

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.01.2020

Date of Verdict : 22.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1449 of 1996

M.Kaliamurthy

...Appellant

Vs.

1. Ramaswamy Pillai (Deceased)
2. Kaveri Ammal (Died)
3. Thillai Ammal
4. Kalaimani
5. G.R.A.Indira
6. Ambika
7. Ilamathi
8. Selvi

(Respondents 3 to 8 brought on record as legal heirs of the deceased first respondent vide order of the Court dated 23.04.2014 made in C.M.P.Nos. 8460 of 2002 in S.A.No. 1449 of 1996)

9. R.Pakkiri
10. R.Pandiyan

(Respondents 9 and 10 brought on record as legal heirs of the deceased second respondent vide order of the Court dated 18.12.2019 made in C.M.P.Nos. 7940 of 2016 in S.A.No. 1449 of 1996)

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.06.1996 made in A.S.No.23 of 1992 on the file of the Additional Subordinate Court, Mailaduthurai, reversing the judgment and decree dated 30.12.1991 made in O.S.No.602 of 1988 on the file of the District Munsif Court, Mailaduthurai.

For Appellant : Mr.A.Muthukumar

For Respondents

R1 & R2 : Died

For R3 to R10 : Mr.R.Ramanlal

JUDGMENT

This second appeal is directed as against the judgment and decree dated 28.06.1996 made in A.S.No.23 of 1992 on the file of the Additional Subordinate Court, Mailaduthurai, thereby reversing the judgment and decree dated 30.12.1991 made in O.S.No.602 of 1988 on the file of the District Munsif Court, Mailaduthurai.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for recovery of possession and injunction. The plaintiffs are the owners of the land ad measuring 17 cents comprised in R.S.No.384/3 situated at Kollumangudy Village. The suit property originally belonged to one Narayanaswamy and his two sons Muthusamy Iyer and Sundaresa Iyer. The suit property is bounded on the east by street, south by road leading to Kumbakonam, north by Ayyasamy house and western by the house belonging to Panneerselvam, comprised in the same survey number. The defendant's predecessors in-interest were Paguthidhar of a portion of the suit property roughly about 2 to 3 kulis on the south-eastern corner. The same is indicated in the plan as ABCD attached to the plaint. The defendant has been permitted to occupy the same for the monthly Paguthi of Rs.1/-. The defendant's predecessors have put up super structure and the same was purchased by the father of the defendant on the same terms of paguthi by a registered sale deed dated 07.09.1936.

3.2. The said Narayanasamy Iyer conveyed entire property in favour of the first plaintiff's brother on 01.01.1971. On the date of purchase, the defendant's father was occupying the said 3 kulies on the south-eastern corner as a tenant under the said Narayanasamy. After the purchase by the brother of the first plaintiff, the father of the defendant was paying paguthi (gFjp) at irregular intervals. Though the said property was purchased in the name of the brother of the first plaintiff, it belonged to the joint family, consisting of his two brothers viz., Ramaswamy Pillai and Natesa Pillai. Ramsawamy Pillai is the first plaintiff and his brother viz., Natesa Pillai died. Therefore, his legal heirs are represented as the plaintiffs 2 to 4.

3.3. There was an arrangement between them by karaiolai, in which the plaintiffs are alone allotted the suit property under A,B,D and C schedule property respectively. ABEFGD portion marked in the plaint is the entire extent of 17 cents. The portion which is marked as ABCD is occupied by the defendant. The remaining portion BEFGDC in the plan is under the occupation of the plaintiffs. Therefore the plaintiffs made request to the defendant to vacate the premises marked as ABCD after removing the super structure and hand over the

possession. But the defendant was postponing the same and also there was a due for a sum of Rs.80/- from the defendant towards paguthi (gFjp) for the portion occupied by him. But the defendant did not response to the request and he filed suit for injunction in O.S.No.566 of 1987 on the file of the District Munsif Court, Mailaduthurai, as against the plaintiffs in respect of his occupied portion, which is marked as ABCD in the plan.

