



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2017

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A. (MD) No.485 of 2015

and

M.P. (MD) .No.1 of 2015

T.Kousalya

... Appellant/Appellant/
Plaintiff

Vs.

M.Panjolai

... Respondent/ Respondent/
Defendant

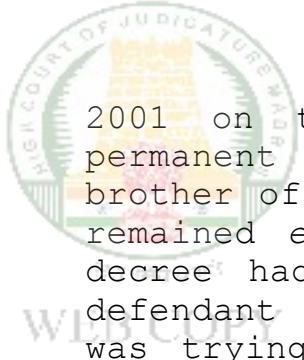
Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the Judgment and Decree, dated 21.10.2013, made in A.S.No.5 of 2013 on the file of the Principal Subordinate Judge, Karur, confirming the Judgement and Decree of the Principal District Munsif Court, Karur, in O.S.No.193 of 2010, dated 04.07.2012.

For appellant : Mr.P.Muthuvijayapandian
For respondent : Mr.N.Shanmuga Selvam

JUDGMENT

The non-suited plaintiff before the Courts below has preferred the above appeal. The suit was filed for a bare injunction restraining the defendant from causing any disturbance to the plaintiff, pursuant to the decree obtained in O.S.No.309 of 2001 on the file of the Principal District Munsif Court, Karur.

2.According to the plaintiff, the suit property is measuring about 12 feet east-west and 10 feet north-south with a house situated therein in Natham Survey No.154A-1, Thirukkampuliyur, LNS Village, Karur Taluk. The plaintiff had purchased the said property from one Ananthakrishnan on 18.05.2005. The said Ananthakrishnan is the son of the sole defendant - Paanjolai. According to the plaintiff, the plaintiff had put up a house and since then, she has been in possession and enjoyment of the property. The defendant - Paanjolai had earlier filed a suit in O.S.No.309 of



2001 on the file of the District Munsif Court, Karur, for permanent injunction and obtained a decree against the mother and brother of the plaintiff. The mother and brother of the plaintiff remained *ex parte* and their attempt to set aside the *ex parte* decree had failed. It is the case of the plaintiff that the defendant has got no right over the suit property. The defendant was trying to demolish the house in the suit property, on the strength of the decree obtained in O.S.No.309 of 2001. Hence, the suit was filed.

3.The case of the defendant is that the present suit is barred by *res judicata*, in view of the decree of injunction granted in favour of the defendant in O.S.No.309 of 2001. Thus, he prayed for dismissal of the suit.

4.Before the trial Court, on the side of the plaintiff, the husband of the plaintiff by name Thangavel was examined as PW1 and Exs.A1 to A4 were marked. On the side of the defendant, one Muniammal and the defendant herself were examined as D.W.1 and D.W.2 respectively and Exs.B1 to B.5 were marked.

5.After consideration of oral and documentary evidence, the Courts below found that the suit is barred by *res judicata* and the properties in both the suits are substantially same and thus, dismissed the suit. Aggrieved by the same, the above appeal has been filed by the plaintiff.

6.At the time of admission, only notice was ordered to the respondent.

7.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

8.It is contended by the learned counsel for the appellant that the witnesses - D.W.1 and D.W.2 had deposed in their evidence that the suit property in O.S.No.309 of 2001 is different from the present suit and hence, the suit is not barred by the principles of *res judicata*. But, the plaintiff herself has admitted in the plaint that the suit property in O.S.No.309 of 2001 and the present case are one and the same. Therefore, the evidence of DW1 and DW2 need not be given much significance.

9.It is contended by the learned counsel for the appellant/plaintiff that the boundary description had changed after several years. But, there is no evidence adduced by the plaintiff to establish the same. It is also contended by the learned counsel for the plaintiff that the decree in O.S.No.309 of 2001 is not executable. If that is so, the present suit need not be filed on the prayer itself is not to disturb the possession on the strength of the decree passed in O.S.No.309 of 2001. Though the plaintiff has got the patta in her name, it was subsequent to



the suit and hence, it cannot be relied upon. The plaintiff had failed to establish that the suit property is different from one involved in O.S.No.309 of 2001. As the suit property in O.S.No.309 of 2001 and the present suit schedule property are one and the same, the present suit is clearly barred by *res-judicata*.

10. In the absence of any evidence or any question of law arising for consideration, in the above said facts, this Second appeal is liable to be dismissed.

11. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Karur,
2. The Principal District Munsif,
Karur,
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.P.MUTHU VIJAYA PANDIAN, ADVOCATE IN SR No. 77611

+ 1 CC TO Mr.N.SHANMUGA SELVAM, ADVOCATE IN SR No. 77617

MSA

TE/KK/SAR-II : 27/09/2017 : 3P/6C

S.A. (MD) No.485 of 2015 and
M.P. (MD) .No.1 of 2015
08.09.2017