

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.01.2020

Date of Verdict : 16.03.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No. 70 of 2001

1.J.M.K.Jiyavudheen (Died)

2.J.Kamarunissa

3.Mohammed John

4.J.Pougiya Begum

5.J.Mohammed Jasim

6.J.Jismath Azhar

(Appellants 2 to 6 are brought on record as legal heirs of the deceased sole appellant and 2nd appellant is permitted to represent the minor appellants 4 to 6 as their mother as natural guardian (J.Kamarunissa) vide order of the Court dated 18.08.2005 made in C.M.P.Nos.20778 to 20781/2004) ...Appellants

Vs.

1.Smt. Ramjan Beevi

2.Smt.Umma Salma Beevi

3.Sri. Syed Jagabar Sathigul Amin

4.Sri. Haja Alavudheen

5.Sri.Gulam Razool

6.Sri.V.T.A. Noor Mohammed (D8) ...Respondents

Prayer: Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 15.03.2000 made in A.S.No.19 of 1998 on the file of the Additional District Court, Nagapattinam confirming the judgment and decree dated 06.04.1995 made by the Sub-Ordinate judge, Nagapattinam in O.S.NO.12 of 1989 rejecting the suit claim.

For Appellants : Mr. K.V.Ananthakrishnan

For Respondents : Mr.A.Muthukumar
for Mr.S.Viswanathan for R6
R1 to R5 - Notice served.

J U D G M E N T

This second appeal has been preferred as against the judgment and decree dated 15.03.2000 passed in A.S.No. 19 of 1998 on the file of the Additional District Court, Nagapattinam confirming the judgment and decree dated 06.04.1995 passed in Sub-Ordinate Judge, Nagapattinam in O.S.No. 12 of 1989 thereby rejecting the suit filed by the plaintiff.

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 is that:-

3.1. The suit is filed for declaration and partition. The suit property admeasuring 2,467 sq.ft. out of 2,741 sq.ft. belongs to the plaintiff. It is comprised in Survey No. 636/1 to 4 in which Havva Beevi, wife of Bawa Sahib had an undivided $2/5^{\text{th}}$ share admeasuring 1097 sq.ft. She executed settlement deed dated 25.02.1984 registered as Document No. 303 of 1984 of her undivided $2/5^{\text{th}}$ share in favour of her grand-daughter Ramjan Beevi. In turn, she sold out the said property on 25.10.1982 in favour of the plaintiff. The remaining $1/3^{\text{rd}}$ undivided share admeasuring 548 sq.ft. belongs to one L.S.Abdul Azeez. After his demise, his sons 4^{th} and 5^{th} defendants inherited the same and they sold out the said property in favour of the plaintiff by the sale deed dated 05.01.1991. One Abitha Ammal and Fathu Muthu Johran are daughters of one Mohammed Sherif, both entitled to 411 sq.ft. each, totally 822 sq.ft. in the suit property. They sold out the respective share in favour of the plaintiff by the sale deed dated 04.01.1989. Thus, the plaintiff purchased by way of three sale deeds admeasuring 2467 sq.ft. in Survey No.636 situated at the Kodikkalpalayam, Thiruvarur. These properties are jointly enjoyed by them without any division. The vendors of the plaintiff were in possession and enjoyment of the suit property. Hence, the plaintiff filed a suit for declaration and partition. The 1^{st} defendant did not chose to file any written statement.

4.1. Resisting the same, the 5^{th} defendant filed a written statement stating that the suit property inherited by the defendants 3 to 5 in which the plaintiff and the first defendant are having their respective shares. In respect of the shares of defendants 3 to 5, they are paying revenue dues in respect of the suit property. The said suit property measuring 822 sq.ft. belongs to the plaintiff and 224 sq.ft belongs to the first defendant. Except their shares, they are not entitled for any share in the suit property. They have no objection to divide the property in respect of the plaintiff as well as the first defendant shares. Further, the 5^{th} defendant also prayed for division of his share and also paid court fee.

