

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.848 of 2016
and C.M.P.Nos.16615 & 16616 of 2016
and CMP No.13036 of 2017

Orders reserved on 13.06.2018	Orders pronounced on 13.07.2018
----------------------------------	------------------------------------

S.Rajeswari

... Appellant/Plaintiff

Vs.

1. Perumal

2. R.Kaliyappan

... Respondents/Defendant

PRAYER : Second Appeal filed under Section 100 of C.P.C against the judgment and decree passed in A.S.No.75 of 2014 dated 26.07.2016 on the file of the Sub Court at Namakkal in reversing the judgment and decree and decree in counter claim made in O.S.No.23 of 2010 on the file of the Principal District Munsif Court at Tiruchengode dated 08.06.2011.

For Appellant : Mr.V.R.Shanmuganathan
for Mr.Ma.P.Thangavel

For Respondents : Perumal - R1(P in P)
R.Kaliyappan - R2
[Parties-in-person]

J U D G M E N T

This Second Appeal has been filed against the judgment and decree passed in A.S.No.75 of 2014 dated 26.06.2016 on the file of the Sub Court at Namakkal in reversing the judgment and decree and decree in counter claim made in O.S.No.23 of 2010 on the file of the Principal District Munsif Court at Tiruchengode dated 08.06.2011.

2.The appellant is the plaintiff and the respondents are the defendants and counter claimants in O.S.No.23 of 2010 on the file of the Principal District Munsif Court, Tiruchengode. The appellant succeeded before the Trial Court but lost in the First

Appellate Court. The appellant filed the said suit originally for permanent injunction restraining the respondents from interfering with her peaceful possession and enjoyment of the suit property. The respondents, in the written statement, denied the title of the appellant. The appellant filed petition to amend the plaint to include the relief of declaration of her title.

2(a) According to the appellant, one Marappan son of Muthusamy Gounder bequeathed the suit property to the husband of the appellant by Will dated 07.11.2000. After the death of said Marappan and his wife Marayee, the appellant's husband became the owner of the suit property and took the possession of the same. The appellant's husband settled the property by deed of settlement dated 25.01.2005 on the appellant. The appellant rented out the suit property to one Devaraj and Elango and his enjoying the property. Apart from the appellant, nobody else has right and title over the suit property. The appellant is paying property tax and electricity charges for the suit property. On 19.10.2005, the appellant obtained plan approval for renovation work in the suit property. There is enmity between the respondents and appellant's husband. On 04.06.2002, the respondents filed O.S.No.66 of 2002 on the file of District Munsif cum Judicial Magistrate, Paramathi for permanent injunction against the husband of the appellant. The said suit was dismissed by judgment and decree dated 01.08.2003 and ended in favour of the appellant's husband. The respondents were illegally trying to evict the appellant from the suit property by threat and force. On 05.06.2007, the respondents, with the help of rowdy elements, tried to interfere with the appellant's possessing and enjoyment of the suit property. The appellant, with the help of general public prevented the same. If the respondents interfere with the suit property, the appellant would be put to irreparable loss and hardship. Based on the above averments, the appellant filed the suit for the reliefs stated above.

3. The respondents filed written statement denying all the averments made in the plaint and contended that the settlement deed executed by the appellant's husband dated 25.01.2005 is a fraudulent one and it is false. The appellant's husband has no right to settle the suit property on the appellant. The appellant has no legal right, possession and enjoyment of the suit property. The appellant's husband is a member of political party and using the political influence and due to money and muscle power, to grab the property from the respondents, have created property tax receipts, changed patta, electricity service connection and obtained electricity receipts. In the suit O.S.No.66 of 2002, the respondents did not claim any declaration and right over the suit property. For the property in Door No.5/143 and 5/144, the property tax is assessed in

favour of the first respondent for the year 2001-2002. The dismissal of the suit O.S.No.66 of 2002 would not be a resjudicata for the claim of respondents in the present suit.