3.4. Therefore, the first plaintiff caused legal notice on 14.03.1988 thereby call upon him to surrender possession of the said ABCD portion in the plan. After receipt of the same, there was no reply from the defendant. In fact, again on 16.09.1988, the defendant was tried to encroach BEFGDC portion annexed to the portion of ABCD. Hence the plaintiffs filed the present suit for recovery and possession in respect of ABCD marked in the plan annexed to the plaint and injunction in respect of the entire property which is marked as ABEFGD in the plan annexed to the plaint.

4. Resisting the same, the defendant filed written statement and stated that he is an agriculturalist and cultivates agriculture land by contributing own manual labour. His father was also agriculturalist and their principal means of livelihood was the wages from agricultural labours. Therefore, the defendant is entitled to have the benefits under the Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act 1971. As per the Act, the defendant has become the owner of the Kudiyruppu and it was vested him absolutely from all encumbrance. In fact, the defendant filed a suit in O.S.No.566 of 1987 as against the first plaintiff for permanent injunction and hence, present suit is a counter blast for the same. Therefore he prayed for dismissal of the suit.

5. On the side of the plaintiffs, they examined P.W.1 and were marked Ex.A.1 to Ex.A.5. On the side of the defendant examined D.W.1 and were marked Ex.B.1 to Ex.B.3. Based on the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court dismissed the suit filed by the plaintiffs. In fact, the trial Court clubbed together the suit filed by the defendant as well as the plaintiffs in O.S.Nos.566 of 1987 and 602 of 1988 and dismissed both the suits. Aggrieved by the same, the plaintiffs in O.S.No.602 of 1988 alone filed an appeal suit in A.S.No.23 of 1992 and the first appellate Court allowed the appeal and decreed the suit filed by the plaintiffs in O.S.No.602 of 1988 as prayed for. Aggrieved over the same, the defendant preferred this present second appeal.

6. At the time of admission of this second appeal on 16.10.1996, the following substantial questions of law were

formulated for consideration:-

"1. Whether the finding of the lower Court on the question of the benefits claimed by the appellant under Tamilnadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 is erroneous?

2. Whether the lower Court erred in holding that the defendant's suit is barred by principles of resjudicata?"

7. The learned counsel appearing for the appellant/defendant submitted that the defendant is an agriculturalist and his forefather purchased the super structure from the original vendor as such, he is entitled to get the benefits of the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971. The defendant subsequently claimed the benefits under the Tamilnadu Act 40 of 1971. When it being so, both the Courts rejected the claim made by the defendant without any reason. The first appellate Court rejected the claim of the defendant only for the reason that the defendant did not prefer any appeal as against judgement and decree passed in O.S.No.566 of 1987 filed by him. In fact both the suits were dismissed by the common judgment and as such the non filing of appeal as against the judgment and decree in O.S.No.566 of 1987 would not operate as resjudicata.

7.1. He further submitted that Section 3 of Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 protects the interest of the defendant as such he is entitled to get benefit under the said Act. In fact, Section 8 of Tamilnadu Rural Artisans Act 1976 defined the agriculturalist and the defendant is well within the definition as such, he is entitled to get the benefits under the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971. He also relied upon the following reported judgments :-

1. 1979 (2) MLJ 369 - Thangavelu Naicker Vs. Muthukumara Chettiar and anr

2. 1982 (1) MLJ 394 - Kalyanasundaram Udayar Vs. Pazhaniayya Udayar

8. Per contra, the learned counsel appearing for the respondents/ plaintiffs submitted that the defendant initially filed suit in O.S.NO.566 of 1987 in respect of the portion marked as ABCD in the plan annexed in the plaint for injunction as against the plaintiffs. While pending the said suit, the plaintiffs filed a suit in O.S.No.602 of 1988 for recovery of possession insofar as the portion marked as ABCD in the plan annexed in the plaint and injunction as against the entire portion ad measuring 17 cents of the property which is marked as ABEFGD. Therefore, the trial Court passed common