4.2. The 8th defendant filed written statement stating that the 8th defendant was impleaded as party pending suit by the order passed in I.A.No. 339 of 1991 vide order dated 22.01.1992. The 8th defendant is the purchaser of the suit property from the first defendant who is the real owner of the suit property through a registered sale deed dated 12.12.1990. The Patta also issued by the municipality in his favour and all the revenue documents were mutated in his name. Further, it is stated that the suit property is a Labbai Manyam and the first defendant's father Abdul Hameed Labbai was attached to Palagam Palli Dharga at Kodikkalpalayam. Originally, the suit property belonged to Dharga and it was handed over to the Labbai attached to Dharga to be owned and enjoyed by him. The first defendant father was the Labbai attached to the Dharga and he used to go to it. Pathya Moulath for those who come go over prayer in the above Dharga. During his life time, he was in possession and enjoyment of the property and he had absolute right over the property. The first defendant is the only legal heir of the said Abdul Hameed, who died several years ago when the defendant was minor. She was denied to live in the suit property and she also died at her age of 70. All the revenue records stands in the name of the first defendant. In fact, the Patta is also issued in his favour. Whereas, the plaintiff Trust is claiming title to the suit property through one Mohamed Sheriff. He had no title over the suit property. He was the first husband of the first defendant about 10 years. After his death, the first defendant married to one Mohamed Ibrahim. Likewise, Abdul Ajees also died and had no title over the property since, he had no share in the suit property also. The said Fathu Muthu Johran and Abitha Ammal, daughters of the said Mohamed Sheriff through his another wife cannot claim any share in the suit property. According to the plaintiff, he had purchased the suit property from them in which they had no title over the suit property. In fact, the plaintiff had nothing stated in the plaint to prove their vendor's ownership in the suit property. The first defendant's daughter and her enjoyment over the suit property have been proved from the year 1962. One Havva Beevi Ammal filed eviction petition as against the first defendant and in the said petition she categorically claimed that she was the sole owner and she was in possession and enjoyment of the property. The suit petition was dismissed, it was confirmed by the Appellate Court in C.M.A.No. 1 of 1963 on the file of the Sub-Court, Mayiladuthurai. On the strength of her ownership, the first defendant also mortgaged her suit property in favour of one Gulam Rasool on 21.03.1984 and proved her ownership. Therefore, the plaintiff without paying any consideration got sale deed in his favour from the vendors who had no title over the suit property and claimed declaration and also partition by this false and frivolous suit and prayed for dismissal of the suit.

5. On the side of the plaintiff examined P.W.1 and were marked Exs.A1 to A3. On the side of the defendants, they examined P.W.1 and P.W.2 and were marked Exs.D1 to D15. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the Trial Court dismissed the suit with costs. In fact, pending the said suit, the plaintiff also filed another suit in O.S.No.155 of 1993 as against the 8th defendant in O.S.No.12 of 1989 alone for permanent injunction. In view of the dismissal of the suit in O.S.No.12 of 1989, the subsequent suit in O.S.No.155 of 1993 is also dismissed. Aggrieved by the same, the plaintiffs preferred an appeal suit only as against the judgment and decree in O.S.No.12 of 1989 in A.S.No. 19 of 1998. The first Appellate Court also dismissed the appeal and confirmed the judgment and decree passed by the Trial Court. Aggrieved by the same, the plaintiff preferred this second appeal.

6. At the time of admission, the following substantial questions of law were framed in this second appeal:-

"i) Is not the Appellate Court wrong in coming to the conclusion that the Appeal is barred by resjudicata under Section 11 of C.P.C.?

ii) In a suit for partition, the subsequent purchaser is a necessary and property party to the proceedings and the sale in his favour is subject to lispendens, under Section 52 of the Transfer of Property Act. Hence, is not the appellate authority wrong in rejecting the case of the appellant, on the ground that for want of pleading against the sixth respondent the suit is not maintainable?"

