

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.06.2019

CORAM: The Hon'ble Mr.Justice N.Seshasayee

S.A.Nos.173 and 174 of 2004

Arjunan ..Appellant/ Appellant /Plaintiff  
in both S.As

Vs.

1.Hanumahtna Babu Rao Patel  
2.Jayashree ..Respondent/Respondents/Respondents  
in both S.As

Common Prayer:- Second Appeals filed under Section 100 of Civil Procedure Code against the Judgement and decree dated 03.10.2002 passed in A.S.Nos.249 and 250 of 2001, on the file of II Additional District Court, Coimbatore in confirming the Judgment and Decree dated 10.01.2001 passed in O.S.No.281 of 1994 and O.S.No.1600 of 1998, on the file of Principal Sub Court, Coimbatore.

For Appellant : Mr.J.Pothiraj

For Respondents : Mr.T.R.Rajaram

COMMON JUDGMENT

The plaintiff who laid two successive suits and lost both of them successively before the Courts below, has come forward with these appeals. Parties would be referred to by their rank before the trial Court.

2.1The plaintiff has first laid a suit in O.S.No.2296 of 1993, for bare injunction before the District Munsif Court, Coimbatore, which was later transferred to Principal Sub Court, Coimbatore where it was taken on file in O.S.No.1600 of 1998. Subsequently, he laid a suit in O.S.No.281 of 1994, before the Principal Sub Court, Coimbatore, for declaration of his title and recovery of possession. It is probably due to the fact that the plaintiff's second suit is laid before the Sub Court, Coimbatore his injunction suit in O.S.No.2296 of 1993 came to be transferred to Sub Court. And, as stated earlier, both the suits came to be dismissed by a common Judgment and the plaintiff unsuccessfully preferred first appeals in A.S.Nos.249 and 250 of 2001 before the II Additional District Court, Coimbatore.

3.The facts are;

- The suit property in both the suits are substantially same, except for one variance. In O.S.No.281 of 1994, which the plaintiff had laid for declaration of his title, the suit property is described as an vacant plot, whereas, in O.S.No.1600 of 1998, couple of buildings were also shown to be there in the said site.
- The plaintiff has come forward with a straight forward case that the suit property originally belongs to certain Ramasamy Naidu, and that on his death the property devolved on his son Rangasamy Naidu. The said Rangasamy Naidu had inducted certain Vennal Naidu as his tenant to the suit property, and he executed several sale deeds. He further pleaded that the defendants, who are spouses as between them, are bringing into existence certain bogus document with the help of the said lessee of the property. The Municipal records show that the property tax assessment has been made in the name of one Lakshmi, one of the daughters of Rangasamy Naidu.
- When Rangasamy Naidu died, the property devolved on his five children namely Venkatasamy Naidu, Ponnuthai Ammal, Lakshmi, Navaneetham and Pushpam. While so, all the siblings of Pushpam executed a Power of Attorney in her favour in Ext.A.6, dated 14.02.1986. On the strength of this Power of Attorney, Pushpam executed Ext.A.7, sale deed, dated 12.05.1989 in favour of the plaintiff.
- The defendants have pleaded an independent title not traceable to Ramasamy Naidu. According to them, the suit property belong to certain Narayanasamy Naidu, from whom they have purchased the property. They also contend that, earlier the present plaintiff had laid O.S.No.1671 of 1990 for declaration of his title and other allied reliefs inter alia against their purchaser Narayanaswamy Naidu and that suit came to be dismissed, and the findings therein would part as res judicata.
- The simplicity with which the parties have approached the litigation in their pleadings assume a rare complex proposition when the matter went for trial, when both parties, especially the defendants have traced the title from as early as 1947.
- Before the trial court, it was established by the defendants that the suit property originally was obtained by one Dharmalingam in a family partition, sometime in 1944, and that on 19.07.1944, under Ext.B.9, sale deed

Dharmalingam had sold the suit property to one Kamalambal, who in turn had sold the property to one Gopalswamy Naidu on 22.04.1945 under Ex.B8, sale deed. Gopalsamy Naidu, in turn had sold the suit property to certain Vennal Naidu under Ex.B7 sale deed, dated 13.04.1948. When the property was with Vennal Naidu, he created a possessionary mortgage in favour of one Lakshmi on 13.04.1949, a copy of which is available on record as Ext.B.11. On 09.04.1953, the mortgagee Lakshmi had executed a made over document assigning her right obtained under Ext.B.11 to one Narayanaswamy Naidu, copy of this document is Ext.B.10.

- Thereafter, on 26.02.1957, Vennal Naidu sold the property to Narayanaswamy Naidu under Ext.B6, dated 26.02.1957. In essence, what was available with Vennal Naidu on the date of Ex.B6 is essentially a right of redemption and that came to be transferred to Narayanaswamy Naidu. Thus, Narayanaswamy Naidu became the absolute owner of the suit property, from whom, the defendants had purchased it on 04.12.1992, under Ext.B.26.

4.1 Both suits were tried jointly and were disposed off by a common judgement. Few of the documents that have relevance were already introduced in the earlier paragraphs. What remains to be stated is a bout a set of litigations in which the present suit property came to be litigated.

- a) A suit for partition in O.S.No.642/1982 against her siblings including Vennal Naidu and certain Gopalswamy Naidu. On 28.09.1983, this suit was dismissed for default and Ex.B.18, is the decree passed therein( It was after the dismissal of this suit, Ext.A7, power of attorney came to be executed)
- b) The second suit was laid by Narayanaswamy in O.S.No.245 of 1986 against Pushpam and two others for bare injunction and the suit property in that suit is the one in O.S.No.1600 of 1998, the suit now laid by the plaintiff. The suit was decreed ex-parte.
- c) To repeat, this was followed by O.S.No.1671 of 1990, laid by the present plaintiff. This suit was laid inter alia against Narayanasamy Naidu, under whom the defendants claim, Vennal Naidu, who according to the plaintiff was a lessee under Rangasamy Naidu, besides his siblings which includes the power of attorney holder Pushpam. The suit property is same as the one in the injunction suit which means, it includes the site and the buildings. That suit came to be dismissed as evidenced by Ext.B.4, judgment and Ext.B.5, decree. This apart, there are few other rent control proceedings which are not very germane to the ongoing discussion.

