

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.10.2020

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THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.No.1612 of 2020 & A.No.597 of 2020 in
C.S.No.716 of 2019 & O.A.No.1140 of 2019

A.No.1612 of 2020

1.S.Ramesh Babu

2.S.Nithyanandam

... Applicants

Vs

Greater Chennai Corporation,
Rep. by its Commissioner,
Ripon Buildings,
Chennai – 600 003.

... Respondent

For Applicants : Mr.T.Gowthaman

For Respondent : Ms.Karthikaa Ashok

A.No.597 of 2020

1. Mr.A.Jeyaraj

2. Mrs.R.Hannah Janet

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3. Mr.S.Vijayaraghavan

4. Mr.S.Venugopalan

...Applicants/proposed

3rd party

.. Vs ..

1. Greater Chennai Corporation,
Rep. by its Commissioner,
Ripon Buildings,
Chennai – 600 003.

2. S.Ramesh Babu

3. S.Nithyanandam

... Respondents

For Applicants : Ms.V.S.Usha Rani

For Respondents : Ms.Karthikaa Ashok – R1

Mr.T.Gowthaman – R2 & R3

Application in A.No.1612 of 2020 filed under Order XIV Rule 8 of
O. S. read with Order VII Rule 11 of CPC to reject the plaint in the above
suit and the application in A.No.597 of 2020 filed under Order XIV Rule 8
of O. S. read with Order I Rule 10(2) read with section 151 of CPC to

implead the applicants/proposed third party herein who are having the right and enjoyment of the land rank them as defendants 3 to 6 in the Civil Suit in C.S.No.716 of 2019.

COMMON ORDER

The application viz., A.No.1612 of 2020 has been filed by the applicants/defendants to reject the plaint on the ground that the suit is nothing but a flagrant abuse of the process of law. This is the second round litigation between the very same parties on the very same issue in respect of the same property.

2. It is the contention of the learned counsel for the applicants/defendants that the earlier suit in O.S.No.2777 of 1999 filed against the respondent/defendant for permanent injunction, was decreed and the matter went upto the Supreme Court and ended in favour of the applicants/defendants herein. In the said suit, it was categorically held that

the applicants/defendants are the owner of the suit schedule property. As such, the present suit is barred by *res judicata* and on that ground alone, the same is liable to be rejected.

3.In the counter affidavit filed by the respondent/plaintiff, it is averred that the immovable property comprised in Survey No.268/1, New Survey No.268/1A/1A to an extent of 20013 sq.ft. situated at No.137, Velachery Village, Mambalam Guindy Taluk, Chennai, morefully mentioned in the schedule is the property ear-marked for children play space by the original owner viz., Thulukkannammal in the approved layout sanctioned vide LPDM/DDTP No.121/74; the said Thulukkannammal entered into an agreement with a third party for the formation of a layout; the third party has clubbed 1 Acre and 66 cents of land with the other adjacent lands and formed a layout in the name and style of Dhandeeswaram Street. It is further averred therein that the condition for approval stipulates 10% of the land be reserved for open space and ear-marked for public purpose and hence, the above area was gifted to the Corporation under a

Gift Deed dated 22.06.1976 from the date of sanction of the plan. Thus, the property is under the custodian of the respondent and they have to maintain the same for public purpose. It is also averred therein that the earlier suit was filed for bare injunction and there was no issue with respect to title and therefore, the present suit filed for declaration is very well maintainable. For better appreciation, the relief claimed in the present suit is usefully extracted hereunder:

“(a) For a Declaration, declaring that the property comprised in Survey No.268/1, New Survey No.268/1A/1A, situated at Velachery Village, Mambalam Guindy Taluk, Chennai, morefully described in the Schedule hereunder is a property ear-marked for Public purpose that has to be maintained by the Plaintiff Corporation for the benefit of Public by developing the vacant area as a Children Play Park as is reserved in the approved Layout;

(b) For a Declaration, declaring that the Judgment and Decree in O.S.No.2777 of 1999 will not be a bar to retain the Schedule mentioned property as Children Play Park as is reserved in the approved Layout for due Maintenance by the Plaintiff Corporation;

(c) For a Permanent Injunction, restraining the 1st and 2nd Defendants herein, their men, agents or anyone on their behalf from in anyway interfering with the peaceful possession and enjoyment of the Suit Schedule property, morefully described

in the Schedule hereunder without any due process of law;”
The suit is filed mainly on the ground that while approving a layout, 10% of the total extent of land is reserved for the public purpose and accordingly, the suit property is reserved for Park under the control of the Corporation and hence, the above reliefs are sought for by the respondent/plaintiff.

