



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.11.2019
CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.R.P (PD) (MD)No.1014 of 2012
and
M.P. (MD) .No.1 of 2012

1.Thaikka Palli Trust
Thittuvilai
rep., by its President,
Thittuvilai, Siramadam Village,
Bhoothapandi Post,
Thovalai Taluk,
Kanyakumari District.

2.President,
Thaikka Palli Trust,
Thittuvilai, Siramadam Village
Bhoothapandi Post,
Thovalai Taluk,
Kanyakumari District.

.. Petitioners / Defendants

Vs.

1.Shirley Margaret @ baby
2.Lilly Radha Bai

.. Respondents / Plaintiffs

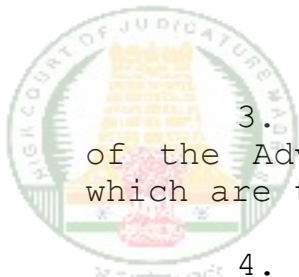
Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and final order, dated 16.12.2011 in W.T.O.S.No.3 of 2008 on the file of the Wakf Tribunal/Principal Sub Court, Nagercoil.

For Petitioners : Mr.T.Arul
For Respondents : Mr.R.Manimaran
for R2

ORDER

This Civil Revision Petition has been filed by the defendants in the Wakf Tribunal Original Suit, who have challenged the Judgment and Decree passed by the Court below decreeing the suit filed by the respondents/plaintiffs.

2. The respondents/plaintiffs filed a suit against the petitioners/defendants seeking for the relief of declaration of the right of pathway in the 'C' schedule property to a width of six feet and for a permanent injunction restraining the defendants from interfering with the use of the pathway.



3. The Court below has decreed the suit based on the report of the Advocate Commissioner and also based on Ex.A5 and Ex.A8, which are the photos and rough sketch of the property.

4. The petitioners/defendants had taken a very specific plea in the written statement to the effect that the suit is not maintainable and it is barred by *res judicata* and that the suit filed by the brother and sister of the plaintiffs in O.S.No.416 of 1997, O.S.No.1146 of 1996 and O.S.No.482 of 2007, claiming for the very same pathway right has been rejected and the same was also confirmed in the appeal in A.S.No.118 of 2004.

5. The Court below while dealing with this issue has given a finding that the copies of the Judgments pertaining to the suits under reference has not been filed and therefore, the Court was not in a position to decide the issue and therefore, the Court below held that the suit is not barred by *res judicata*.

6. During the pendency of this Civil Revision Petition, the petitioners filed an application for additional evidence under Order 41 Rule 27 of C.P.C. This Court passed the following order in the said application on 08.11.2019.

"This petition has been filed to receive the certified copy of the judgment dated 13.01.2004 made in O.S.No.416 of 1997, on the file of the learned Additional District Munsif, Nagercoil, the judgment and decree passed in appeal in A.S.No.118 of 2004, dated 24.08.2005, on the file of the learned Principal Sub Judge, Nagercoil and the judgment in O.S.No.1146 of 1996, on the file of the learned Additional District Munsif, Nagercoil, as an additional evidence under Order 41 Rule 27 of the Code of Civil Procedure.

2. A close reading of the petition and also the documents that have been filed along with the application viz., the certified copy of the judgment in O.S.No.416 of 1997, certified copy of the judgment in O.S.No.1146 of 1996 and the certified copy of the judgment in A.S.No.118 of 2004, shows that there were earlier proceedings as between the sister of the respondents and the same petitioners with regard to the same property and the judgments have gone against the sister of the respondents.

3. The learned counsel appearing for the petitioners submitted that the earlier judgments that is sought to be produced as an additional evidence, clearly shows that the present suit is barred by *res judicata*. The learned counsel

<https://hcservices.ecourts.gov.in/hcservices> submitted that this plea was raised in the



written statement and it was also dealt with by the trial Court and the trial Court rejected the plea of res judicata only on the ground that the judgments in the earlier proceedings and the pleadings were not filed before the Court.

4. The learned counsel appearing for the respondents filed a counter affidavit in this case and submitted that the additional evidence that is sought to be filed in this case, was available with the petition even when the suit was pending and the petitioners have not assigned any justifiable or proper reasons for not producing these documents. The learned counsel submitted that without assigning such proper reasons, this Court should not permit the petitioners to rely upon these documents as an additional evidence.

5. In the considered view of this Court, the very issue regarding res judicata became a subject matter of discussion in the judgment passed by the Court below. However, the Court below did not delve deep into this issue, since it did not have any materials to decide about the same. The additional evidence that is sought to be produced before this Court are the certified copy of the judgments that have been passed by competent Courts in the earlier proceedings pertaining to the same property, which was filed by the sister of the respondents. There is no serious dispute with regard to the earlier judgments passed by a competent Civil Court, except its relevance and evidentiary value. Therefore, there is no requirement to take any evidence in that regard under Order 41 Rule 28 of the Code of Civil Procedure.