7. The learned counsel appearing for the appellant submitted that father of the first defendant namely, Abdul Hameed was doing pathya and Moulath therefore, he has given right of the property comprised in Survey No.636 and the property is a Labbai Maniam. His first wife Umsamma Beevi. Under Inam Abolition Act the property vest in the government. The property itself with the government and the possession were recognized in the settlement order which was marked as Ex.A2 issued by the settlement Tahsildhar, Thanjavur. The suit property which was sold out by the first defendant is the exclusive property held by the plaintiff's predecessor in title. Even then, the first appellate Court held that the plaintiff cannot claim title on the strength of the mortgage deed. He further submitted that the Fathu Muthu Johran and Abitha Ammal are the daughters of Mohammed Sherif and he married Habibu Ammal. He married the

first defendant after his death of his first wife as second wife. They did not have any issues. On the death of Mohamed Sherif, the Habibu Ammal and legal heirs of the Mohamed Sherif, the predecessor in title continued in possession of the suit property. The 4th and 5th defendant's grandfather Abdul Azee and the second defendant were enjoying the property. Therefore, the District Revenue Officer issued joint Patta in the names of Habibu Ammal, Abdul Azeez and Havvabi. In fact, as against the said joint Patta, the 1st and 8th defendant did not raise any objection. He further submitted that after death of Mohamed Sherif, after providing 1/4th share out of 1097 sq.ft. to share to Habibu Ammal, the balance vest in Fathu Muthu Jogran and Abitha Ama. Therefore, they had title over the property from them. The plaintiff purchased the suit property by the sale deed dated 04.04.1989 which was marked as Ex.A14 admeasuring 822 sq.ft. He further submitted that the first appeal was dismissed only on the ground that the appell is barred by resjudicata, since he did not prefer any appeal as against the judgment and decree passed in O.S.No.155 of 1993 and it is not legally correct and valid. Since the Appellate Court decided the issues in O.S.No. 12 of 1989 and only on the basis of the issues decided in O.S.No. 12 of 1989. The suit in O.S.No. 155 of 1983 for injunction was dismissed. In fact, in both the suits cause of auctions are different. Only after impleading the 8th defendant, the subsequent suit was filed that too only as against the 8th defendant. He further submitted that in subsequent suit only for the consequential relief alone. Both the suits are filed by only plaintiff and the defendants did not file any suit. Therefore, the plaintiff can very well relinquish the consequent relief of injunction claimed in O.S.No. 155 of 1993. Further, he submitted that Ex.A1 is 30 years old document as such Section 90 of the Evidence Act proves that the predecessor of the plaintiff had title over the property. In fact, after Inam Abolition Act the property vest in the government and settlement officer passed orders on the possession and title thereby, the plaintiff's predecessor had absolute right over the property. Further, the Appellate Court failed to consider the joint Patta issued in respect of the suit property. Therefore, he prayed for decreed the suit.

8. Per contra, the learned counsel for the 8th defendant submitted that the father of the first defendant was absolute owner of the property. The Vendors of the plaintiff had no title over the suit property. The plaintiff also failed to prove that the vendors had title over the property before the Trial Court. When the 8th defendant categorically denied the title over the property of the plaintiff and his vendors, the duty of the plaintiff has to prove his title over the suit schedule property. Further, he submitted that admittedly, the plaintiff filed two suits and both the suits were dismissed by

the Trial Court. But, the plaintiff preferred an appeal suit only as against the first suit filed for declaration and partition and did not prefer any appeal as against the subsequent suit for declaration in respect of very same property. Therefore, the appeal itself is barred by resjudicata and it is liable to be dismissed. Further, the Ex.A1 is the lease deed and Ex.A2 is an order of the settlement Tahsildhar did not confer any title over the suit property. Further, the first defendant categorically proved their title by producing mortgage deed which was marked as Ex.D1. The learned counsel appearing for the 8th defendant cited the following judgments reported in

1. 1998 (1) CTC 477 in Muthu Goundar Vs. Poosari @ Palaniappan and 4 others.

