



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.09.2018

WEB COPY

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

S.A.No. 96 of 2008

A.Muthusamy ..Appellant (1st Defendant)
vs.

C.Soundaram (dead)

1. S.Raghuram
2. C.Thyagarajan
3. T. Prabhuram
4. T.Ravi Ram
5. M.R.Rathindran ..Respondents 1 to 5/Plaintiff
6. K.Rajagopal ..6th Respondent/2nd Defendant
7. S.Neelaveni
8. Smt.Lalitha ..Respondents 7 to 8/LR's
of Deceased Plaintiff

cause title accepted vide order of
Court dated 20.12.2007 made
in MP No.2/07 in SA SR. No.1129/06

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 09/08/2005 passed in A.S.No.41 of 2004 on the file of the Court of the Principal Subordinate Judge, Coimbatore confirming the Judgment and decree dated 06.04.2004 passed in OS. No.2629 of 1996 on the file of the Court of the Principal District Munsiff, Coimbatore.

For Appellant : Mr.S.V.Jayaraman, Senior Counsel
for Mr.K.Govi Ganesan

For Respondents : Mr.T.R.Rajagopalan, Senior Counsel
Asst. by Mr.R.Siddarth
for Mr.T.R.Rajaraman
for RR 1, 2, 3, 4, 7 & 8

Mr.V.Ramesh, for R5

No appearance for R6



J U D G E M E N T

The 1st defendant in OS No.2629 of 1996 is the appellant. The suit was filed by the plaintiffs seeking declaration that the 6th plaintiff, as the promoter of the lay-out in the suit lands, is alone entitled to deal with the same with the consent of the plaintiffs 1 to 5, for permanent injunction restraining the defendants from trespassing or dealing with the suit property and for costs.

2. According to the plaintiffs, the plaintiffs 1 to 3 entered into an agreement for the development of the land in Survey Nos.280, 281 Pt. and 282 Pt. of Kurudampalayam Village and the minutes was signed on 03.08.1987. Pursuant to the same, the 6th plaintiff prepared the plan for development of proposed lay-out and submitted the same to the concerned Panchayat Union for approval. A regular agreement was entered into between the Plaintiffs 1 to 3 and the 6th plaintiff on 28.08.1987, for development of 5.48 acres of land situate in the above survey numbers. Thus, the 6th plaintiff had paid an advance of Rs.1,00,000/- to the plaintiffs 1 to 3. While the 6th plaintiff got the lay-out approved on 15.09.1987, the plaintiffs 1 to 3, for their own convenience effected a partition among themselves under a Registered Deed of Partition dated 29.10.1987.

3. According to the plaintiff, the 6th plaintiff developed the property by constructing a overhead tank and barbed wire fencing. He was also in the process of arranging for the sale of the sites. While things stood thus, the Government published notification seeking to acquire the lands on 06.10.1990. The 6th plaintiff took efforts to have the acquisition withdrawn. Eventually the acquisition proceedings were withdrawn, vide withdrawal notification dated 31.05.1993. Since the eastern owner had encroached in about 10 cents of land in the property, the 6th plaintiff had made arrangements to file a suit in OS. No.1588 of 1993 to have the encroacher evicted.

4. The defendants 1 and 2, according to the plaintiffs, had manipulated false and bogus records and the 1st defendant filed a suit in OS No.2278 of 1993 on the file of the District Munsif Court, Coimbatore, against plaintiffs 1 and 6 for a bare injunction restraining them from alienating the properties in the above survey numbers. During the second week of February 1994, the plaintiffs unearthed the fraud committed by the 1st defendant with a obvious intention to prevent appearance of the



present plaintiffs in the suit filed by him and to secure an ex-parte order by misleading the Court. Claiming that the defendants have no right and the suit filed in OS No.2278 of 1993 was not maintainable. The plaintiffs have come forward with the present suit.

5. The suit was resisted by the 1st defendant raising several contentions. The 1st defendant also filed OS No.49 of 1994 seeking injunction restraining the plaintiffs in OS No.2629 of 1996 from in any manner alienating the property. It is not in dispute that the suit properties in all the three suits, namely OS Nos. 2278 of 1993, 2629 of 1996 and 49 of 1994 are one and the same. All the three suits were taken up together for joint trial and by judgment and decree dated 06.04.2004, the learned District Munsif, Coimbatore, dismissed the suits in OS No.2278 of 1993 and OS No.49 of 1994. The suit in OS No.2629 of 1996 was decreed as prayed for. Aggrieved, the plaintiffs in OS Nos.2278 of 1993 and 49 of 1994 and the 1st defendant in OS No.2629 of 1996 filed three appeals in AS No.79 of 2004, 41 of 2004 and 45 of 2004. The appeals were heard together by the learned Subordinate Judge, Coimbatore. By judgment and decree dated 9.08.2005 all the three appeals were dismissed confirming the judgment and decree of the Trial Court.

6. Aggrieved, the 1st defendant in OS No.2629 of 1996 has come forward with the above Second Appeal.

7. Notice regarding admission was ordered on 24.01.2008, pursuant to the notice, the respondents except the 6th respondent had entered appearance through counsel. The 6th respondent who has been served has not chosen to appear either in person or through counsel. When the above Second Appeal was listed for hearing on 14.09.2018, Mr.T.R.Rajagopalan, learned Senior counsel appearing for respondents 1,2,3,4,7 & 8 and Mr.V.Ramesh, learned counsel appearing for the 5th respondent raised a preliminary objection contending that the appellant has not challenged the decree in OS No.2278 of 1993 and 49 of 1994, which have been confirmed by the Sub Court in AS No.79 of 2004 and 45 of 2004. According to them, Since all the three suits were disposed of by the common judgment and the appeals there from were also disposed of by the common judgment, in the absence of any challenge in the decrees in other two suits, namely OS No.2629 of 1996 and OS No.49 of 1994, this appeal would be barred by res-judicata.

8. Mr.S.V.Jayaraman, learned Senior Counsel appearing for Mr.K.Goviganesan, for the appellant sought time to verify as to whether the appellant had challenged the other two decrees.



Hence, the matter was adjourned today. Today when the matter is taken up for hearing Mr.S.V.Jayaraman, learned Senior Counsel appearing for the appellant would fairly state that no appeal has been filed against the other two judgments.

9. In view of the said statement, this appeal has to be essentially dismissed as barred by res judicata. In view of the above, the SecondAppeal is dismissed as barred by res judicata without being admitted. There shall however no order as to costs in this appeal.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

jv

To

1. The Principal Subordinate Judge, Coimbatore.

2. The Principal District Munsiff, Coimbatore.

Copy To : The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.T.R.Rajaraman, Advocate SR.No.65732

+1cc to Mr.K.Govi Gnesan, Advocate SR.No.65697

+1cc to Mr.V.Ramesh, Advocate SR.No.65421

S.A.No. 96 of 2008

ASK (CO)
GMY (07/01/2019)