

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

S.A.No.2131 of 2001

1.Govindaraju (deceased)
2.Periyanayagam
3.Jaisankar
4.Saroja
5.Murugan ... Appellants 2 to 5/Defendants/Plaintiff

[Appellants 2 to 5 brought on record as LR's of the deceased/sole appellant viz., Govindaraju vide order dated 19.06.2019 made in CMP.Nos.3063, 3068 and 3069 of 2019]

Versus

1.Rajambal (deceased) ...Ist Respondent/Appellant/
Ist Defendant
2.Visalakshi ... 2nd Respondent/Respondents

[R2 brought on record as LR of the deceased sole respondent viz., Rajambal, vide order dated 02.08.2018 made in CMP.No.300 of 2009]

This Second Appeal has been filed under Section 100 of C.P.C., against the Judgment and decree dated 13.07.2001 in A.S.No.30 of 1999 on the file of the Principal Subordinate Judge at Vridachalam, reversing the Judgment and decree dated 19.07.1999 made in O.S.No.1044 of 1988 on the file of the Additional District Munsif Judge at Vridachalam.

For Appellants : Mr.D.Shivakumaran

For Respondents : No Appearance

JUDGMENT

The unsuccessful plaintiff is the appellant herein.

2.Originally the appellant herein/plaintiff has filed the suit in O.S.No.1044 of 1988, seeking relief of declaration of

title and for permanent injunction in respect of the land in Survey No.112/3, measuring an extent of three cents out of larger extent of 1.62 acre.

3.The suit was resisted by the first respondent herein/defendant viz., Rajambal on the ground, she has already obtained a decree in her favour, claiming for possessory title in respect of 0.33 cents in the said survey number, in O.S.No.1655 of 1974 on the file of the District Munsif Court, Virudhachalam and the same has been confirmed by this Court in S.A.No.154 of 1981, dated 06.04.1988.

4.The Trial Court, on consideration of Exs.A1, A2 and A27, held that the present suit property is different and distinct from the suit property in O.S.No.1655 of 1974 and based upon the title Deeds, Exs.A1 and A2, decreed the suit.

5.Aggrieved against the said Judgement and Decree passed in the said O.S.No.1044 of 1988, the defeated defendant preferred the appeal in A.S.No.30 of 1999, on the file of the learned Principal Subordinate Judge, Virudhachalam. After contest, the appeal was allowed. Consequently, the suit was dismissed and hence, the Second Appeal by the plaintiff.

6.The learned counsel appearing for the appellant would contend that discretion endeavoured by the lower Appellate Court at page No.13 in the typed set of papers in paragraph Nos.13, 14, 15 and 16 amounts to review the order passed by this Court in S.A.No.154 of 1981, wherein, the Lower Appellate Court has compared the boundaries of the suit property and held that earlier round of litigation was in favour of the respondent/defendant and hence, without ignoring the principle of res-judicata.

7.After hearing the learned counsel for the appellant, it is seen that before the Lower Appellate Court, Ex.B2 was marked and decreed the suit in O.S.No.1655 of 1974 on the file of the Additional District Munsif Court, Virudhachalam, it is seen that the sale deed was executed by one Munian and Mnickam, in favour of Appadurai on 06.10.1958, which was marked as Ex.A27. Ex.B2 was marked by the defendant/respondent, which is the decreed copy in O.S.No.1655 of 1974, on the file of the Additional District Munsif Court, Virudhachalam. It appears that the Trial Court on comparison of the suit property covered under the earlier round of litigation in O.S.No.1655 of 1974 is different and distinct from the lands covered under Exs.A1 to A2 and consequently, decreed the suit in O.S.No.1044 of 1988 (the present suit).

8. Aggrieved against the said judgment and decree, it appears that the defeated Rajammal has preferred A.S.No.1655 of 1974 before the Sub Court, Chidambaram and subsequently re-numbered as A.S.No.135 of 1978. The Lower Appellate Court on re-appreciation of the findings as held that the suit property was misdirected in the earlier judgment and it shall operate as res-judicata in favour of the defendant. Accordingly, the appeal was allowed by setting aside the decree and judgment granted by the Trial Court, subsequently the suit in O.S.No.1044 of 1988 was dismissed.