2. 1992 (1) MLJ 457 in Arumugha Nainar Vs. Lakshmana Perumal (Died) and Others.

3. 1993 (2) MLJ 674 in , 1998 (2) LW 188 (SC) in Sir-La-Sri Sivaprakasa Pandara Sannadhi Avargal Vs. Smt. T.Parvathi Ammal & Others.

4. 1998 (2) LW 189 in Srinivasan and 6 Others Vs. Sri Madhyarjuneswaraswami, Pattavaithalai, Tiruchirapalli District by its Executive Officer at Pettavaithalai Devasthanam and 5 others. 5. 2006 (4) MLJ 1016 in S.A.Viswanathan (died) and another Vs. R.Krishnan and Another.

9. Heard Mr.K.V.Anantha Krishnan, learned counsel appearing for the appellants and Mr. A.Muthukumar for Mr.S.Viswanathan, learned counsel appearing for the 6th respondent. Though notice has been served to respondents 1 to 5, none appears either in person or through counsel.

10. The case of the plaintiff is that he purchased the suit property by way of three separate sale deeds from his vendors admeasuring 2,467sq.ft. In Survey No.636 situated at Town No. 4, Door No.13-A, North Street, Sethivattam Kodikalpalayam Pallivasal Street, Municipal Ward 2, Block No.2, Survey No. 636, Nagapattinam District in respect of 1,097 sq.ft. by the sale deed dated 25.10.1992 which was marked as Ex.A44 purchased by the plaintiff from one Havva Ramjan Beevi. She derived title by her grandmother Haava Beevi by the settlement deed dated 22.02.1984 registered as Document 303/1984 which was marked as Ex.A13 thereby settled her 2/5th undivided share. In respect of 548 sq.ft. is concerned, remaining 1/3th undivided share belongs to one L.S.Abdul Azeez. After his demise, his sons 4th and 5th defendants inherited their share and they sold to the plaintiff by the sale deed dated 05.01.1991 which was marked as Ex.45. In respect of the extent of 822 sq.ft. is concerned purchased by the sale deed dated 04.04.1989 from the daughters of Mohamed Sherif namely, Habibu Ammal and Fathu Muthu Johran, which was marked as Ex.A14. Whereas the 8th defendant claimed the title

over the suit property that the suit property is a Labbai Maniam and father of the first defendant was the Labbai attached to Palagam Palli Dharga at Kodikkalpalayam. The suit property was handed over to the father of the plaintiff, the first defendant and he was living in the suit property as a owner. After his demise, his only daughter, the first defendant derived title over the suit property. From the first defendant, the 8th defendant purchased the suit property by the registered sale deed dated 12.12.1990 which was marked as Ex.D3. Further, the plaintiffs Vendor claimed title over the suit property that the first defendant was married to Mohamed Sherif as second wife and they had no issues. After demise of the said Mohamed Sheriff, his legal heirs are having their respective shares in the suit property. The plaintiff marked Exs.A1 to A53 to prove the title of his vendor in which the title derived by Mohamed Dawood. The suit property derived by Abdul Azeez as if his mother and father demise of her mother, he is entitled for title over the property. Ex.A2, the order of the settlement Tahsildhar in which the property comprised in Survey No.636 stand in the name of Habibu Ammal, Abdul Azeez and Havvabi. But the Ex.A1 says the property exclusively belonged to Abdul Hameed. The sale deeds were marked as Exs.A14, Ex.A44 and Ex.A45 in favour of the plaintiffs. The settlement deed in favour of Ramjan Beevi was marked as Ex.A13. On the strength of the settlement, the Ex.A14, the sale deed executed in favour of the plaintiff. In the settlement deed, there is no recital about the title to the extent of 1097 sq.ft namely, 2/5th share in the suit property for which no document was marked by the plaintiff. At the same time, according to the Ex.A2, Habibu Ammal had no title in the property comprised in Survey No.636. Therefore, the settlement deed executed by the said Havva Beevi had no title over the suit property. By Ex.A45, 548 sq.ft. was purchased by the plaintiff in the suit property for which also to prove title by his vendors no document was marked by the plaintiff. It is also seen from the Ex.A2 what is the share of the Abdul Ajeez is not clear. Further, the 1/5th share of the vendor also not proved and there is absolutely no proof for the share of 548 sq.ft. derived by the said Abdul Ajeez as per Ex.A2. When the plaintiff filed a suit for declaration and partition he has to prove his title over the property. But, he failed to prove the title over the property for his vendors.