4.2 So far as the two buildings in the suit property (the subject matter of the injunction suit) P.W.2, who is one of the daughters of Rangasamy Naidu, had deposed that she has no evidence that her father had put up any construction in the property.

4.3 On the basis of the several title deeds placed by the defendants, the trial court has found that the evidence of the defendants preponderates a probability in favour the case that they pleaded, and held that the plaintiff has not established his title, and consequently, the trial Court dismissed the suits, which as already indicated came to be upheld by the first appellate Court.

5. These appeals are admitted on the following substantial questions of law;

In the face of the finding of the Courts below that the sale deeds in favour of the defendant namely Exs-B6, B7 and B9 relate to a different property other than the property forming the subject matter of the suit and in the face of a valid purchase under Ex-A6-registered sale deed, have not the Courts below committed an error of law in non-suiting the plaintiff on a non-existent ground?

6. The learned counsel for the appellant made a valiant attempt to demonstrate that the property covered under Ext.B7 is different from the suit property, and claimed that the decree passed in O.S.No.245 of 1986 or O.S.No.1671 of 1990 would not affect the maintainability of the present suit. He argued that the Courts below have not endeavored to examine this aspect of the matter.

7. The learned counsel for the respondent however, laid emphasis in Ext.B.19, and submitted that the suit property in O.S.No.245 of 1986 as evidenced by Ext.B.19 decree, the one in O.S.No.642 of 1982, as evidenced by Ext.B.18 decree, and that which is the subject matter in O.S.No.1671 of 1990 as seen from Ext.B.5 decree, are the same, and the suit property in O.S.No.1600 of 1998 is same as the property covered under Exts.B.19, B.18 and B.5 decrees passed in those three suits. Therefore, when all the earlier suits were already decided in favour of the defendants, it is sheer abuse of judicial process for the plaintiff to institute a fresh suit as if a new cause of action has arisen.

8. As rightly argued, the present plaintiff has earlier laid O.S.No.1671 of 1990, in which, he had arrayed the vendor of the present defendants Narayanaswamy as a defendant, and that suit was laid for declaration of title. Interestingly, in that suit the present plaintiff would allege that a certain Vennal Naidu has been on a fabrication-spree of creating several false documents, whereas, in the present suit he made one qualifying improvement in that he characterized the same Vennal Naidu as a tenant of his predecessor in title, Rangasamy Naidu. Since the dismissal of the earlier suit in O.S.No.1671 of 1990, the present defendants have purchased the property from Narayanaswamy under Ext.B.26. What the plaintiff has no attempted is to make some cosmetic changes to his pleadings without any substantial consequence in law, and laid fresh suits, as if the cause of action for them are different. In the earlier suits, he also showed certain buildings in the suit property which were also the subject matter in O.S.No.642 of 1982, filed by Pushpam and O.S.No.245 of 1986, filed by Narayanaswamy.

9. Nothing can expose the abuse of judicial process that the plaintiff has put on display. By giving a - relationship to Vennal Naidu in the present suit, and strategically hiding the existence of the buildings in his suit for declaration and title in O.S.No.281 of 1994, he has not done any great service to his cause. Secondly, the plaint is silent about O.S.No.1671 of 1990, which he had filed and lost. Is it not necessary that a plaintiff who approaches a Court seeking remedy on a cause, explain to the Court how the present suit is different from the one in O.S.No.1671 of 1990.

10. An action that attempts to keep alive a cause that has already been decided and attained finality, by subsequent attempts to revive them constitutes an abuse of judicial process. The solitary exception to this statement is fraud played on court in obtaining earlier decree besides cases where a title to the subject matter to the litigation is founded on a different title within the meaning of Sec.11 CPC, but subject to the rule of constructive res judicata. Here this court intends to record that Advocates, who are the torch-bearers for preserving the strength of the legal system, has a far greater responsibility, since without them, a dead cause, or a no cause, will never penetrate to clog the judicial mechanism. Ubi jus ibi remedium only implies that where there is a right requires to be remedied, it should be done. It does not imply as breeding a principle of law of eternal litigation, nor as opportunities to an Advocate to recycle a cause once remedied. It is the greatest dis-service that members of the Bar would be doing to the legal system to institute action for their clients on a dead cause, or no justiciable cause in law which has no

greater purpose than clogging and choking the system. Are they not officers of the Court? Is it not therefore, their responsibility, not to be uni-focal, owning to care only the interest of their clients even where there is nothing in law to be cared, but also to take care of the interest and general health of the legal system? Time for them to ponder.

11. The result in these appeals is to state the most obvious: Both the appeals are dismissed and accordingly, Judgment and decree dated 03.10.2002 passed in A.S.Nos.249 and 250 of 2001, on the file of II Additional District Court, Coimbatore in confirming the Judgment and Decree dated 10.01.2001 passed in O.S.No.281 of 1994 and O.S.No.1600 of 1998, on the file of Principal Sub Court, Coimbatore is upheld. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

tsg

To:

1.II Additional District Court, Coimbatore.

2.Principal Sub Court, Coimbatore.

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

+1 CC to Mr.T.R.Rajaraman, Advocate sr 54303.

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SPD(CO)  
SP(10/03/2020)

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