



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 07.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

S.A. (MD) No.272 of 2016

WEB COPY

1.Pitchai Nayanar (Died)
(memo the effect that A1 died,
is recorded vide Court order
dated 24.04.2017, made in
S.A. (MD) No.272 of 2016
2.Anand : Appellants/ Appellants/ Plaintiffs

Vs.

1.Soundaravalli
2.Karungu @ Karnan
3.Ilangovan
4.Sukumaran
5.Selvam
6.Durairajan : Respondents/Respondents/Defendants

Prayer: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, against the judgment of the Principal Subordinate Judge, Kumbakonam, dated 09.02.2010 in A.S.No.101 of 2008, confirming the judgment and decree passed by District Munsif Cum Judicial Magistrate Court, Papanasam, dated 31.01.2007 in O.S.No.50 of 2001.

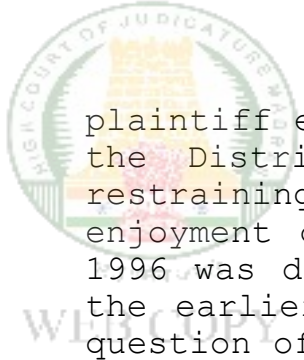
For Appellant : Mr.S.AnandChandrasekar
for M/s.Sarvabhman Associates

For Respondents : No appearance

J U D G M E N T

The plaintiffs in the suit in O.S.No.50 of 2001, on the file of the District Munsif Cum Judicial Magistrate Court, Papanasam, are the appellants in this second appeal. Since the first appellant died during the pendency of the second appeal, a memo was filed to the effect that there is no need to implead the legal heirs of deceased first appellant and the same was also recorded by this Court on 24.04.2017.

2.The appellants filed a suit in O.S.No.50 of 2001 for a declaration that the second plaintiff is entitled to the suit property and direct the defendants to deliver the possession of the suit property to the plaintiffs. The second appellant claimed title to the suit property by virtue of a registered sale deed dated 05.09.1989 executed by one Mr. Anthonysamy and his brother Thanislause alias Daniel. Since the second plaintiff was a minor at the time of purchasing the property, it is stated that the first plaintiff as a guardian of the second plaintiff had purchased in the name of the second plaintiff. It is admitted that the second



plaintiff earlier filed a suit in O.S.No.299 of 1996, on the file of the District Munsif Court, Papanasam, for permanent injunction restraining the defendants from interfering with his possession and enjoyment of the suit property and that the suit in O.S.No.299 of 1996 was dismissed. It is to be noted, that cause of action for the earlier suit and the present suit are one and the same. The question of title is also the subject matter of earlier suit and the present suit. In the circumstances, it was contended by the respondents before the lower Court that the judgment and decree in the earlier suit in O.S.No.299 of 1996, on the file of the District Munsif Court Cum Judicial Magistrate Court, Papanasam, would operate as *res judicata*. The present suit is liable to be dismissed as the earlier suit with regard to the question of title has become final. Accepting the contention of the respondents both the Courts below have concurrently found that the present suit is barred by *res judicata* and that the plaintiffs who failed to establish their title in the previous suit and got the suit dismissed cannot re-agitate in a subsequent suit. Aggrieved by the judgment and decree made in A.S.No.101 of 2008, on the file of the Principal Subordinate Court, Kumbakonam, confirming the judgment of the trial Court in O.S.No.50 of 2001, on the file of the District Munsif Court cum Judicial Magistrate Court, Papanasam, the plaintiffs have filed the above second appeal. The learned counsel for the appellants raised the following substantial questions of law:

a) *Whether the judgment and decree passed in a suit seeking the relief of bare injunction will operate as res-judicata and bars a subsequently instituted suit for declaration and consequential recovery of possession with respect to the same property?*

b) *When in the earlier suit no specific issue has been framed with respect to the title of the properties and the finding given in the earlier suit with respect to title is only incidental in nature whether the same will operate as res judicata in trying the later suit instituted for the reliefs of declaration and consequential recovery of possession?*

3.This Court, having regard to the admitted facts and circumstances of this case, is unable to see any merits in the questions of law framed by the appellants for the following reasons:

3.1.The issues in the suit in O.S.No.299 of 1996, on the file of the District Munsif Court cum Judicial Magistrate Court, Papanasam and in O.S.No.50 of 2001, on the file of the District Munsif Court, Papanasam are one and the same. The earlier suit in O.S.No.299 of 1996, on the file of the District Munsif Court cum Judicial Magistrate Court, Papanasam, is for permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit property on the basis that the plaintiff is the owner of the property in question. It is to be seen that the earlier suit is for injunction based on title. The Court can always decide the questions of title incidentally. When the same is decided on merits after inviting the parties to lead evidence on the



issue, the findings will certainly bind the parties and person who has left the earlier suit is precluded from raising the same issues which were decided against him in the previous suit.

4. In this case, the learned District Munsif Court cum Judicial Magistrate Court, Papanasam, in the earlier judgment dated 31.03.1997, has categorically found that the plaintiffs have not established their title on the basis of the sale deed. After finding that the defendant in the previous suit was in possession of the suit property, it was further held that the defendant has perfected title by adverse possession. On the basis of the original sale deed a specific finding was recorded by the Court earlier that the defendants had proved title and that the second plaintiff has lost his title because of the fact that the defendants in the previous suit had prescribed title by adverse possession.

5. The earlier suit filed by the second plaintiff herein was on the same cause of action and it was dismissed. The dismissal of the suit filed by the plaintiff was on merits by holding that the defendants had prescribed title by adverse possession. In view of the fact that the defendants were found to have perfected title in the earlier suit, the title has been finally decided. Therefore, the respondents herein are right in their statement that the dismissal of the suit in O.S.No.299 of 1996, on the file of the District Munsif Court, Papanasam, will operate as *res judicata*. The decision of the Courts below are supported by the admitted facts and the well accepted principles. Hence this Court find no reason or justification to interfere with the findings of the Courts below. The questions of law raised by the appellants herein are answered against the appellant. In view of the factual findings of the Court below this second appeal is liable to be dismissed. Hence the second appeal is dismissed. The judgment and decree of the Principal Subordinate Court, Kumbakonam confirming the judgment and decree of District Munsif Court, Papanasam in O.S.No.50 of 2001 is affirmed. However, no order as to costs.

Sd/-

Assistant Registrar(ADII)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge, Kumbakonam.

2. The District Munsif Cum Judicial Magistrate Court, Papanasam.

Copy to:- The Section Officer, V.R. Section, (2 copies)

Madurai Bench of Madras High Court, Madurai

+One cc to Mr.S.Anand Chandrasekar for Sarvabhauman Associates,
Advocate, SR.No.47319

gsp

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