

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.02.2019

PRONOUNCED ON : 21.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1024 of 2005

Thambikilaiyan @ Thangavel ...Appellant/Respondent/
1st Defendant

Vs.

1.Arulmighu Thambi Kilayan Swamy
Thirukovil Pothiamooppanur
By its Hereditary Trustee
Thambikilai Nadar.

2.Arayammal

3.Thangarathinam

4.Ranganayaki

5.Venkateshwaran

6.Sivasakthi

...Respondents 1 to 6/Appellants 2 to 7
/Plaintiffs 2 to 7

7.Thiru Veeka Weaver Co-operative
Production and Sales Society Ltd.,
rep.by its Secretary,
Kilvvoni Village, Bhavani.

...7th Respondent/ 2nd Respondent/
/2nd Defendant

(The seventh respondent is given up
in this appeal.)

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 02.09.2003 passed in A.S.No.79 of 2003 on the file of the Additional District Judge, Fast Track Court No.IV, Erode at Bhavani, reversing the judgment and decree dated 04.12.2002 made in O.S.No.364 of 1999 on the file of the Principal District Munsiff Court, Bhavani.

For Appellant : Mr.A.Sermaraj

For Respondent: Mr.K.Ponmani
Nos.1 to 6 for Mr.V.Rajesh

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 02.09.2003 passed in A.S.No.79 of 2003 on the file of the Fast Track Court No.IV, Erode at Bhavani, reversing the judgment and decree dated 04.12.2002 passed in O.S.No.364 of 1999 on the file of the Principal District Munsiff Court, Bhavani.

2.The appellant has laid the suit in O.S.No.147 of 1999 against the respondents for the relief of permanent injunction, based on title claiming that the patta had been issued in favour of his wife in respect of the suit property and on the basis of the conveyance of the suit property in his favour by his wife by way of a sale deed dated 24.09.1997, the appellant claims to be in the possession and enjoyment of the suit property and putting forth the case that the defendants, without any authority, attempted to interfere with his possession and enjoyment of the suit property, he had come forward with the suit in O.S.No.147 of 1999 praying for the relief of permanent injunction.

3.The first respondent/second defendant as well as the deceased first defendant, in particular, resisted the appellant's suit contending that the suit property belonged to the respondent's temple and put forth the case that the 40 cents of land surrounding the temple belong to the temple and used by the devotees during the festival occasions for the purpose of worshipping the deities and the Government has no right, title or interest over the property belonging to the temple and not entitled to assign and grant patta in favour of the third parties and on the other hand, the Government had been unlawfully issuing the pattas without any authority and on that basis, the appellant and his wife seem to have stealthily obtained patta by using their political influence in respect of the suit property and on that basis, not entitled to remain in the possession and enjoyment of the suit property and accordingly, it is only the abovesaid defendants, who are entitled to the possession and the temple has got the title to the suit property and accordingly, sought for the dismissal of the appellant suit.

4.The first respondent/second defendant and the deceased first defendant putting forth the similar case for claiming title to the property in dispute, it is found that they and the others have laid the suit against the appellant in O.S.No.364 of 1999 claiming the reliefs of declaration, possession and mandatory injunction in respect of the suit property. The appellant resisted the abovesaid suit putting forth the same version as pleaded in his suit in O.S.No.147 of 1999.

5. Inasmuch as the property involved in both the suits is found to be one and the same and both the parties claim title to the suit property as well as the possession and enjoyment of the same on the same pleas put forth by them respectively in the abovesaid suits, it is found that both the suits were taken up by the trial Court, on the basis of the memo filed, for joint trial and accordingly, the parties had adduced common evidence in both the suits and it is found that the common evidence had come to be recorded in O.S.No.147 of 1999 and the issues involved in both the suits were jointly tried and determined by the trial Court and based on the materials placed on record by the respective parties, both oral and documentary, the trial court was pleased to dismiss both the abovesaid suits.

6. As against the dismissal of the appellant's suit in O.S.No.147 of 1999, it is found that the appellant has not preferred any appeal and therefore, it is evident that the decree passed in O.S.No.147 of 1999 has become final. However, as regards the dismissal of O.S.No.364 of 1999, it is seen that the first respondent herein and the deceased first defendant preferred the first appeal and the first appellate Court, on a consideration of the materials placed on record and the submissions made, was pleased to set aside the judgement and decree of the trial Court and by way of allowing the appeal preferred by the first respondent and the deceased first defendant, granted the reliefs in their favour as prayed for in their suit. Impugning the same, the present second appeal has been laid.

7. At the time of the admission of the second appeal, the following substantial questions of law were formulated for consideration:

"(1). Whether the appellate Court is right in law in decreeing the suit against the provision of sections 101 and 102 of the Indian Evidence Act, when the plaintiffs failed to prove their case through documentary evidence?

(2). Whether the first appellate court has rightly determined the issue of declaratory relief, appreciating the evidences, which are all necessary to decide the issue?"

8. At the time of placing submissions in the second appeal, the counsel for the respondents put forth the preliminary objection that the second appeal laid by the appellant is not

maintainable and barred by res judicata, inasmuch as he has not preferred any appeal independently challenging the dismissal of his suit in O.S.No. 147 of 1999 in the light of the decision of the apex Court reported in 2015-1-L.W.1 (Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal & others). As regards the abovesaid position, the counsel for the appellant is unable to putforth any legal resistance as such. The apex Court in the abovesaid decision has held that where two and more suits are jointly tried, the losing party must file appeals in respect of all adverse decrees founded even on partially adverse or contrary speaking judgments and accordingly held that the decree not assailed thereupon metamorphoses into the character of a former suit and thereby, the cause of the appellant gets permanently sealed and foreclosed since res judicata applied against him and the position of law has been outlined by the apex Court in the abovesaid decision as follows:

"C.P.C., Section 11/ Res judicata , when applies, appeal against common decree, preferring of, need for, suit for injunction, Title, scope;

Whether filing of an appeal agaist a common judgment in one case, tantamounts to filing an appeal in all the matters.

