

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2017
PRONOUNCED ON : 23.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.No.486 of 2001

1. Rangammal
2. M.Subramani
3. M.Vijaya
4. M.Shankar
5. M.Nagaraj

...Appellants/Plaintiffs 2 to 6

Vs.

1. A.Jayaraman
2. M.Gangadharan
3. A.Natarajan

... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 04.08.2000 passed in A.S.No.24/97 on the file of the Subordinate Judge, Ootacamund, confirming the judgment and decree dated 26.02.97 passed in O.S.No.266/89 on the file of the District Munsif, Ootacamund.

For Appellants : Mr.Kinston Jerold
for Mr. S.K.Rakhunathan

For Respondents 1 & 3 : Mr. S.Jayaraman

For Respondent No.2 : No appearance

JUDGMENT

This second appeal is directed against the judgment and decree dated 04.08.2000 passed in A.S.No.24/97 on the file of the Subordinate Court, confirming the judgment and decree dated 26.02.97 passed in O.S.No.266/89, on the file of the District Munsif Court, Ootacamund.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of possession.

4. The case of the plaintiffs, in brief, is that they had been granted patta in respect of an extent of 0.03 acres with specific boundaries in R.S.No.3116/37 of Ootacamund town and accordingly, been in possession and enjoyment of the above said property and the first plaintiff constructed two independent

premises bearing door nos.110 A and 110 B in the said property and the second defendant being the brother of the first plaintiff, requested the first plaintiff to permit him to occupy one of the premises and accordingly, out of sympathy, the first plaintiff permitted the second defendant to occupy one of the premises bearing door no. 110 B described as Item no.2 of the plaint schedule property during the February 1982 and the second defendant after staying for some time, rented out the same to the first defendant without the knowledge and consent of the first defendant and in the said premises defendants 1 and 3 started a tea stall business in the name and style of Balakrishnan tea stall and thereby, misunderstanding arose between the plaintiffs and the defendants and the first plaintiff and his sister were staying in door no.110 A described in item 1 of the plaint schedule property. During March 1988, when the first plaintiff started to put up additional room in door no. 110 A on its eastern side through a contractor, on account of the misunderstanding between the parties, the defendants lodged a false complaint against the first plaintiff and his family members and the contractor, so as to prevent the first plaintiff from the construction work as above referred to and the police without proper verification filed a false case against the first plaintiff and his family members and the contractor and further, the defendants along with the henchmen attempted to forcibly take possession of the door no. 110 A, which was resisted by the plaintiffs and the plaintiff and his family members were beaten by the defendants and accordingly, by making use of their influence, in order to throw them out of door no.110 A, the defendants preferred a false complaint against the plaintiffs and the family members and the contractor and subsequently, the defendants trespassed into the property bearing door no.110 A illegally and thereby are in illegal and unlawful possession of the plaint schedule property and also instituted a false suit in O.S.No. 211/1988 alleging that the first defendant is a tenant under the third defendant in respect of the door no. 110 A and as the suit property are in unlawful possession of the defendants, according to the plaintiffs, they are necessitated to lay the suit for proper reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the plaintiffs are granted patta for 0.03 cents in R.S.No.3116/37 in Ootacamund town and it is false to state that the plaintiffs put up premises bearing door no.110 A and 110 B in the said property. The patta for the above said property was granted to Rangammal wife of Mayannan, who is the mother of the first plaintiff and the second defendant. Taking advantage of the same, the plaintiffs had claim false right in the suit property. It is only Rangammal who had constructed door no.110 A and 110 B and the construction was put up by the third defendant and the plaintiffs have no right of title over the said property. The second defendant, never requested the first plaintiff to let out the suit property as alleged in the plaint

and door no. 110 B belonged to the third defendant and built by him and the land belongs to the Highways and not to the plaintiffs. The third defendant is in possession of the door no.110 B and it is false to state that the second defendant residing thereunder the plaintiffs and let out the same to the first and second defendant. It is false to state that the first and third defendant had started a tea stall business in the above said property. Door no.110 A was originally constructed by Rangammal and on her death, patta for the same had been granted both to the first plaintiff and the second defendant and the second defendant rented out the door no.110A to the first defendant in 1982 and when the plaintiffs in order to usurp the the property attempted to dispossess first defendant in collusion with the second defendant, the first defendant had filed a suit in O.S.No. 211/1988 and the present suit is only counter blast to the above said suit. It is false to state that the complaint had been falsely levied at the instigation of the second defendant and only when the first plaintiff had taken forcible possession, the first defendant had laid the complaint to protect his possession and his family members etc., The first defendant had been in possession from 1982 in Door no. 110 A and the plaintiffs have no right in the suit property in any manner and at the most the plaintiffs can claim only share in the property bearing door no. 110 A and nothing more than that and the suit for possession without the relief of declaration is not maintainable and hence the suit is liable to be dismissed.

6. It is found that O.S.No. 266/89 and O.S. No.211/88 were jointly tried by the trial Court, as common issues in respect of the suit property involved in both suits and accordingly, it is found that the common evidence was recorded in O.S.No. 266/89, the same being the comprehensive suit.