6. If this Court is able to ascertain as to whether the very same issue that is the subject matter in the present case has already been decided in the earlier proceedings initiated by the sister of the respondents, there will be no need for this Court to go into the merits of the case and the case can be decided on the ground of res judicata. The relevancy and effect of the additional evidence which are the judgments passed in the earlier proceedings can always be considered at the time of final hearing of the Civil Revision Petition and at that point of time, it is always left open to the respondents to make the submissions regarding the same.

7. The Hon'ble Supreme in the case of



Akshilesh Singh @ Akileshwar Singh Vs. Lal Babu Singh and others reported in 2018 (3) CTC 883 and this Court in the case of K.M.Thangavel and others Vs. K.T.Udhayakumar and another reported in 2014 (2) CTC 113 have categorically held that a separate order has to be passed in the petition seeking for the additional evidence and only thereafter, the main appeal can be taken up for hearing. In view of the said dictum, this Petition is taken up for hearing and in the considered view of this Court, this Petition must be allowed. The certified copy of the judgment in O.S.No.416 of 1997 is marked as Ex.B3, the certified copy of the judgment in O.S.No.1146 of 1996 is marked as Ex.B4, the certified copy of the judgment in A.S.No.118 of 2004 is marked as Ex.B5 and the decree in A.S.No.118 of 2004 is marked as Ex.B6.

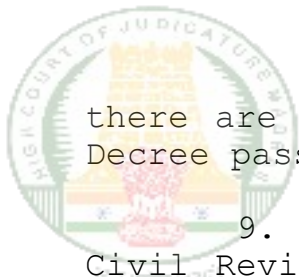
8. This Court is of the considered view that the additional evidence that has been filed before this Court will enable this Court to pronounce a considered judgment in the Civil Revision Petition.

9. In the result, the Petition is allowed.

10. Registry is directed to post the main Civil Revision Petition for final hearing on 15.11.2019."

7. The learned counsel for the petitioners submitted that the Judgment in O.S.No.416 of 1997, marked as Ex.B3 was given in the suit filed by the sister of the respondents. In the said suit, the right of pathway was claimed with regard to the very same property and it was rejected. The said suit was also filed against the petitioners. The learned counsel further submitted that the appeal filed against the Judgment, in A.S.No.118 of 2004 was also dismissed confirming the Judgment and decree in the suit and for this purpose, reliance was placed upon the Judgment and Decree in the appeal, which was marked as Ex.B5 and Ex.B6. The learned counsel submitted that without going into any of the contentions, the present suit has to be dismissed only on the ground that it is barred by *res judicata* and the dispute which was already considered and decided in favour of the petitioners, cannot be allowed to be reopened on the same grounds by the other siblings.

8. Per contra, the learned counsel appearing on behalf of the respondents submitted that the sister of the respondents did not properly prosecute the suit and appeal and that the said Judgment is not binding on the respondents. The learned counsel further submitted that the Court below has given categorical findings on facts and found that there was a pathway with a width of six feet and that is the only pathway, which is available to the respondents in order to access the road. The learned counsel submitted that



there are absolutely no grounds to interfere with the Judgment and Decree passed by the Court below.

9. The only issue that requires to be considered in this Civil Revision Petition is whether the earlier Judgment and Decree that was passed in the suit filed by the sister of the respondents will act as a *res judicata* against the respondent. A comparison of the suit property in O.S.No.416 of 1997, the schedule of property in the present suit and the report filed by the Advocate Commissioner in this suit and which was marked as Ex.C1 and Ex.C2, clearly shows that it is the very same property, which became a subject matter in the earlier suit that was filed by the sister of the respondents. Even in that suit, the same plea was taken to the effect that, that is the only pathway available to access the road. That suit was also filed against the petitioners. The Court had come to a very categorical conclusion in the said suit that the plaintiff therein had not made out a case and there is an alternative pathway. This Judgment and Decree was also confirmed in appeal in A.S.No.118 of 2004.

10. The same plea has now been raised by the respondents in the present suit. Section 11 of C.P.C., specifically provides that no Court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially in issue in a former suit between the same parties or between the parties under whom they or any of them claim and the said claim or issue has been heard and finally decided by such Court, will act as a *res judicata* in the latter suit. In the present case, the first attempt was made by the sister and it failed and the present attempt is being made by the respondents (Siblings) on the very same set of facts against the petitioners. Therefore, the present suit is barred by *res judicata*. This vital issue has not been properly considered by the Court below. There is no requirement for this Court to go into the merits of the case, since the present suit is held to be barred by *res judicata*. The respondents cannot be permitted to agitate the same issue, which has already been heard and finally decided by a competent Civil Court in the former suit.

11. In the result, the Judgment and Decree, dated 16.12.2011, passed by the Wakf Tribunal/Principal Sub Court, Nagercoil, in W.T.O.S.No.3 of 2008 is hereby set aside and accordingly, this Civil Revision Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar(CS)



To

The Principal Sub Judge/Wakf Tribunal,
Nagercoil.

+1 CC to Mr.R. MANIMARAN, Advocate (SR-102448[F] dated 29/11/2019)
+1 CC to Mr.T.ARUL, Advocate (SR-102560[F] dated 29/11/2019)

C.R.P (PD) (MD)No.1014 of 2012
28.11.2019

MK (13.12.2019) 6P 4C