Held: suits in which common issues have been framed and a common trial, conducted, losing party must file appeals in respect of all adverse decrees founded even on partially adverse or contrary speaking judgments - Decree not assiled thereupon metamorphoses into the character of a "former suit" - Where a common judgment has been delivered in cases in which consolidation orders have specifically been passed, filing of a single appeal leads to the entire dispute becoming subjudice once again consolidationn orders are passed by virtue of inherent powers on courts by Section 151 of CPC.

Having avoided filing appeals against the decrees in 2 suits the cause of the respondents was permanently sealed and foreclosed since res judicata applied against them.

An appeal ought to have been filed by tenant in respect of O.S.5/78 which was dismissed, for fear of inviting the rigours of res judicata as also for

correcting the 'dismissal' order - Tenant had been completely non-suited once it was held that no cause of action had arisen in its favour and the suit was dismissed.

Facts: property in question belonged to appellants and leased to respondents 1 to 6. Tenants filed the suit O.S.No.5 of 1978 seeking for injunction. The appellant - Trust filed 2 suits, being O.S.6/78 and O.S.7/78, claiming arrears of rent from the Tenants (Respondent Nos.1 to 6 before us, in which the Transferees were not impleaded) pertaining to the period prior to the transfer of suit lands by them to Transferees. O.S.5/78 came to be dismissed. O.S.6/78 was partially decreed; whilst O.S.7/78 was dismissed on the ground that the alleged claim of arrears of rent in this suit was not tenable as the said land was part of and encompassed in the suit land which was the subject matter of O.S.6/78 and, accordingly, the claim was covered and subsumed therein.

All three suits have been decided, after recording of common evidence, by a common judgment passed on 6.11.1982 by the Court of 2nd Additional District Judge at Pondicherry. Pursuant to this judgment three different decrees have been drawn. The Tenants have not filed any appeal in respect of O.S.5/78 and O.S.7/78; and an appeal was filed only against judgment and decree in O.S.6 of 1978.

Question that arise is whether the Court while entertaining an appeal from judgment and decree in 'A' suit can reverse a finding rendered in suit 'B' especially when no appeal was filed from findings rendering in suit B?

It has been correctly observed in the common judgment dated 6.11.1982 by which all three suits have been decided, that the issues framed in O.S.6/78 and O.S.7/78 were one and the same.

It permeates, as in the case in hand, into the sinews of all suits (O.S.5/78 and O.S.7/78) since common issues had been framed, a common trial had been conducted,

common evidence was recorded, and a common judgment had been rendered. Facially, all the factors are common to each suit, namely, the commonality of issues, Trial and Verdict rendering any effort to differentiate them to be an exercise in futility. A reading of the plaint and of Issue No.2 in O.S.5/78 (supra) will make it impossible to harbour the view that the contours of controversy in that case concerned only the apprehension of forcible dispossession of the Tenants by the Trust as well as the Transferees.

Where a common judgment has been delivered in cases in which consolidation orders have specifically been passed, we think it irresistible that the filing of a single appeal leads to the entire dispute becoming sub judice once again. Consolidation orders are passed by virtue of the bestowal of inherent powers on the Courts by Section 151 of the CPC.

In the instance of suits in which common issues have been framed and a common Trial has been conducted, the losing party must file appeals in respect of all adverse decrees founded even on partially adverse or contrary speaking judgments. While so opining we do not intend to whittle down the principle that appeals are not expected to be filed against every inconvenient or disagreeable or unpropitious or unfavourable finding or observation contained in a judgment, but that this can be done by way of cross-objections if the occasion arises. The decree not assailed thereupon metamorphoses into the character of a 'former suit'. If this is not to be so viewed, it would be possible to set at naught a decree passed in Suit A by only challenging the decree in suit B."

9. In the light of the abovesaid position of law, when admittedly, the appellant has not chosen to challenge the dismissal of the suit in O.S.No.147 of 1999, despite the abovesaid suit having been jointly tried along with the respondents' suit in O.S.No.364 of 1999 and when the respondents have chosen to canvass and challenge the dismissal of their suit and the first appellate Court has set aside the Judgement and

decree of the trial Court and upheld the suit laid by the respondents and granted them appropriate reliefs, in such view of the matter, on the failure of the appellant in not challenging the dismissal of the suit, on the abovesaid factors, the cause of the appellant gets permanently sealed and foreclosed as the principles of res judicata would come into operation, as outlined by the apex Court in the abovesaid decision and in such view of the matter, it is seen that the appellant's second appeal has to fail on the abovesaid legal bar.

10. In the light of the abovesaid discussions, the appellant's second appeal being found to be not legally sustainable, the substantial questions of law projected by the appellant in this second appeal are not necessary to be answered one way or the other, when the cause of the appellant is found to have been permanently sealed and foreclosed in the light of the application of the principles of res judicata as held by the apex Court in the abovesaid decision.

For the aforesaid reasons, the second appeal fails and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.
sms

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
Fast Track Court No. IV,
Erode at Bhavani.
2. The Principal District Munsif Court,
Bhavani.
3. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr. V. Rajesh, Advocate, SR.No.16495
+1cc to Mr. A. Sermaraj, Advocate, SR.No.14373

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Kak (30/04/2019)