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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.335 of 2014
and M.P.No.1 of 2014

Thandavarayan ... Appellant/Ist Respondent/Plaintiff

Vs.

1. Rajendran ... Ist Respondent/Appellant/Ist Defendant
2. Regional Development Officer,
Annakavoor. ... 2nd Respondent/2nd Respondent/2nd Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned Subordinate Judge, Cheyyar, dated 22.10.2013 in A.S.No.33 of 2011, reversing the judgment and decree of the Principal District Munsif-cum-Judicial Magistrate-I, Cheyyar, dated 30.08.2011 in O.S.No.357 of 2005.

For Appellant : Mrs.P.Veena

For Respondents: Mr.V.Meenakshi Sundaram
(for R1)

J U D G M E N T

The plaintiff in O.S.No.357 of 2005 who managed to obtain a decree for permanent injunction restraining the defendants from interfering with his possession by laying a pathway over the land in Survey No.272/8, Thenkalpakkam Village, Cheyyar Taluk, Thiruvannamali District, upon the said decree being reversed by the lower appellate Court in A.S.No.33 of 2011 has come up with this appeal.

2. The suit was laid by the plaintiff contending that he along with his brother Chokkalinga Udaiyar are the absolute owners of the suit properties measuring about 85 cents, having purchased of the same under a Sale Deed dated 01.09.1979. The plaintiff would claim that he is filing the suit on behalf of his brother also. According to the plaintiff, the 1st defendant who is the President of Thenkalpakkam Village Panchayat in



active collusion with the 2nd defendant is attempting to lay a new road over the suit properties. Claiming that the defendants have no right to do so, the plaintiff has come up with the suit for permanent injunction.

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3. The suit was resisted by the defendants contending that there is a pathway in existence as a Cart track which runs over the suit properties for several years. The plaintiff has come up with the suit by suppressing the existence of the Cart track. It is also pleaded that the same relief of injunction was sought for by the plaintiff in O.S.No.655 of 1996 and the said suit came to be dismissed by the learned Additional District Munsif, Cheyyar on 27.02.2004, therefore, the suit is barred by the principles of res judicata. It is also claimed that the plaintiff has come forward with the present suit by impleading the 2nd defendant who is not a party to the earlier suit only to wriggle out of the applicability of the principle of res judicata.

4. At trial, the learned District Munsif, literally sat in appeal over the judgment in O.S.No.655 of 1996. He picked holes in the said judgment and concluded that the trial Court which decreed the suit in O.S.No.655 of 1996, had wrongly assessed the evidence in the said suit. On the said conclusion, the learned District Munsif decreed the suit in O.S.No.357 of 2005. Aggrieved, the defendants preferred an appeal in A.S.No.33 of 2011.

5. The lower appellate Court on a reconsideration of the evidence on record, particularly the judgment and decree in O.S.No.655 of 1996, concluded that the plaintiff actually re-agitated the same issue by giving a colour of different cause of action and impleading the Block Development Officer as 2nd defendant. The lower appellate Court concluded that in view of the categorical finding rendered in O.S.No.655 of 1996 about the existence of the Cart Track in the land in Survey No.272/8, the plaintiff is not entitled to re-agitate the same issue and seek a decree for permanent injunction. On the above finding, the lower appellate Court reversed the judgment of the trial Court and dismissed the suit.

6. Aggrieved, the plaintiff has come up with the second appeal.

7. The following questions of law were framed at the time of admission:



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- i. When the two suits were filed on different causes of action, is the learned Subordinate Judge right in reversing the judgment of the trial Court on the ground of res judicata without going into the merits of the case?
- ii. Is the learned Subordinate Judge right in reversing the judgment of the trial Court when the plaintiff has clearly proved his case by producing the documents and letting in oral evidence to show that there is no road in existence connecting the next village across the plaintiffs property? (sic).

8. A perusal of the judgment and decree of the trial Court in O.S.No.655 of 1996 would demonstrate that the relief sought for in both the suits is substantially the same. The only difference is that the 2nd defendant/Block Development Officer has been made as party to the present suit and the date of the trespass has been altered. That by itself cannot prevent the principle of res-judicata being applied. The trial Court in O.S.No.655 of 1996 had categorically found that there is an existing Cart track over the suit properties and the same has been in existence over several years and as such the plaintiff is not entitled to injunction restraining the defendant from using the Cart track as such. Merely because another party is added to the subsequent suit, the principles of res judicata will not cease to apply. The lower appellate Court was justified in coming to the conclusion that the second suit for permanent injunction based on the alleged attempt made by the defendants to lay the pathway is clearly barred by res judicata. In the earlier suit, the Court has found that the pathway in existence in Surve No.272 /8 namely the suit property.

9. In view of the above, the 1st question of law is answered against the appellant. Once the 1st question of law is answered against the appellant, the 2nd question of law is also to be answered against the appellant. Merely because in the subsequent suit, a cosmetic addition is made by adding a new party, the Court cannot go into the merits of the claim. The action of the learned Principal District Munsif sitting in appeal over the judgment of the Additional District Munsif, rendered in O.S.No.655 of 1996 while deciding the present suit in O.S.No.357 of 2005 to say the least is preposterous. A Court dealing with a later suit cannot sit in judgment of the same Court or even the Court of lower rank which had decided the earlier dispute.



10. Hence, the 2nd question of law is also answered against the appellant. In view of the answers of the questions of law against the appellant, the appeal is dismissed confirming the decree and judgment of the lower appellate Court. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum

To

1. The Subordinate Court,
Cheyyar.
2. The Principal District Munsif-
cum-Judicial Magistrate-I,
Cheyyar.

Copy to

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

+1cc to M/s.P.Veena Suresh, Advocate Sr.96919

S.A.No.335 of 2014
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