3(a) The appellant, by fraudulent settlement deed and with the help of police have prevented the respondents from enjoying the property from the year 2005. The documents filed by the appellant is a fraudulent one. The suit property was purchased by one Muthusamy from Shanmuga Sundaram s/o Palaniappa Gounder by deed of sale dated 13.09.1989. The said Muthusamy purchased vacant land measuring 6 cents and he was enjoying the said land. He died leaving behind his wife Silambayee as his only legal heir. During the lifetime of Muthusamy, he and his wife Silambayee constructed four room in 529 sq.ft. and they were in possession and enjoyment of the same. The said four rooms were not completed in all aspects. The respondents, by deed of sale dated 06.02.1998, purchased 0.06 cents together with four rooms from Silambayee. From the date of sale, the respondents are in possession and enjoyment of the said property. The patta No.1303 or 133 for Survey No.42/5 B1 for 0.2.5 ares is issued to the first respondent and he was paying the property tax for the years 2001 to 2004. The suit O.S.No.66 of 2002 was dismissed as the date of hearing was not informed to the respondents. The respondents let out the property to one Pandian and Elango and went out of station for their vessel business. The appellant was collecting the rent from the tenants. Taking advantage of the absence of the respondents, the appellant's husband created fraudulent document and changed the patta in the name of the appellant. Subsequently, the property tax and electricity service connection were changed in the name of the appellant. The appellant and her husband, illegally and forcibly, evicted the tenants of the respondents and took possession of the suit property.

3(b) In the written statement, the respondents also filed counter claim for the following reliefs -

(i) The settlement deed dated 21.02.2005 and patta proceedings dated 01.05.2005 are not valid.

(ii) For a direction to the appellant to hand over the suit property and house within 30 days to the respondents.

(iii) To cancel the patta granted in favour of the appellant.

(iv) Direction to the Tahsildar to record patta, chitta and adangal in favour of the respondents.

- (v) To register a criminal case against the appellant
- (vi) To order compensation as per Section 35A of CPC till the appellant handover the suit property to the respondents.

4. The appellant filed reply statement and denied all the averments made by the respondents in the written statement and counter claim. She further contended that no cause of action has arisen in the counter claim. The respondents do not have valid counter claim and have not mentioned the correct provisions of law and have not paid the correct court fee. The respondents have to file a separate suit for their claim. Palaniappa Gounder, by deed of sale dated 10.07.1968 sold 10 cents on the western side to Marappa Gounder. The said Marappa Gounder was in possession and enjoyment of the suit property and constructed a thatched house in 2700 sq.ft. and bequeathed the same by will dated 07.11.2000 to the appellant's husband. After the death of Marappa Gounder and his wife, the appellant's husband took possession and settled the property on the appellant. After selling the property on 10.07.1968 to Marappa Gounder, Shanmuga Sundaram who is the grandson of Palaniappa Gounder did not have any right to sell the property of 6 cents from and out of 10 cents to Muthusamy in the year 1989. Muthusamy's wife did not have any right to sell 6 cents to the respondents by sale deed dated 06.02.1998. The respondents, only with a view to grab the property of the appellant, have created these documents. The respondents have no right to claim decree against the Tahsildar and Inspector of Police when they are not parties to the suit. The respondents are appearing in person, the second respondent has not cross examined the appellant and has not given any authorisation to the first respondent to conduct the case on his behalf. The appellant prayed for decree and dismissal of the counter claim.

5. Based on the above pleadings, the Trial Court framed necessary issues on 21.01.2008 and additional issued on 31.01.2011. At the time of trial, the learned Judge re-arrayed the issues. Before the Trial Court, appellant examined herself as PW1, her husband as PW2, one M.Palanisamy as PW3 and K.K.Palanivel as PW4. 12 documents were marked as Exs.A1 to A12 on the side of the appellant. The first respondent examined himself as DW1 and marked 11 documents as Exs.B1 to B11.

6. The learned Trial Judge considering the pleadings, oral and documentary evidence and arguments of the counsel for parties, decreed the suit as prayed for and dismissed the counter claim of the respondents. Two decrees were drafted; one decreeing the suit and another for dismissal of the counter claim.

7. Against the said judgment and decree dated 08.06.2011 made in O.S.No.23 of 2010, the respondents filed A.S.No.75 of 2014 before Sub Court, Namakkal. The learned First Appellate Judge framed necessary points for consideration. The learned First Appellate Judge, considering the materials on record, judgment of the Trial Court as well as the written arguments of the learned counsel for the appellant and respondents, allowed the appeal dismissing the suit filed by the appellant and decreeing the counter claim of the respondents.

8. Against the said judgment and decree dated 26.06.2016 made in A.S.No.75 of 2014, the appellant has filed the present Second Appeal.