11. The learned counsel appearing for the respondent mainly contended that the present appeal is barred by resjudicata since the plaintiff failed to prefer any appeal as against the judgment and decree passed in O.S.No. 155 of 1993. Since both the suits filed by the plaintiff for the very same property. Though, the second suit is filed for consequential injunction he ought to have preferred an appeal suit as against the said

judgment and decree passed in O.S.No. 155 of 1993. In this regard, the learned counsel also cited the following judgments:-

i) Arumugha Nainar Vs. Lakshmana Perumal (died) and Others has held as follows:-

"5. The question has been considered by Ratnam, J. In Thangavelu Kounder and others Vs. Venkatarama Kounder and others, (1988) 2 L.W.14. The relevant passage in the judgment read thus:

"It was pointed out by the Supreme Court that where there are two suits and the decree in one of the suit had become final, the issues decided therein, could not be reopened in the second appeal filed against the decree passed in an appeal arising out of another suit. The Supreme Court had also laid down that even when appeals are disposed of by a common judgment, the decision in that judgment, may party to challenge the decision in one, would operate as resjudicata, as it had not been appealed against. Apart from this, the decision in a suit, though instituted subsequently, may operate as resjudicata in a pending appeal, on the footing of a decision in a former suit. This principle does not appear to be confined in its application to independently instituted suits, but can be applied even in the case of a common judgment. If two suits are tried together and a common judgment is rendered and separate decree are also drawn up and one of the adjudications is allowed to become final, that adjudication assumes finality on and from the date of its adjudication and in the course of an appeal against the other judgment and decree, the adjudication, which had become final, can be pleaded as resjudicata on the ground that the controversy had been finally adjudicated upon."

9. In view of the pronouncements of the Supreme Court in the above two cases, there can be no doubt that the present appeals are barred by resjudicata. It is not open to the appellants herein to contest the same issues in the appeals when there is a decree against them in O.S.No.346 of 1968 which has become final and conclusive. The argument of learned counsel for the appellants that there should be a confirmation of the decree of the Trial Court by an appellate Court in order to constitution resjudicata is without any substance."

ii) D.Krishnamurthi Vs. K. Parasuraman reported in 1993 (2) MLJ 674:-

"4. A Bench of this Court has considered the question whether a finding in a suit for injunction would operate as resjudicata in S.Kurshid Begum alias Basu vs. S.Ajaram Bi alias Hazaram Bibi(1992) 2L.W.81. In that case, there was no issue in the injunction suit relating to title. But, the Bench found that there was discussion on the question of title and a finding was given. Hence, the Bench held that the decision in the other suit would operate as resjudicata. The relevant observation is found in the following passage:

