

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.07.2019
CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.413 of 1999

1.Thandapani
2.Thanikachalam .. Appellants Appellants/ defendants

/Vs/

Munusami ... Respondents/ Respondent /plaintiff

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment in A.S.No.78 of 1996 dated 25.11.1997 on the file of the Subordinate Court, Panruti in confirming the decree and judgment in O.S.No.268 of 1992 and dated 28.02.1995 on the file of the District Munsif Court, Panruti.

For Appellants : Mr.S.Sabarish for
Mr.S.K.Rakhunathan

For Respondent : M/s.A.Nilaphar for
M/s. R.Meenal

JUDGMENT

The defeated defendants are the appellants herein. The respondent/ plaintiff Munusami has filed a suit in O.S.No.268 of 1992 before the District Munsif Court, Panruti seeking the relief of declaration to title to the suit property and consequently, prayed for permanent injunction against the defendants. In the said suit, the appellant/ defendants have filed a written statement alleging that the subject matter of the suit property was purchased by the defendants under Ex.B4 dated 15.05.1992 and they have been paying the Revenue Receipts under Exs.B5 and B6 and further contended that the very same plaintiff has filed a suit for the very same suit property in O.S.No.385 of 1986 on the file of the District Munsif Court, Panruti and the same was dismissed for default and therefore, it operates as resjudicata. During the trial, the plaintiff examined himself as PW.1 and marked Exs.A1 to A7 and first defendant examined himself as DW.1 and marked Exs.B1 to B6.

2. On consideration of both oral and documentary evidence adduced before the Court, the learned District Munsif has felt that the decree and judgment copy though was marked as Exs.B1 and B2, related to the very same suit property, the cause of action alleged is different and further more, the said suit was dismissed for default for the non appearance of both the

parties under Order 9 Rule 4 of the CPC., and hence, by proviso in the very same section, the plaintiff is entitled to file a fresh suit and held that it is not barred by resjudicata and also held that the property covered under Ex.B1 related to Survey no. 1239/1 whereas, the suit property relates to Survey no. 1239/4 and held that they are different properties and accordingly, decreed the suit as prayed for.

3.The defeated defendants have preferred A.S.No.78 of 1996 before the Subordinate Court, Panruti and the same was dismissed and hence, the Second Appeal.

4.The above Second Appeal was admitted on the following substantial question of law:

1.Whether the suit is barred by resjudicata, in view of the dismissal of O.S.No.385 of 1986?

5.The learned counsel for the appellant made a submission in support of the substantial question of law. While the learned counsel appearing for the respondent made a submission in support of the judgment of both the Courts below.

6.It is seen from Exs.B1 and B2, the judgment and decree copy in O.S.No.385 of 1986, wherein, the suit was dismissed on the ground of non appearance of both the plaintiff and the defendants. In this connection, it is to be stated that it is a specific case of the plaintiff in the witness box that there was a police complaint before Puliur Police Station by the plaintiff, in and by which, both the plaintiff and the defendants the parties herein, there was a compromise in the Police Station to the effect, that not to interfere with the possession of the plaintiff and accordingly, in view of the compromise so arrived before the Puliur Police Station, both the parties have not appeared before this Court, which resulted in dismissal of the suit for the non appearance of both parties. In support of the same, Exs.A5 and A6 were marked before the trial court and the same was spoken by the PW.1 in the witness box. Taking into consideration of the oral evidence of PW.1 coupled with Exs.A5 and A6 and in view of the fact that Exs.B1 and B2 relates to the O.S.No.385 of 1986, it appears that in view of the compromise arrived between the parties in the Police Station, both the plaintiff and defendants have not appeared for the case hearing, resulting in the dismissal of the suit and the nature of the dismissal of the above said O.S.No.385 of 1986 falls under Order 9 Rule 3 for which, a fresh suit can be filed under Order 9 Rule 4 and it was rightly held by the learned District Munsif in the judgment and the said finding by the trial court is also confirmed by the lower Appellate Court.

7.Yet another point is that as per Ex.P4 / Sale deed, the property involved in O.S.No.385 of 1986 was in Survey no.1239/1 whereas the property involved in the present suit in

O.S.No.268 of 1992 is Survey no.1239/4 and hence, the trial court has rightly come to the conclusion that the subject matter of the suit property is different from the lands covered under Ex.B4 /Sale deed which is Ex.A7 also. Taking into consideration that the evidence of PW.1 Munusamy and native village he also called as Muniyan and the Revenue Records stand in the name of plaintiff Munusamy as it could be seen from Exs.A2, A3 and B4 and both the courts below has rightly come to the conclusion that the plaintiff in the suit property is in possession of the suit property for a quite long years and thereby, has possessing right though the land in question, belongs to the Government. In view of the earlier suit having been dismissed under the category of Order 9 Rule 3 for which Order 9 Rule 4, provides remedy and hence, the trial court arrived at a conclusion that the suit is not hit the res judicata under Section 11 of the CPC. Similar finding arrived by both the Courts below is well considered and well merited and the same does not warrant any interference at this appellate stage.

8.On the above stated facts and circumstances of the case, the substantial question of law is answered in negative against the appellants/defendants. Accordingly, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vr
To

1.The Subordinate Court, Panruti.

2.The District Munsif Court, Panruti.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.S.K.Rakhunathan , Advocate SR.No. 66397

+1cc to Mrs.R.Meenal , Advocate SR.No. 65628

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A.SK(11/09/2020)