9. At the time of admission, the following substantial questions of law were framed -

(i) Where the respondents have filed counter claim seeking for a relief of declaration of title, recovery of possession and mandatory injunction and other various consequential reliefs for same suit property and the same was dismissed by the separate decree and the same was not at all challenged by separate appeal, whether they are barred from claiming any relief in the First Appeal by virtue of principles of res judicata ?

(ii) When under Ex.A1 Palaniyappa Gounder had sold an extent of 10 cents of land in the year of 1968, which ultimately vested in favour of the plaintiff to an extent of 2700 sq.ft., whether his grandson P.Shanmugasundaram, can sell the same property in the year 1989 under Ex.B1 in favour of defendants' vendors' husband namely Muthusamy, without any title and the same is barred under the principles of 'Nemo dat quod non habet' ?

(iii) Whether the Appellate Court failed to formulate the points for determination as mandated under Section 41 Rule 31 of CPC. ?

10. The learned counsel for the appellant contended that -

(i) The learned First Appellate Judge erred in dismissing the suit as well as decreeing the counter claim. The learned Trial Judge, passed two decrees namely decreeing the suit and another one dismissing the counter claim. In such circumstances, the respondents ought to have filed two appeals. The single appeal filed by the respondents is not maintainable and is liable to be dismissed.

(ii) The respondents did not file any appeal against the dismissal of their counter claim and same has become final. The

said decree operates as resjudicata against the claim of the appellant.

(iii) Marappa Gounder purchased 10 cents from Palaniyappa Gounder, marked as Ex.A1. After such sale, P.Shanmuga Sundaram, grandson of Marappa Gounder has no right to sell 6 cents out of 10 cents to Muthusamy by deed of sale dated 13.09.1989 marked as Ex.B1. The said Muthusamy did not acquire any title over 6 cents alleged to have purchsaed by him and consequently sale by his wife Silambayee does not confer nay title on the respondents.

(iv) The first respondent admitted in the cross examination that the description of the property in Ex.A1 is correct. The alleged purchase by Muthusamy and subsequently by respondents from Silambayee wife of Muthusamy are subsequent to purchase by Marappa Gounder. Marappa Gounder, by Ex.A2 will dated 07.11.2000 had bequeathed the property with specific boundaries. The respondents have no right to challenge the said will. The appellant has proved the said will by examining the attesting witnesses PW3 & 4.

(v) Exs.B6 to B8 and B11 are subsequent to the suit. The respondents have not proved the alleged sale deed Ex.B9 dated 13.03.1997 by examining the parties to the said document.

10(a) The learned counsel for the appellant, in support of his contention, relied on the following judgments :

- (i) 2015 (3) SCC 624 [Sri Gangai Vinayagar Temple & Anr. v. Meenakshi Ammal & others.

"26. On the other hand, the verdict of Full Bench of the Allahabad High Court in Zaharia vs. Debia ILR (1911) 33 All 51 and decisions of the Calcutta High Court in Isup Ali vs. Gour Chandra Deb 37 Cal LJ 184: AIR 1923 Cal 496 and of the Patna High Court in Mrs. Getrude Oastes vs. Mrs Millicent D Silva ILR 12 Pat 139 : AIR 1933 Pat 78 are of the contrary persuasion. These decisions largely proceeded on the predication that the phraseology suit is not limited to the Court of First Instance or Trial Court but encompasses within its domain proceedings before the Appellate Courts; that non-applicability of res judicata may lead to inconsistent decrees and conflicting decrees, not only due to multiplicity of decrees but also due to multiplicity of the parties, and thereby creating confusion as to which decree has to be given effect to in execution; that a decree is valid unless it is a nullity and the same cannot be overruled or interfered with in appellate proceedings initiated against another decree; that the issue of res judicata has to be decided with reference to the decrees, which are appealable

under Section 96 of the CPC and not with reference to the judgment (which has been defined differently), but with respect to decrees in the CPC; that non-confirmation of a decree in appellate proceedings has no consequence as far as it reaching finality upon elapsing of the limitation period is concerned in view of the Explanation II of Section 11, that provides that the competence of a Court shall be determined irrespective of any provisions as to right of appeal from the decision of such Court; and that Section 11 of the CPC is not exhaustive of the doctrine of res judicata, which springs up from the general principles of law and public policy.