9. The unsuccessful plaintiff has preferred this above Second appeal and the appeal was admitted on 22.01.2002 by the following substantial questions of law:-

"Is the Lower Appellate Court erred in law in holding that the judgment and decree in the previous suit in O.S.No.1655 of 1974 would operate as a res-judicata over the present suit, in spite to the conclusive decision of this Court in S.A.No.154 of 1981 that the properties are different from one another. "

10. The learned counsel for the appellant has made the submissions in respect of the substantial question of law framed at the time of admission in the said appeal. According to him, the subject matter of the suit property in S.No.112/3 is measuring extent of 0.33 cents out of large extent of 1.62 cents. As per Ex.A2/vendor of the plaintiff/Gangaram has purchased the property from one Amma Kannammal, from whom, the plaintiff purchased the suit property under Ex.A1/sale deed dated 01.12.1960. The property of the plaintiff situated on the Western side of the land belongs to his brother Appadurai, who purchased the property under Ex.A27.

11. The first respondent died pending the Second appeal and in the second appeal the legal heirs of the deceased first respondent were brought on record and none appears on behalf of the respondents.

12. After perusing the Judgment of the Lower Appellate Court, it appears that the Lower Appellate Court has endeavoured itself for identifying the property said to have been covered under the earlier proceedings in O.S.No.1655 of 1974 filed by the first respondent/first defendant herein, as the plaintiff therein, which has culminated in decree in her favour in S.A.No.154 of 1981 dated 06.04.1988.

13. After perusing the order passed by the Hon'ble Justice. Rathnam, as he then was, at page No.5, wherein His Lordship was

pleased to compare the boundaries and the recitals in Exs.B3 and B4 filed therein, which is corresponding to the title deeds of the appellant/plaintiff under Exs.A1 and A2 herein and held that :-

“Ex.B2 to B4, considered together and the boundary recitals therein are scrutinized, it is different to say that they take in the suit property. Thus, on the strength of Exs.B3 and B4, the appellants cannot lay any claim to the suit property.”

14.Accordingly, held that the schedule property in O.S.No.1655 of 1974 filed by the Rajammal, the plaintiff therein (the first defendant herein) is different and distinct from the schedule property covered under Exs.B3 and B4 therein which is equivalent to Exs.A1 and A2 herein, in favour of one Govindaraju/plaintiff also. When that being the case, the Lower Appellate Court cannot go to the extent of concluding that the suit is barred by res-judicata. When a finding was rendered therein to the effect the property claimed by Rajammal is different and distinct from the property of Govindaraju on with the strength of Exs.A1 and A2, the Trial Court properly appreciated the finding rendered by this Court in S.A.No.154 of 1981 and based on Exs.A1 and A2 coupled with Exs.A4 to A24 has come to the conclusion that the plaintiff established his title to the suit property in the suit, which is different and distinct from the decree granted in favour of Rajammal. It appears to be correct on the proper interpretation on the basis of earlier finding given by this Court.

15.Furthermore, on perusal of the order passed by the Lower Appellate Court, it had ventured itself and identify the properties claimed by Rajammal in the earlier round and the schedule property in Exs.B3 and B4 in the earlier round as that of Exs.A1 and A2 in the present round along with the property purchased by the elder brother of the plaintiff herein and rendered a new finding, which is contrary to the Judgment passed in the Second appeal between the parties. Hence, in view of the finding rendered by this Court in S.A.No.154 of 1981 and the exercise carried out by the Lower Appellate Court, appears to be not in the manner known to law and the same appears to reviewing the Judgment passed by the Hon'ble justice Mr.Rathnam in S.A.No.154 of 1981, in that the properties covered in the earlier suit in O.S.No.1655 of 1974 before the District Munsif Court, Virudhachalam is different and distinct in Exs.A1 and A2. Based upon which, the present plaintiff/appellant claims title in O.S.No.1044 of 1988 before the Additional District Munsif Court, Virudhachalam and accordingly, this Court holds that the finding

of res-judicata is interpreted by the Lower Appellate Court is found to be not in accordance with law and I find the fact that they are different property with regard to the appeal appears res-judicata in favour of the plaintiff and not in favour of the defendant.

16. Accordingly, the substantial questions of law are answered in favour of the appellant, consequently the Second Appeal is allowed and the judgment and decree granted by the Lower Appellate Court is set aside and the Judgment and decree granted by the Trial Court in O.S.No.1044 of 1988 dated 19.07.1999 is restored. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

klr

To

- 1.The Principal Subordinate Judge,
Vridachalam.
- 2.The Additional District Munsif Judge,
Vridachalam.
- 3.The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.D.Shivakumar, Advocate Sr.74153

S.A.No.2131 of 2001

sr[co]
srg 04/06/2020

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