judgment and decree and dismissed both the suits filed by the plaintiffs as well as defendant. Aggrieved by the same, the plaintiffs alone preferred an appeal in A.S.No.23 of 1992 and the same was allowed in favour of the plaintiffs and their suit was decreed. The defendant did not file any appeal as against dismissal of his suit. Therefore, directly resjudicata would operate as against the defendant and he is not entitled for any relief in this appeal. The defendant without preferring any appeal suit as against the dismissal of his suit, he cannot get any benefit under Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act, 1971, since the resjudicata would operate against the defendant. In this regard, he relied upon the following reported judgment of this Court :-

1. 2002 (4) CTC 94 - Sundararaj Vs. R.Manoharan and 10 ors
2. 2001 (2) TNLJ 216 - K.A.Perumalsamy Vs. A.Kandasamy & anr
3. 2001 (1) CTC 222 - Renganayaki and another Vs. K.R.Renganatha Mudaliar

9. Heard Mr.A.Muthukumar, learned counsel appearing for the appellant/defendant and Mr.R.Ramanlal, learned counsel appearing for the respondents/plaintiffs.

10. The plaintiffs filed suit in O.S.No.602 of 1988 on the file of the District Munsif Court, Mayiladurai, for recovery of possession with regard to A schedule property and permanent injunction with regard to B schedule property, which is marked as ABCD and BCDGFE respectively, in the plan annexed in the plaint. ABCD portion ad measuring 3 kulies and entire portion which marked as ABFGD ad measuring 17 cents. Both are comprised in R.S.No.384/3 situated at Kollumangudy Village, Pillur Vattam, Nannilam Taluk, Thanjavur District. Whereas, the defendant filed suit for injunction with regard to A schedule property in O.S.No.566 of 1987 which is marked as ABCD in the plan annexed in the plaint. The trial Court by the common judgment and decree dated 30.12.1991, dismissed both the suits. Aggrieved by the same, the plaintiffs in O.S.No.602 of 1988 alone preferred an appeal suit in A.S.No.23 of 1992 and the first appellate Court allowed the appeal and decreed the suit as prayed for by the plaintiffs. Aggrieved by the same the defendant preferred this second appeal. The defendant did not prefer any appeal suit as against the judgment and decree passed in his suit in O.S.No.566 of 1987. Therefore, the learned counsel appearing for the respondents/plaintiffs vehemently contended that the appeal itself would attract resjudicata against the defendant as such, it is liable to be dismissed.

11. In this regard the learned counsel appearing for the respondents/ plaintiffs cited the judgment of this Court reported in 2002 (4) CTC 94 in the case of Sundararaj Vs. R.Manoharan and 10 ors, which reads as follows:-

"8. It is also seen from para 22 of the judgment of the lower appellate court, relying upon Fathima Bibi Ammal .vs. A.A.Mohammed Mohideen and others that in a case of joint trial of two suits between the same parties and if an appeal is filed against only one decree, the other decree operates as res judicata. It is only under such circumstance, the lower appellate court came to the conclusion that as no appeal has been filed, the judgment add decree in O.S. No. 487 of 1983 will operate as res judicata. Hence, I am of the view that the finding given by the lower appellate court is proper and correct and no interference is called for."

12. In another judgment reported in 2001 (2) TNLJ 216 in the case of K.A.Perumalsamy Vs. A.Kandasamy & anr, this Court has held as follows:-

"11. Learned counsel for the respondent raised a legal plea to the effect that the present appeal is also barred by res judicata on the ground that the appellant had not preferred any appeal in respect of the two connected matters, namely, O.S.No. 176 of 1988 and O.S. 80 of 1992. As adverted to, the appellant was the plaintiff in the other two suits and they also relate to the same subject matter of the property covered in O.S.No. 388 of 1988. There is a clear finding against the appellant in respect of the other two suits also and when once the appellant failed to prefer any appeal against the other two judgments, naturally the present appeal also would be barred on the principles of res judicata. In support of his contention, reliance is placed upon the decision reported in Premier Tyres Ltd., v. Kerala State Road Transport Corporation, 1993 Supp (2) SCC 146."