27. Procedural norms, technicalities and processal law evolve after years of empirical experience, and to ignore them or give them short shrift inevitably defeats justice. Where a common judgment has been delivered in cases in which consolidation orders have specifically been passed, we think it irresistible that the filing of a single appeal leads to the entire dispute becoming sub judice once again. Consolidation orders are passed by virtue of the bestowal of inherent powers on the Courts by Section 151 of the CPC, as clarified by this Court in *Chitivalasa Jute Mills vs. Jaypee Rewa Cement* (2004) 3 SCC 85. In the instance of suits in which common Issues have been framed and a common Trial has been conducted, the losing party must file appeals in respect of all adverse decrees founded even on partially adverse or contrary speaking judgments. While so opining we do not intend to whittle down the principle that appeals are not expected to be filed against every inconvenient or disagreeable or unpropitious or unfavourable finding or observation contained in a judgment, but that this can be done by way of cross-objections if the occasion arises. The decree not assailed thereupon metamorphoses into the character of a former suit. If this is not to be so viewed, it would be possible to set at naught a decree passed in Suit A by only challenging the decree in Suit B. Law considers it an anathema to allow a party to achieve a result indirectly when it has deliberately or negligently failed to directly initiate proceedings towards this purpose. Laws of procedure have picturesquely been referred to as handmaidens to justice, but this does not mean that they can be wantonly ignored because, if so done, a miscarriage of justice inevitably and

inexorably ensues. Statutory law and processal law are two sides of the judicial drachma, each being the obverse of the other. In the case in hand, had the Tenant diligently filed an appeal against the decree at least in respect of O.S. 5/78, the legal conundrum that has manifested itself and exhausted so much judicial time, would not have arisen at all."

(ii) 2015 SCC online Kerala 3799 [Girija & others v. Rajan & another]

"12. Upshot of the discussion is that the counter claim raised in a suit shall be treated as a cross suit as per statutory mandate. It has all the trappings of a regular suit, like paying the requisite court fee, filing a written statement, raising the relevant issues and deciding the issues on evidence. It is also clear that the suit and the counter claim shall be disposed of by a judgment, but a decree shall be drawn up in the counter claim too, although it may be a composite one with the decree in the suit. Well settled is the proposition of law that the rule of estoppel in the form of res judicata will be attracted at a subsequent stage in the same suit, if findings on some of the issues are allowed to attain finality. The ratio in the decisions in A.Z.Mohammed Farooq's and Philip's cases (supra) only indicate the forum where an appeal has to be filed considering the suit claim and counter claim as a unified proceedings. The said decisions do not lay down a proposition that no separate appeal need be filed, if a party is prejudicially affected by the adjudication in the suit as well as in the counter claim. The question of res judicata was not at all adverted to in those decisions. The ratio in the binding precedents in Janardhanan Pillai and Premier Tyres Ltd. and other cases clearly lay down that there should be separate appeals in cross suits; otherwise the appeal filed against one decree allowing the other decree, the one passed simultaneously with the challenged decree, to become final, then the appeal will be barred by res judicata. I am of the definite view that the same principle is applicable in the case of a decree passed in a counter claim also."

(iii) 1997 (1) MLJ 529 [Vediammal and others v. M.Kandasamy and others]

"23. In Uthandarama Pillai v. Arumugam Pillai , a Division Bench of this Court considered as to what is meant by counter-claim, and when the same can be entertained. Their Lordships said thus:

A counter-claim is one based on an independent cause of action which distinguishes it from a set-off generally arises as a part of the transaction giving rise to the cause of action for the suit. The essence of counter-claim is that the defendant should have a cause of action against the plaintiff and should be in the nature of a cross-action against the plaintiff and not merely a defence to the plaintiff's claim.

25..... I have already opined that the counter-claim is a suit for all intents and purposes. And the order of the learned Munsif finally disposes of the suit while he held that the counter claim was not maintainable. It is immaterial that no formal decree was drawn up in the instant case also.

