

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.840 of 2001
and
C.M.P.No.8696 of 2001

1.Sarojini Ammal
2.Nalini
3.Suseela
4.Sethuraman
5.Jalaja
6.Sathyamoorthy
7.Boopalan

... Appellants/Plaintiffs

..Versus..

1.Papathi ammal
2.Kannan (Deceased)
3.Venkatesan
4.Winmani
5.Rajeswari
6.Sundari
7.Yesodha
8.Mohana
9.Rekha

... Respondents/Defendants

(RR 6 to 9 brought as record as LRS
of the deceased R2 vide order of Court
dated 02.12.2014 made in
CMP.Nos.489 to 491/2014)

Prayer: Second Appeal has been filed under Section 100 of Civil Procedure Code, against the Judgement and Decree of the Additional Subordinate Judge, Chengalpattu in A.S.No.44 of 1997 dated 30.08.2000, confirming the judgment and decree of District Munsif Cum Judicial Magistrate Court, Thirukalkundram in O.S.No.3 of 1996 dated 31.03.1997.

For Appellants:: Mr.Perumbulavil Radhakrishnan

For Respondents:: Mr.R.V.Nallasivan for R1 to R3 & R5

R2 - Died

R4 - No appearance

R6 to R9 - Not Ready

JUDGMENT

The legal representatives of the plaintiff in O.S.No.3 of 1996 are the appellants herein.

2. The Suit in O.S.No.3 of 1996 had been filed by T.S.Jayarama Naicker for recovery of possession of the suit property and for payment of mense profits at the rate of Rs 50/- per month from June 1983 till May 1986 and thereafter, till the date of vacating the property. The Suit was filed before the District Munsif Court, Chengalpattu and subsequently, transferred to the District Munsif-Cum-Judicial Magistrate, Thirukalikundram.

3. The plaintiff claimed that he is the owner of the suit property, which was a gramamatham residential house site. The first defendant has no right over the suit property. The first defendant executed a rental agreement on 17.03.1964 and was permitted to put up a residential hut. It was claimed that the first defendant was a bus conductor and he was not an agriculturist. It was understood that the first defendant would vacate the premises by removing the hut at the end of the lease period, which expired on 17.03.1966. Since the first defendant did not vacate the premises, a notice dated 07.10.1973 was issued. The first defendant sent a reply dated 16.10.1973, denying the title of the plaintiff.

4. The plaintiff claimed that his father Shanmuga Naicker purchased the property from Subramania Gurukkal under a registered sale deed, dated 11.05.1932. He died in the year 1950, leaving behind the plaintiff as his legal heir. There was a simple mortgage in favour of the first defendant. This was discharged on 16.03.1964. The first defendant also claimed that the suit property was a Government poromboke and that he had put up a construction, and denied the payment of rents. The plaintiff also claimed that the property was not a Kudiyiruppu. The first defendant was not entitled to the benefits of the Tamilnadu Occupants of Kudiyiruppu (Conferment of Ownership) Act 1971. It was stated that the jurisdiction of the Civil Court was completely ousted.

5. The authorised Officer passed an Order that the first defendant was not an agriculturist and was not entitled to patta. It was stated that the Authorised Officer had no authority to direct the plaintiff to sell the site. The plaintiff never agreed to sell the property. No advance was paid under the agreement dated 17.03.1964. The plaintiff had earlier filed a suit in O.S.No.974 of 1973, before the District Munsif, Chengalpattu, for delivery of possession and to recover the arrears of rent. The said suit was decreed. The first

defendant filed the appeal A.S.No.167 of 1975 before the District Court, Chengalpattu. It was held that under Section 23 of the Act, the jurisdiction of the Civil Court was barred. The plaintiff filed in S.A.No.1498 of 1977 and it was dismissed on 01.03.1978. The High Court fixed the compensation at Rs.300/- and directed the first defendant to pay at Rs.200/- after deducting Rs.100/- paid earlier. It was stated by the plaintiff that the Judgments in O.S.No.974 of 1973, A.S.No.167 of 1975 and S.A.No.1498 of 1977 are non-est. It was stated that the Authorised Officer alone was the competent authority in these circumstances, the suit had been filed.

6. In the written statement of the first defendant and other defendants, it was specifically denied that the suit property is not a Kudiyiruppu and that the defendant was not entitled to the benefits of the Tamilnadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971.

7. The District Munsif Court, on the basis of the oral and documentary evidence dismissed the suit by judgment, dated 31.03.1997. The plaintiff then filed the suit in A.S.No.44 of 1997, before the Additional Subordinate Court, Chengalpattu. By judgment dated 30.08.2000, the appeal was also dismissed. At the time of pendency of the appeal, the plaintiff died and his legal representatives had been impleaded as appellants. They have filed the present Second Appeal. The Second appeal has not yet been admitted. It is pending for the past 17 years. Notice was directed to the respondents, who also entered appearance.

8. It is the contention of Mr.Perumbulavil Radhakrishnan, the learned counsel for the the appellants that the both Courts below held that the suit was barred by principles of res judicata. It was the contention that the Courts below had failed to note that the earlier suits were barred and the judgments therein were non-est.

9. In this connection, the learned counsel for the appellants relied upon the judgment of this Court reported in 95 Lw 562, Kalyanasundaram Udayar vs Pazhaniayya Uddayar .

10. I failed to agree with the contention raised. The present suit is re-agitation of the same issues raised in O.S.No.974 of 1973. If, according to the learned counsel, the Judgment in S.A.No.1498 of 1977 is non-est, the appellants should have logically filed a further appeal before the Honourable Supreme Court and obtained such an order. Till the order is interfered with by the higher forum, the judgment in S.A.No.1498 of 1977 will prevail and is binding on the parties. Clever drafting of the plaint will not help the plaintiff's cause.

9. In 1998-3-SCC-573 (K.K.Modi Vs K.N.Modi), the Honourable Supreme Court had stated as follows:-

"44. One of the examples cited as an abuse of the process of the Court is re litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against him. The re agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the Court. A proceeding being filed for a collateral purpose, or a spurious amount to an abuse of the process of Court."

10. I find no reason to interfere with the concurrent findings of both Courts below. No substantial question of law arises for consideration. The Second Appeal is rejected. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional Subordinate Judge,
Chengalpattu.
- 2.The District Munsif Cum Judicial Magistrate Court,
Thirukalkundram.
- 3.The Section Officer, VR Section,
Madras High Court.

S.A.No.840 of 2001 and
C.M.P.No.8696 of 2001

CNR(CO)
GN(21/03/2019)