

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.06.2018

Pronounced on : 28.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.564 of 2001

1. Veerappa Gounder (deceased)

2.Gurusamy

...Appellants/defendants

1.Nachimuthu

2.Lakshmi

3.Pounayal

4.Indirani

5.Ramakrishna

6. Selvaraj

...Respondents/plaintiffs

(Respondents 2 to 6 brought on record as LRs of the deceased first appellant vide order of this court dated 29.11.2017 made in CMP.No.18348/2017)

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure to set aside the Judgment and Decree dated 25.06.1998 made in A.S.No.318 of 1997 on the file of the Principal District Judge, Erode reversing the Judgment and Decree dated 01.08.1997 made in O.S.No.634 of 1996 on the file of the Sub-Court, Bhavani.

For Appellants : Ms.Zeenath Begum

For Respondents : Set exparte

J U D G M E N T

This second appeal has been filed by the defendants against the Judgment and decree passed by the Principal District Judge, Erode in A.S.No.318 of 1997 dated 25.06.1998 reversing the Judgment and Decree passed by the Sub-Judge, Bhavani, in O.S.No.634 of 1996 dated 01.08.1997.

2. The first respondent herein has filed a suit in O.S.No.634 of 1996 on the file of the Sub-Judge, Bhavani, to restrain the appellants herein from interfering with his

peaceful possession and enjoyment of the properties situated in R.S.No.115/3 of Andhiyur Village, Bhavani Taluk measuring about 1.46.5 hectares (old SR.No.1331/3 measuring about 3.56 acres) and in R.S.No.109/3 of the same village measuring about 1.90.5 hectares (old SR.No.1334/2) in which 2.54 acres on the southern side. The appellants herein have filed a suit in O.S.No.589 of 1996 on the file of the Sub-Judge, Bhavani, to restrain the first respondent herein from interfering with their peaceful possession and enjoyment in respect of the properties situated in R.S.No.115/3 of Andhiyur village measuring about 2.45 acres and to direct the first respondent herein to lay a cart track by way of mandatory injunction.

3. The learned Sub-Judge, Bhavani, has tried both the suits jointly and disposed of them by a common judgment dated 01.08.1997. The learned Sub-Judge, Bhavani, has decreed the suit in O.S.No.589 of 1996 partly and granted permanent injunction, however, he dismissed the said suit in respect of the mandatory injunction. In O.S.No.634 of 1996, the learned Sub-Judge, Bhavani, has granted a decree for permanent injunction in respect of the property situated in R.S.No.109/3 and in so far as R.S.No.115/3 is concerned, permanent injunction was granted only for the extent of 1.11 acres. In respect of remaining properties, he has dismissed the said suit.

4. Feeling aggrieved by the aforesaid Judgment and decree passed by the learned Sub-Judge, Bhavani, the first respondent herein has filed an appeal in A.S.No.317 of 1997 on the file of the Principal District Judge, Erode, to set aside the Judgment and decree in respect of the relief granted in favour of the appellants herein in O.S.No.589 of 1996. He also filed another appeal in A.S.No.318 of 1997 before the same court in respect of the relief denied for him in O.S.No.634 of 1996. The appellants herein have filed cross objections in both the appeals.

5. The learned Principal District Judge, Erode, by the common Judgment dated 25.06.1998, has allowed the appeal in A.S.No.317 of 1997 and dismissed the suit in O.S.No.589 of 1996. He also allowed the appeal in A.S.No.318 of 1997 and decreed the suit in O.S.No.634 of 1996 in toto. The appellants herein have filed the present second appeal against the Judgment and Decree passed in A.S.No.318 of 1997 alone.

6. At the time of admitting this second appeal, the following substantial question of law was formulated by this court:

"When the plaintiff admits that the extent mentioned in the sale deed in his favour is erroneous, whether a suit for bare permanent

injunction is maintainable in the absence of the plaintiff seeking a rectification of the sale deed or in the alternative of the plaintiff being directed a relief to declare his title?"

7. The respondents remained exparte. After hearing the arguments of Ms.Zeenath Begum, learned counsel for the appellants and perusing the records, Judgment is being passed in this second appeal.

8. The learned Principal District Judge, Erode, by his common Judgment dated 25.06.1998 has found that the appellants herein have sold the entire extent of land i.e., 3.56 acres which is situated in R.S.No.115/3 in favour of the first respondent herein through the registered sale deed dated 13.09.1978 (Ex.B1) and after executing the said sale deed, the appellants herein are not having any land in R.S.No.115/3. He also found that the first respondent was in possession and enjoyment of the entire extent of the property situated in R.S.No.115/3 measuring about 3.56 acres. Accordingly, he allowed both the appeals and dismissed the suit in O.S.No.589 of 1996, which was filed by the appellants herein and decreed the suit fully in O.S.No.634 of 1996 which was filed by the first respondent herein.

9. The appellants herein have filed the present second appeal against the Judgment and Decree passed by the Principal District Judge, Erode, in A.S.No.318 of 1997, alone, but they have not filed any second appeal against the Judgment and decree passed in the connected appeal i.e., A.S.No.317 of 1997. So, the Judgment and decree passed in A.S.No.317 of 1997 on the file of the Principal District Judge, Erode, has become final. Admittedly, the said appeal in A.S.No.317 of 1997 was filed against the Judgment and Decree passed in O.S.No.589 of 1996 which was filed by the appellants herein. In the said suit, the appellants herein have claimed right over the property situated in R.S.No.115/3 measuring about 2.45 acres. According to them, as per the sale deed dated 23.06.1968, the first appellant herein has purchased 3.56 acres in R.S.No.115/3 and subsequently, they have sold 1.11 acres only through the sale deed dated 13.09.1978 to the plaintiff and hence, the remaining extent i.e., 2.45 acres not sold to the first respondent and the same is in their possession only. Though the trial court has accepted the said contention and granted permanent injunction in respect of 2.45 acres situated in R.S.No.115/3, the first appellate court has reversed the findings of the trial court and dismissed the said suit as they have sold the entire extent in favour of the first respondent under the sale deed dated 13.09.1978. Without challenging the said decree, they cannot challenge the decree which was granted in favour of the first

respondent in A.S.No.318 of 1997.

10. At this juncture, it would be relevant to refer the decision in Premier Tyres Limited Vs. Kerala State Road Transport Corporation AIR 1993 SC 1202 wherein the Hon'ble Supreme Court has held in paragraph No.4 as follows:

".....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."

11. From the aforesaid decision, it is clear that where an appeal arising out of connected suit is dismissed on merits the other cannot be heard and has to be dismissed. The finality of the findings recorded in the connected suit, due to non-filing of the appeal precludes the court from proceeding with appeal in other suit. The same principle will apply for non-filing of second appeal against the Judgment and Decree passed in the connected First Appeal in A.S.No.317 of 1997. Therefore, this second appeal has to be dismissed. Accordingly, the substantial question of law is answered against the appellants.

12. In the result, this second appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District Judge,
Erode.

2. The Sub-Court,
Bhavani.

S.A.No.564 of 2001

KS (CO)
GSP(16/08/2018)