27. From the above decisions, the following principles emerge:

A counter-claim is really a suit, though the same is taken in the written statement. Just as a suit is filed by the plaintiff, defendant seeks a relief against the plaintiff on a cause of action which he has against the plaintiff. It is an independent cause of action which could also be agitated in a separate suit. It is to avoid multiplicity of proceedings, defendant is given liberty to file a counter-claim and get adjudication. Issues are suggested in both the original claim as well as in the counter-claim, and both are disposed of by a common judgment (Order 8, Rule 6-A(2), C.P.C. says that there can be a final judgment in the same suit, both on the original claim and counter-claim). In common parlance, 'common judgment' means, 'decision arrived simultaneously in more than one suit tried together.' In view of the legal position under Order 8, Rule 6-A, C.P.C, a counter-claim or set-off can be made in many forms in a suit. But they need not be given separate numbers. The counter-claim is also said to be a weapon on evidence and enables the

defendant to enforce the claim against the plaintiff as effectively as an independent action. As stated earlier, it is an enabling provision which gives a right to the defendant that instead of filing an independent action, he can seek that relief in a suit filed by plaintiff against him. Originally, there was a doubt whether the counter-claim filed in a suit for recovery of money and whether there should be nexus to the cause of action on which the suit is instituted. The legal position is now settled in view of the judgment reported in Shri Jag Mohan Chawla v. Dera Radha Swami Satsang J.T. (1996) 5 S.C. 428, wherein their Lordships have held thus:

...The counter-claim could be treated as a cross-suit and it could be decided in the same suit without relegating the parties to a fresh suit. It is true that in money suits, decree must be conformable to Order 20, Rule 18, C.P.C. but the object of the amendments introduced by Rules 6-A to 6-G are conferment of a statutory right to the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action.....

28. This view of mine is supported by the decision reported in Shivkali Bai v. Meera Devi 1991 M.P.L.J. 102, wherein a learned Judge of that High Court held thus:

Counter-claim being in the nature of cross-suit, is not affected by the dismissal of plaintiff's suit. The counter claim has to be disposed of on merits. Therefore, the dismissal of plaintiff's suit on the ground of non-joinder of necessary party would not affect the counter claim of the defendant. The only difference is, instead of filing two suits having two registered numbers, relief is sought for in the same suit by both plaintiff and defendant. The inference is irresistible therefore, that a counter-claim will be a suit. It must have a cause of action and that cause of action can be independently enforced. Necessary court-fee must be paid on the relief sought for.

29. If the counter-claim is treated as a suit, and the same is disposed of by a common judgment, and if one of the judgments is not appealed against, the principle of resjudicata has to be applied....."

(iv) 1993 Suppl. (2) SCC 146 [Premier Tyres Limited v. Kerala State Road Transport Corporation]

"4. Although none of these decisions were concerned with a situation where no appeal was filed against the decision in connected suit but it appears that where an appeal arising out of connected suits is dismissed on merits the other cannot be heard, and has to be dismissed. The question is what happens where no appeal is filed, as in this case from the decree in connected suit. Effect of non filing of appeal against a judgment or decree is that it become final. This finality can be taken away only in accordance with law. Same consequences follows when a judgment or decree in a connected suit is not appealed from.

.....

6. Thus the finality of finding recorded in the connected suit, due to non filing appeal, precluded the Court from proceeding with appeal in other suit. In any view of the matter the order of the High Court is not liable to interference."

11. The respondents are appearing in person. At the time of hearing CMP No.16616 of 2016 filed under Order XXXIX Rule 1 & 2 CPC for interim injunction restraining the respondents from interfering with appellant's peaceful possession and enjoyment of the suit property in O.S.No.23 of 2010, the learned counsel for the appellant contended that the counter claim filed by the respondents was dismissed and the respondents did not prefer any independent appeal. This court found that the respondents were unable to understand the legal implications. The respondents submitted that they are being assisted by an undergraduate and not by a lawyer or person with legal background. This court observed that it is for the respondents to avail the services of a lawyer and if he is unable to do so, this court is inclined to appoint a counsel through High Court Legal Services Authority. The respondents did not either engage a lawyer or avail the services of a lawyer through High Court Legal Services Authority. At the time of final hearing of the Second Appeal, the respondents appeared in person. The first respondent alone made submissions. The second respondent appeared in person and

submitted that he is adopting the submission of the first respondent.