4.The learned counsel appearing for the applicants vehemently contended in the application seeking to reject the plaint that the earlier suit proceedings have come to an end after more than 18 years and all the contentions of the Corporation raised in the earlier suit in O.S.No.2777 of 1999 were rejected. It is further contended by the learned counsel that though the earlier suit was filed for permanent injunction, the title was also incidentally decided by the competent Civil Court, which has categorically held the title in favour of the applicants herein and granted injunction and the same was also upheld by the Hon'ble Supreme Court. As such, the present suit filed to overcome the earlier judgment under the pretext of the public purpose, is nothing but clear abuse of the process of law and if the

same is allowed to continue, it would amount to re-litigate the issues which were already decided and also to nullify the judgment and decree passed in the earlier suit.

5. The learned counsel appearing for the respondent/plaintiff vehemently contended that the present suit is only in respect of relief of declaration whereas the previous suit is related to permanent injunction, wherein there was no issue pertaining to the title of the property. When the property involved is public in nature, no title issue was decided. Merely because the suit was filed for bare injunction, the same cannot be a bar for filing a comprehensive suit for declaration, declaring the suit property as ear-marked for public purpose and to be maintained by the Corporation. Further, it is contended by the learned counsel that as per the terms and conditions, at the time of approval of the plan, 10% area has to be left for the public purpose. The owner of the property having entered into an agreement with the third party to deal with the property and obtained approval, cannot now dispute the same and contend that the Corporation has

no right over the same, hence submitted that the suit for declaration can very well maintainable. It is also contended that since there was no direct issue in the earlier suit as regards the title of the property, the present suit cannot be rejected and the issue involved in the present suit has to be decided after letting in evidence and not by mere application and hence, the application filed to reject the plaint, is liable to be dismissed. In support of the submissions, the following judgments are relied on:

(a)*Gram Panchayat of Village Naulakha Vs. Ujagar Singh* [CDJ 2000 SC 472 472],

(b)*Sajjadanashin Sayed Vs. Musa Dadabhai* [CDJ 2000 SC 109],

(c)*P.T.Chet Ram Vashist Vs. Municipal Corporation of Delhi* [(1995) 1 SCC 47] and

(d)*Shri Girish Vyas & Others Vs. the State of Maharashtra & Others.*;

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6.Heard both sides and perused the entire materials and pleadings available on record.

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7.The suit can be rejected only on the grounds set out under Order 7 Rule 11 of CPC. At the same time, when the Court finds that the subsequent suit is one is a result of abuse of the process of law and nothing but re-litigation apart from the grounds mentioned in Order 7 Rule 11 CPC, the Court at the threshold, can reject such plaint. The entire reading of the plaint indicates that the Corporation in the present suit attempts to prove the title of the suit property merely on the ground that layout was formed in the suit property at the relevant point of time; gift deed was also executed in their favour by the erstwhile owner; and therefore, the suit property is absolutely belonging to them.

8.The fact that the earlier suit in O.S.No.2777 of 1999 was filed by the erstwhile owner against the respondent herein before the XII Assistant City Civil Court, Chennai, has not been disputed by both sides. Similarly, it is also not in dispute that the above suit was decreed and permanent injunction was granted against the Corporation, which is the plaintiff herein

and the same went upto the Hon'ble Supreme Court. The Special Leave Petition filed by the Corporation was also dismissed. This fact has been admitted by both sides during the course of arguments. It appears from the earlier suit in O.S.No.2777 of 1999 that relief claims only with regard to the present suit schedule property. As far as the relief of rejecting the plaint, only documents and pleadings of the plaint assume significance. The Court on careful perusal of the plaint and the written statement as well as judgment passed therein in the earlier suit find that the suit property is one and same in both suits. Though the relief claims in the earlier suit was only permanent injunction, many documents were filed to establish that the applicants/ defendants are the absolute owner of the property and similar defence was taken. The Court ultimately decreed the suit in favour of the plaintiff therein.

