



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2019

CORAM:

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A. (MD).No.278 of 2019
and C.M.P. (MD).No.5385 of 2019

Hameedul Asukin
through his Power Agent
Mohaideen Sathak

.. Appellant/Appellant/Plaintiff

Vs.

1.Rahumat Nisha
2.Mehar Nisha
3.Habeed Nissar

.. Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree, dated 07.08.2018, passed in A.S.No.26 of 2014, by the learned Subordinate Judge, Ramanathapuram confirming the judgment and decree, dated 10.02.2014, passed in O.S.No.99 of 2010, by the learned District Munsif, Ramanathapuram.

For Petitioner : Mr.M.Jothi Basu
For Respondents : Mr.V.Sitharanjandas

JUDGMENT

The plaintiff in the suit in O.S.No.99 of 2010 on the file of the District Munsif Court, Ramanathapuram, is the appellant in the second appeal.

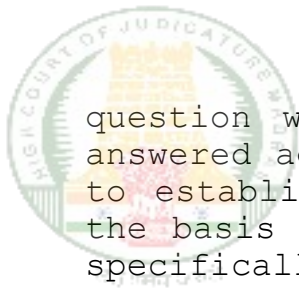
2.The appellant filed the suit in O.S.No.99 of 2010 on the file of District Munsif Court for declaration of title and consequential permanent injunction in respect of a property measuring an extent of about 750 sq. feet of land in S.No.467/2 corresponding to Keelakarai Town S.No.554/17. The appellant claims title on the basis of a registered sale deed, dated 04.01.1989 that was executed in favour of him. However, the plaintiff has not pleaded in the plaint about the title of the person from whom he had acquired the property. It is admitted that in a suit for partition in O.S.No.100/1996 filed by the mother of defendants, the suit property was also included. The appellant was the 7th defendant in the earlier suit. Even in the earlier suit the appellant claimed title on the basis of very same sale deed, dated 04.01.1989. In the said suit for partition a preliminary decree was passed on 23.12.2004. It is admitted that in



the earlier judgment, the appellant's claim based on the sale deed, dated 04.01.1989, was rejected by holding that his vendor had no title and that he cannot claim any right on the basis of the said sale deed, dated 04.01.1989. Thereafter, the appellant and his vendor filed an appeal in A.S.No.12 of 2005 and the said appeal was also dismissed confirming the decree of the trial Court granting preliminary decree. It is admitted that a final decree application is also filed in I.A.No.777 of 2008.

3.The appellant who failed to establish his title or right on the basis of the sale deed, dated 04.01.1989, instead of filing a second appeal as against the judgment and decree in O.S.No.100 of 1996, preferred the present suit for declaration of his title and consequential permanent injunction. The appellant has purchased the property in S.No.467/3. S.No.467/3 is also the subject matter of the suit in O.S.No.100 of 1996. The present suit is filed by showing the suit property as one comprised in S.No.467/2. With regard to the identity of the property, the property in the earlier suit as well as the present suit appears to be same with reference to four boundaries. In the said circumstances, a plea was raised by the appellant before the lower Courts that the earlier suit for partition is only inspect of 467/3 and that the suit property is different from the property for which decree was obtained by the defendants. This question was answered by court below by referring to two facts which are not in dispute. The subject matter of the suit in O.S.No.100 of 1996 and the present suit is one and the same. The appellant himself has purchased the property only in S.No.467/3. But, it is his case that the property which is purchased under the said document falls in S.No.467/2. This discrepancy can be explained. Since there is confusion with regard to the survey number which is the subject matter the plaintiff in the suit for partition in O.S.No.100/1996 has earlier filed a petition for amendment and succeeded in amending the earlier plaint in O.S.No.100/1996 to include S.No.467/2 instead of 467/3. Though the appellant states that a revision petition has been filed by him before this Court, this Court is of the view that it is not necessary to wait till the disposal of the civil revision petition as there is no dispute with regard to identity of the property at any stage of the proceedings.

4.The courts below have considered the case pleaded by both sides and framed the issues. The learned counsel appearing for the appellant pointed out that the court below have not framed proper issues. Since no issue was framed by the trial court with regard to the validity of the earlier decree or the applicability of Section 11 of CPC, the learned counsel further submitted that without framing issue whether the earlier suit would operate as Res-judicata, the court below ought not have dismissed the suit filed by the plaintiff for declaration of title. The question whether the earlier suit will operate as Res-judicata can be decided as a question of law when facts are not in dispute. In this case, the



question whether the suit property belonged to the plaintiff was answered against the appellant by holding that the plaintiff failed to establish his title in the previous suit in O.S.No.100/1996 on the basis of Ex.A1 sale deed and that the issue has been gone into specifically by the Courts below.

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5.The following substantial questions of law have been raised in this appeal.

1. Whether Courts below are correct in dismissing the suit/Appeal on the basis of the Judgment and Decree passed by the Courts in previous suit/Appeal, without framing the question, the previous judgment are relevant to the fact in issue u/s.40 to 43 of Indian Evidence Act, 1872?
2. Whether the Trial Court is correct in dismissing the suit, without framing the issue on the particular fact which is mandatory under Order 14 Rule 1 CPC?
3. Whether the Court below are correct in dismissing the suit, on the basis of previous judgments in which the suit property is Survey No.467/3, the present suit Survey Number is 467/2>
4. Whether Courts below are correct in appreciating of evidence DW1 in which he states that they have filed an application in the Execution Petition to amend the Survey Number of the suit schedule property?

6.One of the question of law raised by the appellant is that the previous judgment in the suit in O.S.No.100/1996 cannot be relied upon in view of the Section 42 and 43 of the Indian Evidence Act. The argument has no substance. The appellant is a party to the previous suit in O.S.No.100/1996. He claimed title on the basis of the same document in the previous suit and it is also the basis of the present suit. Despite the appellant's claim of title was negatived in the previous suit, the present suit has been filed ignoring the legal implications of a binding judgment as against the appellant. In such circumstances, the first question of law has no substance. In view of the concurrent findings of Courts below, the other questions of law have no substance.

7.As stated earlier, the question of amendment of plaint is only formal, probably in view of the subsequent change in survey number or survey by revenue department. The property has been described with reference to four boundaries in the present suit. Similarly, the property also has been described with reference to survey number and four boundaries in the previous suit. Since the appellant himself has purchased the property in S.No.467/3 and now claim title in respect of S.No.467/2, this Court has no hesitation to hold that the same property for which the plaintiff claim right in the previous suit is the subject matter of present suit and hence absolutely there is no merit in the second appeal. The present suit is nothing but re-litigation. Hence, liable to be dismissed with costs.



8. Accordingly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

To

1. The Sub Judge, Ramanathapuram.
2. The District Munsif, Ramanathapuram.
3. The Section Officer, E.R/V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.V.SITHARANJANDAS, Advocate (SR-71078[F] dated 25/06/2019

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-71196 dated 25/06/2019)

S.A. (MD) .No.278 of 2019
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