1 and 2 are answered in negative against the appellant/plaintiff.

Substantial Questions of Law No.2

20. This Court has already pointed out that the judgment and decree passed in O.S.No.1819/1981 is not in consonance with Order 20, Rule 4 and Rule 5 of Civil Procedure Code and though in the impugned judgment, the Trial Court had extracted three issues, especially issue No.2 pertains to the plea of resjudicata, in the light of the earlier judgment and decree passed in O.S.No.190/1969 and A.S.No.116/1974, have not dealt with the said issue at all. The plaintiff also did not file the certified copy of the judgment and decree passed in the above cited Suit and Appeal Suit and merely marked three exhibits,

which are not having much relevance and therefore, it is to be held that the present Suit is also hit by resjudicata.

21. This Court, on an independent application of mind to the entire materials placed before it, is of the considered opinion that there is no error apparent or infirmity in the reasons assigned by the Trial Court for rejection of the plaint, as confirmed by the Lower Appellate Court and finds no merit in this Second Appeal.

22. In the result, this Second Appeal is dismissed, confirming the judgment and decree dated 01.04.2015 made in A.S.No.23/2013 on the file of the Principal District Judge, Thiruvallur in confirming the judgment and decree dated 05.07.2012 passed in I.A.No.15/2012 for rejection of the plaint in O.S.No.238/2010 on the file of the Sub-Court, Poonamallee. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Principal District Judge, Thiruvallur.
2. The Sub-Judge, Poonamallee.

+1 CC to Mr. V. Raghavachari, Advocate sr 18770

सत्यमेव जयते

WEB COPY

S.A.No.449 of 2016

rsy(CO)
sp/13/4