9. In the above suit, though there was no specific issue with regard to title of the suit schedule property, the trial Court in issue nos.1 and 2 in fact incidentally decided the issue relating to title. The Trial Court examined the

revenue officials as C.W.1 and found that the contention of the defendant therein was not established and held that the plaintiff proved the title and granted injunction. In the Second Appeal in S.A.No.206 of 2011 at para 8, this Court has held that based on the sale deeds as Exs.A1, A2, C1 and evidence of C.W.1 only the plaintiff was the owner of the property and accordingly, granted injunction. It is also relevant to note that the plaint documents now relied upon were sought to be filed as additional documents during the Second Appeal stage. Order 41 Rule 27 of CPC application was also rejected by this Court in Second Appeal. While rejecting the same, in para 13, this Court has held that even as per the documents relied by respondent does not prove whether the third party M/s.VGP Housing Private Ltd. had authority to make layouts in the suit property and those facts have not been established by the documents relied upon by the respondent/plaintiff herein and accordingly, rejected the same during Second Appeal. Against which, Special Leave Petition was filed and the same was also dismissed by order dated 19.03.2018 made in Diary No.4969 of 2018 on the ground of delay as well as on merits. After dismissal of the

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Special Leave Petition, the present suit has been filed by the respondent / plaintiff for declaration. In fact, such attempt of the plaintiff would amount to over come the judgment of this Court as well as Hon'ble Apex Court. If such plea is raised and sought to be adjudicated once again, it will permit the plaintiff / respondent to achieve what they cannot do it directly by doing indirectly. To apply the principle of res judicata, there must be an issue relating to title and the same must be decided in the earlier suit. This Court has no quarrel with the said proposition, but the fact remains that though there was no specific issue in the earlier suit, the discussion and the findings are only with regard to the title of the property. Therefore, it cannot be said that in the absence of any specific issue in the previous suit, the decision on the same issue over the same property not binding on the other side. When the suit for permanent injunction was decided on title, it cannot be said that the principle of res judicata has no application on the ground that there was no specific issue in the formally decided suit.

10. In the judgment in *Gram Panchayat of Village Naulakha Vs. Ujagar Singh* [CDJ 2000 SC 475], this Court has held that the incidental finding on title in a suit for injunction would not be binding in a subsequent suit for title even if in the earlier suit a specific issue was framed qua the title and the authority / court competent to adjudicate upon the title, would still have the power and jurisdiction to decide upon the title. It was further held that if the party setting up *res judicata* as an estoppel has alleged all the elements of an estoppel, it is still open to the latter to defeat the estoppel by setting up and establishing certain affirmative answers i.e., fraud, cross-estoppel, contract and public policy. The said decision cannot be applicable to the facts of the present case, as the case of the plaintiff in that case was that the decree was obtained by fraud.

11. In the judgment in the case of *Sajjadanashin Sayed Md.B.E. Edr. (D) by Lrs. Vs. Musa Dadabhai Ummer* [CDJ 2000 SC 109], the Supreme Court has held that a decision on an issue collaterally or incidentally involved not directly and substantially in issue necessary to decide the main

issue in controversy will not operate as resjudicata in the subsequent proceedings, where the same issue is directly and substantially involved as main issue.

12. In the judgment in *PT.Chet Ram Vashist (Dead) by LRS. Vs. Municipal Corporation of Delhi [(1995) 1 SCC 47]* the Supreme Court has held that when any site is reserved for public purpose, Corporation only gets a right as custodian to manage the same, but it cannot acquire any right, title or interest thereof. In the said case, the Corporation has not even proved the fact that the property is still reserved for public purpose.