"Taking the above referred to question of resjudicata the Court below has held that in view of the earlier suit in O.S.No.645 of 1977 being an injunction suit, its decision cannot operate as resjudicata to the present suit. The earlier suit was filed by the defendants 1 and 2 herein against the 2nd plaintiff herein (and not the 1st plaintiff herein also) praying for a permanent injunction restraining him from interfering with the possession of the suit property by defendants 1 and 2 herein. No doubt, there was only one issue in the said suit, viz. Whether the plaintiffs are entitled to injunction as prayed for? But, the learned counsel for the appellant relied on a very recent decision reported in C.Arumuganathan Vs. S.Muthusamy and others (1991) 1 L.W.63, wherein it has been held that the decision given in a suit for bare injunction also can operate as resjudicata to a latter suit based on title, if the question of title was directly and substantially in issue in the former suit. No doubt in the former suit, viz. O.S.No.645 of 1977 there was no specific issue regarding title. However, in the written statement herein there was a specific denial of title of the plaintiff therein. It was specifically alleged therein what the abovesaid settlement deed dated 30.06.1967 was void and the plaintiffs therein had nothing to do with the suit properties. On the above said defence plea taken, the Court in the said suit, went into the question of title also and upheld the validity of the said settlement deed. Therefore, we think that the said decision would operate as resjudicata to the present suit..."

5. Hence, the contention of learned counsel cannot be accepted. Consequently, we hold that this appeal is barred by the principle of resjudicata in view of the finality of the decree and judgment in O.S.No.6970 of 1982 as between the same parties."

iii) S.A.Viswanathan (died) and Another Vs. R.Krishnan and Another:-
Resjudicata - Common judgment against a party - No appeal preferred against the decree in one suit - Aggrieved party is bound by the decree, which is not appealed against - Finding in that suit, had reached finality - Second appeals in the connected matters, are barred by resjudicata.

12. This Hon'ble Division Bench of this Court held that the two suits were tried together and disposed of by a common judgment and there is no appeal as against the one judgment and decree then the principles of resjudicata came into effect. In the case on hand, though the plaintiff took a stand that the second suit is only for consequential prayer for injunction and as such it cannot operate as resjudicata to the present appeal, the first suit filed by the plaintiff as against the defendant and subsequent suit filed only as against the 8th defendant who is the contested defendant for the very same property. In the second suit filed by the plaintiff, there was no issue framed by the Trial Court and in view of the dismissal of the first suit for declaration and partition, the subsequent suit for injunction was also dismissed. Therefore, decision in the first suit would operate as resjudicata, and this appeal is barred by the principles of resjudicata in view of the judgment and decree passed in O.S.No.155 of 1993 as between the same parties by the common judgment and decree.

13. The judgments cited by the 8th defendant are as follows:-

i) Sir-La-Sri Sivaprakasa Pandara Sannadhi Avargal Vs. Smt.T.Parvathi Ammal & Others reported in 1998 (2) L.W.188:-

"The only question for decision relates to the jurisdiction of the Civil Court to entertain the suit which was filed by the respondents. The Trial Court decreed the suit. The First Appellate Court set aside the decree taking the view that the Civil Court's jurisdiction was barred. In the second appeal filed by the present respondents, the High Court has restored the judgment and decree of the Trial Court taking the view that the Civil Court's jurisdiction was not barred.

2. The plea of exclusion of the Civil Court's to adjudicate the title of the parties in the present case is based on the provisions of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. This Court in a recent decision in R.Manikanaicker Vs. E.Elumalainaicker, 1995 (4) SCC

156=1995-1-L.W.731 has clearly held that the Civil Court's jurisdiction to adjudicate title of the parties, is not barred by virtue of the provisions of the said Act. This is a direct decision of this Court on the provisions of the Act with which we are concerned in the present case. Learned counsel for the appellant place reliance on the decision in Vatticherukuru Deekshithulu and Others.1991(Supp.2) SCC 228. It is sufficient to observe that this decision relates to the provisions under a different Act of Andhra Pradesh. Moreover, in R.Manikanaicker, this decision relating to the provisions in the Andhra Pradesh Act was considered and distinguished. In view of the direct decision of this Court in R.Manikanaicker, there is no merit in this appeal. The appeal and the Contempt Petition are dismissed. No costs."

ii) Srinivasan and 6 others Vs Sri Madhyarjuneswaraswami, Pattavaithalai, Thiruchirapalli Dist reported in 1998 (2) LW 189:-

