



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Civil Appellate Jurisdiction)

Friday, the Twenty Seventh day of April Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice M.SUNDAR

CMP (MD) No.2142 of 2018

IN

SA (MD) No.316 of 2011

CHANDRASEKHARAN NAIR

... PETITIONER/7TH RESPONDENT

Vs

1 DASAYYAN NADAR,
2 RAJAM,
3 RAJESH,

...RESPONDENTS 1 TO 3/
APPELLANTS 1 TO 3

4 RAGHAVAN NAIR @ REGHU (DIED)
5 KRISHNANKUTTY
6 LEKSHMANAN NADAR
7 SELVAMONI NADAR,
8 THERASAMMA
9 RAJAMONI NADAR

...RESPONDENTS 4-9/
RESPONDENTS 1-6

10 SELVARAJ
11 RASEENA
12 EASWARADHAS (DIED)
13 SWAMYDHAS
14 SUNNARAN
15 KUMAR
16 SARASWATHI
17 SUGANTHI
18 SELVIN
19 RAJAN,

...RESPONDENTS 10-19/
RESPONDENTS 8-17

20 KANAKAM
21 E. UMA,
22 E. ABIN
23 E. REMA
24 E. ANISH

...RESPONDENTS 20-24/PROPOSED
RESPONDENTS 18-22 (L.RS OF R10)
PENDING IN MP (MD) NOS.1 TO 3/2013

25 KARUNAGARAN NAIR
26 SREERANIAN
27 SUKESHAN



28 MUKUNTHA KUMAR
29 SUJATHA KUMAR

...RESPONDENTS 25-29/PROPOSED
RESPONDENTS 23-27 (L.RS OF R1)

PENDING IN CMP(MD)NOS.183 TO 185/2016
(RESPONDENTS 17 TO 19 ARE REMAINED EXPARTE BEFORE THE LOWER
APPELLATE COURT AND NOTICE TO THEM IS GIVEN UP)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to grant an order of Interim Injunction restraining the respondents 1 to 3 herein, their men or agents or anyone acting upon them, from in any manner altering the physical features or trespassing into the suit property, which is subject matter of the suit in O.S.No.412 of 1998 on the file of II Additional District Munsif Court, Kuzhithurai.

SCHEDULE OF PROPERTY

Kanyakumari District, Vilavancode Taluk, Muthumayammal Village, Kulappuram, Athencode, Old Survey No.3819, 3538, New Survey No.412/8, 5 acres 28 cents, Plot of 22 cents bounded on the South by southern one half, by the river on the East, on the West by Ankamari and Elankathara and on the North by the plot of Ramasamy Nadar in the plaint 'A' schedule property supra. Kavum Parakkadavum Purayidom land and all things apportioned thereto.

Boundaries :

East to River
South to Thalimuttam and Chemmonvila
West to Ankamari Elankathara
Vazhavilai Thokkavilagam

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.J.ANANDHAVALLI, Advocate for the petitioner and of M/S.K.N.THAMPI, Advocate for R1 to R3, the court made the following order:-

Seventh respondent in the main second appeal has taken out the instant petition. There are three appellants in the main second appeal and they have been arrayed as respondents 1 to 3 herein.

2.I have heard Ms.J.Anandhavalli, learned counsel on record for petitioner and Mr.K.N.Thampi, learned counsel for respondents 1 to 3.

3.Before I proceed with discussion, it is necessary to extract the prayer in C.M.P(MD)No.8641 of 2017, which was also taken out by the same seventh respondent and appellants were respondents 1 to 3 therein also. The prayer reads as follows:



"For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble court may be pleased to grant an order of injunction restraining the respondents 1 to 3 herein from altering the physical features the suit property and also from cutting, removing the trees from the suit property which is subject matter of suit in O.S.No.412 of 1998 on the file of 2nd Additional District Munsif Court, Kuzhithurai pending disposal of the above Second appeal and thus render justice".

4.It becomes necessary to extract the prayer in the instant petition. Prayer in the instant reads as follows:

"For the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to grant an order of INTERIM INJUNCTION restraining the respondents 1 to 3 herein, their men or agents or anyone acting upon them, from in any manner altering the physical features or trespassing into the suit property, which is subject matter of the suit in O.S.No.412 of 1998 on the file of II Additional District Munsif Court, Kuzhithurai, pending disposal of the above Second appeal and thus render justice".

5.The main second appeal arises out of a preliminary decree in a partition suit.

6.The prayers in the two civil miscellaneous petitions extracted supra, i.e., C.M.P(MD)No.8641 of 2017 and the instant civil miscellaneous petition would reveal that the prayers are virtually the same. C.M.P(MD)No.8641 of 2017 was filed on 18.08.2017 and an order of status quo was granted on 22.11.2017, which reads as follows:

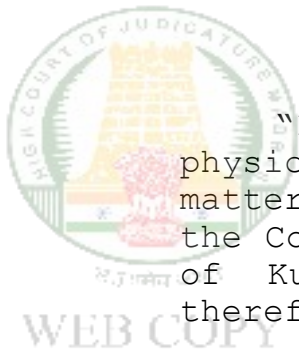
"Counter filed by the respondent.

Heard both sides.

In view of the reasons stated and undertaking given by the petitioner, status quo as on date shall be maintained in respect of property by both parties till 06.12.2017".

[Underlining made by me to supply emphasis and highlight].

7.Before me today, both the learned counsel very fairly agree that the reference to 'petitioner' in the aforesaid order is a secretarial error and that it should read as 'respondent'. Furthermore, both the learned counsel also very fairly agree that the undertaking referred to in the aforesaid order, dated 22.11.2017 is the undertaking given in the common counter affidavit filed by respondents 1 to 3, dated 18.11.2017 and more particularly, paragraph No.8 of the said counter affidavit, which reads as follows:



"I respectfully undertake that we will not alter the physical features of the property, which is the subject-matter of the suit in O.S.No.412 of 1998 on the file of the Court of the learned Second Additional District Munsif of Kuzhithurai, or cut and remove any living tree therefrom pending disposal of the above second appeal".