13. The learned counsel appearing for the respondents/ plaintiffs also relied upon the judgment of this Court reported in 2001 (1) CTC 222 in the case of Renganayaki and another Vs. K.R.Renganatha Mudaliar as follows :-

"10. The above decisions directly apply to the present case. The subject matter of the two suits in the present case was precisely the same. Although the reliefs claimed were different, possession in one suit and declaration and permanent

injunction in the other, the question that was directly and substantially in issue in both the suits was whether the sale deed dated 19.5.1983 is valid and it was found to be valid by the learned Subordinate Judge. The first appellant, not having preferred an appeal against the decree in O.S.No.20 of 1986, has preferred this appeal against O.S.No.27 of 1985 and it is liable to be dismissed on the ground that the finding in O.S.No.20 of 1986 is final and binding on the parties.

11. Thus, on the basis of the aforesaid factual as well as legal proposition, it can safely be concluded that where two connected suits have been tried together and the findings recorded in one of the suits have become final, in absence of an appeal, the appeal preferred against the findings recorded in the other suit would definitely be barred by the principles of res judicata."

In the above judgements, this Court held that when the appellant did not prefer any appeal in respect of the two connected matters related to the same subject matters of the suit property, and when once the appellant failed to prefer appeal against the other suit, naturally the present appeal also would be barred on the principles of resjudicata.

14. In the case on hand, admittedly the defendant also filed suit in O.S.No.566 of 1987 with regard to A schedule property in the suit in O.S.No.602 of 1988 filed by the plaintiffs, which is marked as ABCD portion in the plan annexed in the plaint. The trial Court clubbed both the suits filed by the plaintiffs as well as the defendant and passed common judgment and decree, thereby dismissed both the suits. Aggrieved by the same the plaintiffs alone preferred an appeal suit and the same was allowed. But the defendant did not prefer any appeal suit as against the dismissal of his suit. But he preferred this second appeal as against the judgment and decree passed in the appeal preferred by the plaintiffs in respect of the suit in O.S.No.602 of 1998 alone. When both the suits filed in respect of very same property and there is a clear findings against the defendant, even then, the defendant failed to prefer any appeal. Therefore, the present appeal would be clearly barred on the principles of resjudicata.

15. Though the relief sought for by the plaintiffs and the defendant were different viz., recovery of possession in O.S.No.602 of 1988 and injunction in O.S.No.566 of 1987 respectively, both the reliefs sought for against each other for the very same property. When it being so, the defendant failed to prefer any appeal against the judgment and decree in

O.S.No.566 of 1987. Hence, it has to be concluded that two connected suits have been tried together and the findings recorded in the one suit have become final, in the absence of an appeal, the appeal preferred against the findings recorded in the other suit would definitely be barred by the principles of resjudicata. Therefore, on this ground, the appeal fails and it is liable to be dismissed.

16. Further insofar as the other grounds raised by the defendant in this appeal, he failed to establish that he is entitled for the relief under the Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act 1971. Therefore, the first appellate Court has given convinced and cogent reasons and allowed the appeal filed by the plaintiffs and there is absolutely no reason to interfere with the same. Accordingly, all the substantial questions of law formulated by this Court are answered in favour of the plaintiffs and against the defendant.

17. In fine, the second appeal stands dismissed by confirming the judgment and decree dated 28.06.1996 made in A.S.No.23 of 1992 on the file of the Additional Subordinate Court, Mailaduthurai. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Additional Subordinate Judge,
Mailaduthurai,

2. The District Munsif,
Mailaduthurai.

3. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

+1cc to Mr.A.Muthukumar, Advocate SR.No.4580

+1cc to Mr.R.Ramanlal, Advocate SR.No.4605

S.A.No.1449 of 1996

VSN II (CO)
GMY (04/03/2020)