"14. We have carefully considered the submissions of learned counsel appearing on either side in the light of the catena of cases noticed supra by us and the principles laid down therein. A comparison of the provisions contained in the Abolition Act, the Inam Abolition Act as also the Minor Inams Act would go to show that the ultimate object of one or the other of these legislations is the introduction of ryotwari settlement in the areas covered and notified under the respective enactments, after abolishing existing land tenure and acquiring the rights of the landholders or inamdars concerned, who, under the system of land tenure which was in vogue in these areas, were considered to be intermediaries in between the actual tiller of the soil and the State and that the other provisions pertaining to the constitution of authorities, their powers, jurisdiction and the finality given to the orders passed, or incorporation of a provision in the nature of res judicata providing for the binding nature of the orders on the parties to the same and persons claiming under them in any suit or proceeding in a civil Court insofar as such matters are in issue between the parties or persons in such suit or proceeding, are almost identical and similar, except certain differences which, in our view, may not be that much relevant for the issue before us. Even while dealing with this aspect of the matter, the Supreme Court in the decision reported in State of Tamil Nadu v. Ramalinga Swamigal Madam, : AIR1986SC794 observed

that the powers of the statutory authority constituted under the Act are exercised in a summary manner and the claims of occupants comes to be determined only incidentally and they cannot be equated with the civil Courts in respect of what they could do or the nature of relief that they could grant. A careful analysis of the scheme underlying these Abolition laws would go to show that the vesting on abolition under everyone of these legislations are subject to the pre-existing rights of the occupants, except in respect of what are known as public or communal properties, meant for common use and the grant of patta has been always considered and held to be in recognition of their pre-existing rights. The provisions relating to abolition and vesting of the properties do not have the effect of obliterating or destroying such pre-existing rights, if any, except in respect of public or communal properties and the rights which inhere are the basis and fundamental rights which entitle a person to preferentially get patta under these legislations and the same could not be equated to the grant of patta by way of assignment under the Revenue Standing Orders or under rules of assignment outside the scope of the statutory enactments. Similarly, a meticulous analysis of the scheme underlying the provisions of the Act dealing with the nature of rights dealt with by the various authorities, the manner in which such authorities adjudicate such rights and the consequences of such adjudication, disclose that they do not mean and even intended to be a substitute or alternate mode of resolution of the ordinary civil right of a citizen or for that matter persons asserting competing claim, in their attempt to project a claim for patta. Consequently, in our view, the ratio of the decisions of the Apex Court reported in *State of Tamil Nadu v. Ramalinga Swamigal Madam*, : AIR1986SC794 , *R. Manicka Naicker v. E. Elumalai Naicker*, : [1995]3SCR217 and *Sayyed Ali v. A.P. Wakf Board, Hyderabad*, : [1998] 1SCR398 and that of a Division Bench of this Court in *Ramanujam Kavirayar, T.K. v. Sri-La-Sri Sivaprakasa Pandara Sannathi Avargal* 1988 (2) L.W. 513 and of a learned single Judge of this Court in *Samsuddin Rowther and another v. Avvammal and 2 others* 1992 (1) L.W. 207 would squarely apply and govern the case and consequently, it has to be necessarily held that the jurisdiction of the civil Courts cannot be held to have been completely ousted or barred at any rate in respect of adjudication of claims of title and questions or issues which are not obliged or required to be adjudicated for the purposes of enforcement of these

laws which has, as their objection and aim, to implement ryotwari settlement in the areas governed by them.