12. The first respondent contended that 6 cents including the suit property was purchased by one Muthusamy by deed of sale dated 13.09.1989. After purchase, the said Muthusamy and his wife Silambayee constructed 4 rooms in 599 sq.ft. which is the suit property and they were in possession and enjoyment of the same. By the deed of sale dated 06.02.1988, the respondents purchased 6 cents together with superstructure and they were in possession and enjoyment of the same. The patta was issued in the name of the respondents and they were paying the property tax for the years 2001 to 2004. The suit O.S.No.66 of 2002 filed by the respondents against the husband of the appellant was dismissed as the date of hearing was not informed to the respondents. In the said suit, the respondents did not seek declaration and dismissal of the suit will not be a resjudica for the claim of the respondents. The appellant's husband fraudulently created the will dated 07.11.2000 and it is a fabricated document. In view of the same, the appellant did not acquire any right or title over the suit property based on the settlement deed executed by the appellant's husband and using political power, obtained patta and was paying property tax. By using force, they evicted the tenants of the respondents and are illegally occupying the suit property. In such circumstances, the respondents made a counter claim in the suit filed by the appellant. The Trial Judge, on erroneous grounds, decreed the suit and dismissed the counter claim. The respondents filed first appeal A.S.No.75 of 2014 and the learned First Appellate Judge, properly appreciating the materials on record, allowed the appeal. The contention of the appellants that respondents ought to have filed two appeals is without merits. The respondents can substantiate their counter claim as well as pray for dismissal of the suit in one single appeal itself.

13. The respondents contended that their written arguments filed in the Lower Court may be treated as part and parcel of their contention in this Second Appeal. In the written arguments filed before the First Appellate Court, the respondents denied the title of the appellant and furnished details of criminal cases pending against the husband of the appellant.

14. Heard the learned counsel appearing for the appellant as well as the first respondent who appeared as party-in-person and perused the materials available on record.

15. Substantial questions of law 1 to 3 :

15(a) The appellant filed suit for declaration of title and for injunction claiming ownership of the suit property. The

respondents, apart from denying the title of the appellant, claimed ownership. According to the respondents, they purchased the property from rightful owners and were in possession and enjoyment of the suit property. The appellant's husband fabricated and forged documents and based on the forged document, the appellant is claiming ownership. The respondents made counter claim against the appellant. The respondents paid court fee on their counter claim.

15(b) The appellant and respondents let in oral and documentary evidence. The learned Trial Judge, considering the pleadings, oral and documentary evidence, decreed the suit and dismissed the counter claim. Two separate decrees were drafted for decreeing the suit and dismissing the counter claim. The respondents filed only one first appeal A.S.No.75 of 2014 challenging the decree passed in favour of the appellant, namely decreeing the suit. No appeal was filed challenging the dismissal of the counter claim. It is well settled that the counter claim itself is in the nature of suit. It is well settled that counter claim has to be considered as separate suit and courts have to pass a judgment and decree in respect of counter claim. Even if the suit itself is dismissed for any reason whatsoever, the counter claim can be allowed on merits and a separate decree is to be drafted. When common judgment is delivered in respect of two or more suits, appeals are to be filed in respect of all the suits which are decided against him. If a party fails to file appeal in respect of one of the suits, the said judgment will be resjudicata in respect of the judgment appealed. In the present case, the suit filed by the appellant was decreed and counter claim filed by the respondents was dismissed. The learned Trial Judge, considering the averments in the counter claim, the evidence let in and arguments of the respondents, dismissed the counter claim of the respondents by giving cogent and valid reasons. The respondents did not file any appeal challenging the dismissal of the counter claim. The First Appellate Judge, failed to consider the failure on the part of the respondents to challenge the dismissal of the counter claim, erroneously set aside the dismissal of the counter claim and allowed the counter claim. The First Appellate Judge failed to take note that the dismissal of counter claim and the same not being challenged, the appeal filed by the respondent is hit by principles of resjudicata. The dismissal of the counter claim has become final and the reasons given by the First Appellate Judge for allowing the counter claim is not valid and legal.