7. In support of the plaintiffs' case Pws 1 and 2 were examined Exs.A1 to A15 were marked and on the side of the defendants Dws 1 to 8 were examined and Ex.B1 to 52 were marked and Exs. C1 and 2 were also marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court dismissed the suit in O.S.No. 266/89 and decreed the suit as prayed for in O.S.No. 211/88.

9. It is seen that as against the above said impugned judgment and decree passed in O.S.No. 266/89 and O.S.No. 211/88, only as against the judgment passed in O.S.No. 266/89 the plaintiff had preferred the first appeal and the first appellate Court also on a consideration of the materials placed, concurred with the findings of the trial Court and thereby dismissed the first appeal. Aggrieved over the same, the present second appeal has come to be laid.

10. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Whether the lower appellate Court is right in holding that the appeal is barred by the principles of res judicata in view of the non-filing of an appeal against the decree of injunction in O.S. No.211/1988?

2. Whether the findings of the Courts below that the name referred to in patta denotes the mother of the deceased M.Nanjappan and the second respondent and not the first appellant?

11. O.S.No. 266/89 and O.S.No. 211/88 were pending between the parties in respect of the subject matter and as the common issues are found to be involved in both suits, it is found that both suits were jointly tried and accordingly, common judgment was pronounced in both suits. However, it is found that though the plaintiffs have suffered the decree in O.S.No. 211/88, had not preferred any appeal against the same and on the other hand, preferred the appeal only against the dismissal of the suit in O.S.No. 266/89 and the first appellate Court, relying upon the decisions of the Apex court finding that the failure of the plaintiffs in preferring appeal against the judgment and decree rendered in O.S.No. 211/88 would operate as resjudicata to their suit in O.S.No.266/89 and the said finding of the first appellate Court is impugned in this second appeal. However, as seen from the discussions of the first appellate Court with reference to the above said finding, it is found that when the suit in O.S.No. 266/89 and O.S.No. 211/88 were jointly tried and when common issues are involved in respect of both the suits and the plaintiffs have suffered decree in both the suits, as rightly argued, the plaintiffs should have preferred the appeals as against all the judgments and decrees rendered against them and the failure of the plaintiffs in preferring the appeal against the judgment and decree passed in O.S.No. 211/88 certainly would operate as res judicata as determined by the first appellate Court and also as seen from the principles of law adumbrated in the decisions of the Apex Court referred to in the judgment of the first appellate Court.

12. Recently also the Apex Court in its decision reported in 2015-1-L.W.1 (Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal & others), has held that wherein the suits in which the common issues were framed and a common trial had been conducted, the losing party should prefer appeals in respect of all the adverse decrees founded, even on partially adverse or

contrary speaking judgments and the decree not assailed thereupon metamorphoses into the character of a "former suit" and the cause or rights of the parties having failed to prefer appeals against any such adverse decrees/judgments against the other parties gets permanently sealed and foreclosed since resjudicata applies against them. Therefore, when it is found that the failure of the plaintiffs in not challenging the decision rendered in O.S.No. 211/88 would operate as resjudicata to their present suit in O.S.No.266/89, as rightly determined by the first appellate Court and also in the light of the decisions pronounced by the Apex Court, it is found that the first appellate Court is perfectly right in holding that the suit levelled by the plaintiffs in O.S.No. 266/89 is hit and barred by the principles of the res judicata, on account of the failure of the plaintiffs in not preferring the appeal against the judgment and decree passed in O.S.No.211/88. Accordingly, the first substantial question of law formulated in this second appeal is answered against the plaintiffs and in favour of the defendant.

13. As regards the challenge made to the determination of the Courts below into the merits of the suit claim, particularly, the nature of the patta granted with reference to the suit properties, in my considered opinion, the Courts below had rightly assessed the issues in all perspectives, both factually as well as legally in all aspects, in the right manner and accordingly, found that the plaintiffs are not entitled to claim the reliefs sought for in O.S.No. 266/89 and the first defendant/plaintiff in O.S.No. 211/88 is entitled to the relief of permanent injunction as sought for in O.S. No.211/88. For arriving at the above said determination, the Courts below have discussed the issues in detail and correctly found that the plaintiffs would not be entitled to obtain the reliefs sought for in O.S. no. 266/89 and accordingly, found that at the most, the plaintiffs would be entitled to resort to the rent control proceedings as against the specific portion in the occupation of the first defendant Jayaraman. The above said determination or the findings of the Courts below being pure question of facts and not involving any question of law, it is found that the second substantial question of law formulated in this second appeal need not be answered, as it is found to be a pure question of fact. In any event, when it is found that the Courts below have determined all the aspects of the matter by assessing the evidence in the proper manner and accordingly, negatived the reliefs sought for by the plaintiffs, the same in my considered opinion, do not warrant interference at this stage of the second appeal, as they are pure question of facts and not involving any question of law.

14. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Ootacamund.
2. The District Munsif Court, Ootacamund.
3. The Section Officer,
VR Section, High Court, Madras(2 copies)

+1cc to Mr.S.K.Rakhunathan, Advocate Sr.No.83371

+1cc to Mr.S.Jayaraman, Advocate Sr.No.83221

Judgment in
S. A.No.486 of 2001

NMI (CO)

sm:23.11.2017



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