15. Further, the mere fact that the orders passed or decisions rendered under these Acts were given finality for the purposes of those Acts or that the issues, which they are obliged or required to be decided, when so decided are ordained to bind the parties to the proceedings or their privies and successors-in-interest applying the principles of res judicata, does not have the effect of ousting the jurisdiction of the Civil Court once and for all. It is by now well settled that even in cases where finality is accorded to any decision or order, there are certain well settled exceptions and proved existence of such exceptional factors, the Civil Court is entitled to nullify any or all such decisions. Similarly, even in cases where the principles of res judicata are rendered applicable, the jurisdiction of the competent Civil Court to go into the question and find out whether the necessary ingredients to apply the principles of res judicata exist in a given case or not cannot be denied to the Civil Courts and from the mere fact of according finality to the orders or decisions rendered under the Act or the application of the principles of res judicata, a total or complete bar or ouster of the jurisdiction of the Civil Courts for all and any purpose cannot be automatically inferred or implied. Before a plea of res judicata can be given effect to, it must be sufficiently pleaded and established that the litigating parties must be the same, that the subject matter of the suit and the other proceedings also are identical, that the questions arising in the suit and the other proceedings were directly and substantially in issue and the same was finally decided and that too by an authority or Court of competent jurisdiction.

16. On coming to know of the existence of an unreported decision of the Apex Court rendered by a Bench consisting of three of their Lordships, efforts were made to secure the same when the judgment in this case was under preparation and it was ascertained that in Sri-La-Sri Sivaprakasa Pandara Sannadhi Avargal v. Smt. T. Parvathi Ammal & Ots., : [1996]2SCR917 . Their Lordships of the Apex Court by a judgment dated 20.2.1996, not only approved the earlier decision of the Apex Court reported in R. Manicka Naicker v. E. Elumalai Naicker, : [1995]3SCR217 and set their seal of approval to the principles laid down therein, but has

categorically held in unmistakable terms with the decision in Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu : [1991]2SCR531 has no application to the provisions or in respect of claims arising under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. Their Lordships of the Apex Court in coming to such a conclusion, held as follows:-

'The only question for decision relates to the jurisdiction of the Civil Court to entertain the suit which was filed by the respondents. The trial Court decreed the suit. The First appellate Court set aside the decree taking the view that the Civil Court's jurisdiction was barred. In the second appeal filed by the present respondents, the High Court has restored the judgment and decree of the Trial Court taking the view that the Civil Court's jurisdiction was not barred.

The plea of exclusion of the Civil Court's jurisdiction to adjudicate the title of the parties in the present case is based on the provisions of the Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963. This Court in a recent decision in R. Manickanaicker v. E. Elumalinaicker, : [1995]3SCR217, has clearly held that the Civil Court's jurisdiction to adjudicate title of the parties, is not barred by virtue of the provisions of the said Act. This is a direct decision of this Court on the provisions of the Act with which we are concerned for the appellant placed reliance on the decision in Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu and Ors., 1991 (Supp.) 2 SCC 228. It is sufficient to observe that this decision relates to the provisions under a different Act of Andhra Pradesh. Moreover, in R. Manicknaicker, this decision relating to the provisions in the Andhra Pradesh Act was considered and distinguished. In view of the direct decision of this Court in R. Manicknaicker, there is no merit in this appeal. The appeal and the contempt petition are dismissed."

14. In both the judgments, the Hon'ble Supreme Court of India and this Court held that the Patta is not the title to property and also it does not confer any title to the suit property. Therefore, the plaintiff cannot seek title over the property by marking Patta in respect of the suit property without proving the title over the property by his vendors. Therefore, the above judgments are squarely applied to the present case.

15. In view of the above discussion, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the Courts below. As such this Court is of the considered opinion that no substantial questions of law are involved in this appeal. Be that as it may, the substantial questions of law are accordingly answered against the plaintiff and in favour of the 8th defendant. In fine, this second appeal is dismissed with costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:-

1. The Additional District Judge,
Nagapattinam.
2. The Sub-Ordinate Judge,
Nagapattinam.

Copy to

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

+lcc to Mr.A.Muthukumar, Advocate Sr.23022
+lcc to Mr.K.V.Ananthakrishnan, Advocate SR.23904

सत्यमेव जयते

S.A.No. 70 of 2001

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srg 30/04/2021

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