8.Further to be noted, the aforesaid petition, i.e., C.M.P(MD) No.8641 of 2017 was allowed/disposed of making the order of status quo, dated 22.11.2017, absolute, vide order, dated 11.04.2018. Paragraphs 6 and 7 of the said order are relevant and therefore, I extract the same. Paragraphs 6 and 7 of the order, dated 22.11.2017, reads as follows:

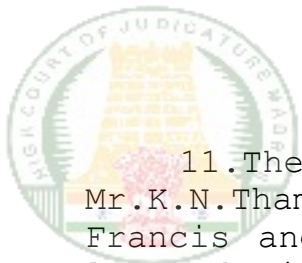
"6.While Mr.K.N.Thampi, learned counsel asserts that the averment contained in paragraph No.8 is being adhered to in letter and spirit, Ms.J.R.Annie Abinaya, learned counsel, disputes the same and submits that there is breach of the same.

7.It is open to the parties to take out suitable applications in this regard. So reserving the rights, I deem it appropriate to make the order of status quo absolute, as this second appeal arises out of a preliminary decree in a partition suit. Accordingly, the order of status quo granted on 22.11.2017, is made absolute and this petition is allowed/disposed of, on above terms".

9.It is seen that the instant petition was filed on 28.02.2018. Learned counsel for petitioner submits that it became necessary to file the instant petition owing to breach of the aforesaid undertaking on the part of respondents 1 to 3. Paragraphs 6 and 7 of the order, dated 11.04.2018 in C.M.P(MD)No.8641 of 2017 [extracted supra] gives a straight forward answer to the same.

10.However, Mr.K.N.Thampi, learned counsel on record for respondents 1 to 3 submits that this petition deserves to be dismissed as being hit by res judicata. In support of his submission, he pressed into service two judgments. One is a judgment of the Hon'ble Supreme Court in AIR 1987 SC 1145 [Prahlaad Singh v. Col.Sukhdev Singh] This Prahlaad Singh's judgment in turn has followed another judgment of the Hon'ble Supreme Court in AIR 1960 SC 941 [Satyadhyam Ghosal v. Deorajin Debi]. The relevant paragraph in Debi's case has been extracted in Prahlaad Singh's case and the same reads as follows:

"The principle of res judicata applies also as between two stages in the same litigation to this extent that a Court, whether the trial Court or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings".



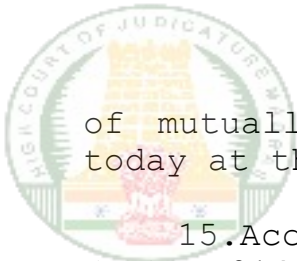
11.The second judgment pressed into service by learned counsel Mr.K.N.Thampi, is a judgment reported in 1994(2) MLJ 191 [Mariya Francis and another v. Peter and others], which was rendered by a learned Single Judge of this Court, following Prahlad Singh's case principle and that is articulated in paragraph No.4 of the said judgment, which reads as follows:

"4.Learned counsel for the revision petitioner mainly urged that this application for amendment of plaint is hit by the principles of res judicata since the point involved was directly and substantially in dispute in the earlier I.A.No.1150 of 1987 which was dismissed. Sec.11, C.P.C. no doubt refers only to matters directly and substantially in issues in two successive suits between the same parties and in respect of the same subject matter. By virtue of Explanation VII to that section the provisions therein are made applicable to execution proceeding also. There is no express terms in the section to invoke the doctrine in case of applications also. Except that Sec.141, C.P.C. reads that the procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. In any event, Sec.11, C.P.C. is not exhaustive of the doctrine of res judicata. The principles underlying the rule of res judicata may be invoked in a proper case without recourse to the provisions of this section. So a previous order in a proceeding finally adjudicating a matter cannot be canvassed by the parties thereto in subsequent stages of the same proceeding. The Supreme Court has held in Arjun Singh v. Mohindra Kumar, A.I.R. 1964 S.C. 993 : 1964 S.C.D. 715 : (1964)2 An.L.T.341, that even if the rule of res judicata does not apply, if applications are made for relief on the same basis after the same has once been disposed of, the court would be justified in rejecting the same as an abuse of process of court. Prahalat Singh v. Sukhdev Singh, A.I.R. 1987 S.C. 1145, lays down that the decision given by a court at an earlier stage of a case is binding at a later stage is well settled though interlocutory judgments are open for adjudication by an appellate authority in an appeal against the final judgment".

12.There can be no dispute about the aforesaid principles.

13.In the light of the aforesaid principles, it would suffice to close this petition as unnecessary, subject to whatever has been alluded to supra with regard to the proceedings in C.M.P(MD)No.8641 of 2017.

14.It is noted, what has been alluded to supra with regard to proceedings and orders in C.M.P(MD)No.8641 of 2017, was on the basis



of mutually agreed submissions made by both the learned counsel today at the bar.

15. Accordingly, this civil miscellaneous petition, i.e., C.M.P (MD) No. 2142 of 2018 is closed/disposed of.

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sd/-
27/04/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SUBORDINATE JUDGE, KUZHITHURAI.

2 THE II ADDITIONAL DISTRICT MUNSIF,
KUZHITHURAI.

+1. C.C. to M/S. J. ANANDHAVALLI Advocate SR.No.7695

ORDER IN
CMP (MD) No. 2142 of 2018
IN
SA (MD) No. 316 of 2011
Date : 27/04/2018

MS/PN/ASVM/07.05.2018/6P.4C