13. In the judgment in the case of *Shri Girish Vyas & Others Vs. The State of Maharashtra & Others, [CDJ 2011 SC 1084]*, it was held by the Supreme Court as follows:

“145.As stated above, we adopted the model of democratic planning which involves the participation of the citizens, planners, administrators, Municipal bodies and the Government as is also seen throughout the MRTP Act. Thus when it comes to the Development Plan for a

city, at the initial stage itself there is the consideration of the present and future requirements of the city. Suggestions and objections of the citizens are invited with respect to the proposed plan, and then the planners apply their mind to arrive at the plan which is prepared after a scientific study, and which will be implemented during the next 10 to 20 years as laid down under Section 38 of the MRTP Act. The plan is prepared after going through the entire gamut under Sections 21 to 30 of the Act, and then only the sanction is obtained thereto from the State Government. That is why the powers to modify the provisions of the plans are restricted as noted earlier. If the plan is to be tinkered for the benefit of the interested persons, or for those who can approach the persons in authority, then there is no use in having a planned development. Therefore, Section 37 which permits the minor modifications provides that even that should not result into changing the character of the development plan, prior where to also a notice in the gazette is required to be issued to invite suggestions and objections. Where the modification is of a substantial nature, then the procedure under Section 29 of the Act requiring a notice in the local newspapers inviting objections and suggestions from the citizens is to be resorted to. Even the deletion of reservation under Section 50 is at the instance of the appropriate authority only when it does not want the land for the designated purpose.

146. The idea is that once the plan is formulated, one has to implement it as it is, and it is only in the rarest of the rare cases that you can depart therefrom. There is no exclusive power given to the State Government, or to the planning authority, or to the Chief Minister to bring about

any modification, deletion or de-reservation, and certainly not by a resort to any of the D.C.Rules. All these constituents of the planning process have to follow the mandate under Section 37 or 22A as the case may be if any modification becomes necessary. That is why this court observed in paragraph 45 of Chairman, Indore Vikas Prodhikaran Vs. Pure Industrial Coke & Chemicals Ltd. & Ors. Reported in 2007 (8) SCC 705 as follows:-

“45.Town and country planning involving land development of the cities which are sought to be achieved through the process of land use, zoning plan and regulating building activities must receive due attention of all concerned. We are furthermore not oblivious of the fact that such planning involving highly complex cities depends upon scientific research, study and experience and, thus, deserves due reverence.”

As already indicated above, the fact that the property has been reserved for park, has not been proved by the Corporation, which has been recorded by the lower Court and therefore, the aforesaid decision also cannot help the case of the Corporation in any manner.

14. In the judgment of “AIR 1977 SC 2421” in the case of “*T.Arivanandam Vs T.V.Satyapal*”, it has been held as under:

“Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against

an order of the High court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes decrees with judicial seals brutum fulmen. The long arm of the law must throttle such, litigative caricatures if the confidence and credibility of the community in the judicature is to survive”

15. In the judgment in **K.K.Modi Vs. K.N.Modi reported in 1998-3-SCC-573**, the Honourable Supreme Court has held as follows :

“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. 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 collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the Court.”

Thus, this Court is of the view that the Corporation has failed to prove their right over the property. When the earlier litigation attained finality, the respondent/plaintiff cannot be permitted to produce some documents, which

were not allowed earlier by the Court. Once the suit was decreed in favour of the plaintiff therein, whose legal heirs are the applications/defendants and the claim of the respondent / plaintiff has been rejected in the earlier suit, the respondent / plaintiff cannot be permitted to rely upon the same in respect of the different relief on the same set of facts. Therefore, the plaint filed by the respondent/plaintiff is liable to be rejected on the ground of abuse of the process of law as well as principle of re-litigation.

16. Application in A.No.597 of 2020 has been filed by the applicants to implead themselves as party to the main suit. It is the contention of the applicants that they have purchased the property and they are in possession of the property. Therefore, they should be impleaded as a party in the suit.

17. This Court has rejected the plaint itself on the ground that the plaintiff being a third party cannot expouse the cause of the Corporation which has suffered a decree and judgment earlier in a similar litigation. If

at all, the applicants have any right, they will have to establish their right in an independent proceedings and not in the present suit, which is nothing but relitigation and the lis had already reached its finality. In such view of the matter, this application is also liable to be dismissed.

18. Accordingly, A.No.1612 of 2020 is allowed and the plaint is rejected. The application in A.No.597 of 2020 is dismissed. Consequently, O.A.No.1140 of 2019 seeking injunction stands closed.

16.10.2020

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Index : Yes/No

Internet : Yes/No

Speaking/Non-Speaking Order

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N.SATHISH KUMAR, J.

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