15(c) Before the Trial Judge, the appellant examined the attesting witness to the Will dated 07.11.2000 executed by Marappan in favour of the appellant's husband and proved the genuineness of the Will. The learned Trial Judge, considering

the evidence of attesting witness, held that the Will is genuine and appellant's husband became absolute owner after the death of Marappa Gounder and his wife Silambayee. The first respondent admitted that Marappan purchased 10 cents by Ex.A1 and the property mentioned therein is correct. In view of such admission, the learned Trial Judge held rightly that purchase of 6 cents by Muthusamy subsequently, from and out of 10 cents from one Shanmuga Sundaram, the grandson of Palanisamy Gounder is not valid. The respondents have not proved that Shanmuga Sundaram is the only legal heir of Palanisamy Gounder or Silambayee is the only legal heir of Muthusamy. The appellant has proved by producing and marking building plan permission that she renovated the suit property and obtained electricity service connection in her name and is paying electricity charges and property tax. Patta has been issued to her. The learned First Appellate Judge, without properly appreciating the above documents, rejected the same. The respondents have not examined their vendor Silambayee, who according to the respondent, was alive at the time of trial. The respondents have also not examined the persons who according to them are their tenants to prove that the appellant's husband illegally evicted them and occupied the suit property. The respondents have failed to file any appeal challenging the dismissal of counter claim. In view of the same, the appeal filed only against decreeing the suit is hit by principles of resjudicata and is not maintainable.

For the above reasons, the substantial questions of law are answered in favour of the appellant.

16. In the result, this Second Appeal is allowed setting aside the judgment and decree dated 26.06.2016 passed in A.S.No.75 of 2014 of 2015 and the judgment and decree dated 08.06.2011 made in O.S.No.23 of 2010 decreeing the suit and dismissing the counter claim is restored. No costs. Consequently, connected Miscellaneous Petitions are closed.

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

True Copy

Sub-Assistant Registrar

rgr
To

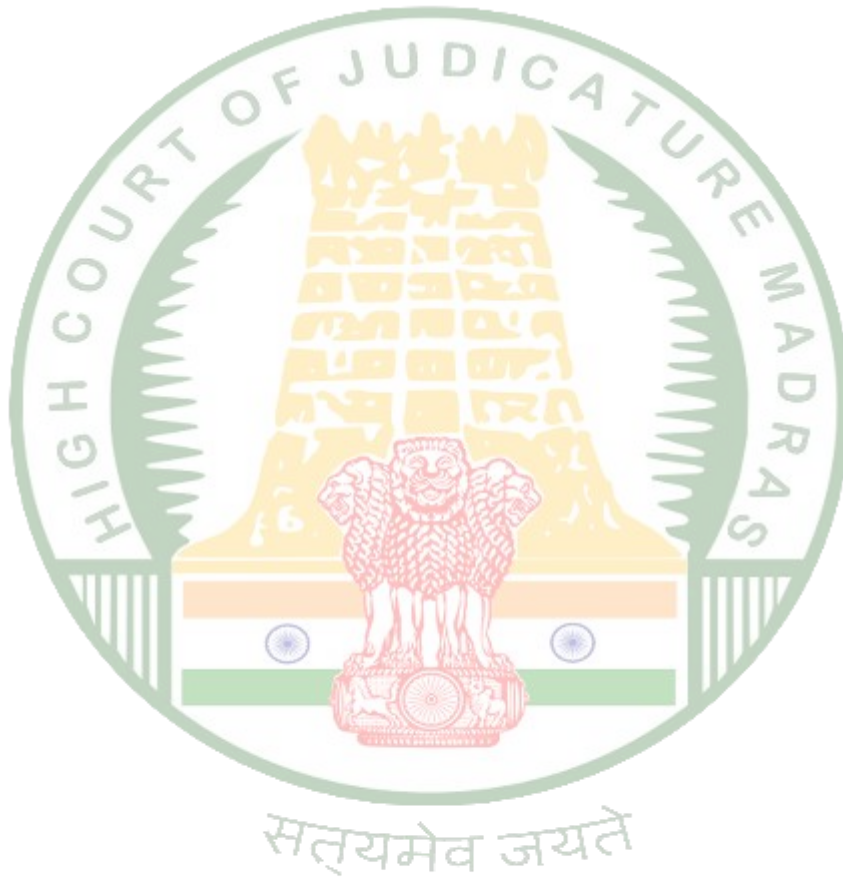
1.The Sub Judge,
Namakkal.

2.The Principal District Munsif
Tiruchengode.

+2 Ccs to Mr.R. Perumal,Party in person sr 46289.
+1 CC to Mr.Ma.P. Thangavel, advocate sr 46530

S.A.No.848 of 2016

NRI (CO)
SP(30/08/2018)



WEB COPY