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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.01.2021

PRONOUNCED ON : 04.02.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No. 1045 of 2008

1. M.R. Reddiar alias M. Rangarajan Reddy (died)
2. Indirani
3. T. Premavathy
4. K. Usha
5. K. Bathrinarayanan (minor)
Rep by mother/natural guardian
K. Usha ...Appellants LR of the sole Appellant

Appellants 2 to 5 brought on record as LR's of the deceased sole appellant viz. M.R. Reddiar @ M. Rangarajan vide order of court dated 16.10.2019 made in CMP No.9087/2016 in S.A. No.1045/2008.

Vs.

Jakkampettai village people
Tindivanam Taluk
Villupuram District.

Represented by

1. Loganathan Reddiar
Son of Kannusamy Reddiar
2. Gopalakrishna Reddiar
S.o. Vijayaraghavan ...Respondents/Respondent

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree of the learned Principal Subordinate Judge, Tindivanam made in A.S. No. 53 of 2006 dated 30.03.2007 confirming the judgment and decree of the learned Additional District Munsif, Tindivanam, made in O.S. No.85 of 2003 dated 31.08.2006.

For Appellants : Mr. J. Ramakrishnan

For Respondents: Mr. A.K. Kumarasamy

for M/s. Kaithamalai Kumaran



JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 30.03.2007 passed in A.S. No. 53 of 2006 on the file of the Principal Subordinate Court, Tividivanam, confirming the judgment and decree dated 31.08.2006 passed in O.S. No.85 of 2003 on the file of the Additional District Munsif Court, Tindivanam,

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

3. The defendant in OS.No.85 of 2003 is the appellant in the Second Appeal.

4.Suit for declaration and permanent injunction.

5. Briefly stated, the case of the plaintiffs is that the suit has been laid by the plaintiffs on behalf of the villagers of Jakkampettai in the representative capacity and the suit property has been ear marked for the benefit of the villagers of the Jakkampettai village and enjoyed by the villagers in common and out of the income derived from the suit property, the temple festivals were celebrated and during 1961, the villagers of the Jakkampettai has decided to form a school in the village in the name of Rabindranath Tagore High School and also formed a committee for the opening of the school and it has been decided by the villagers that the suit property should be allotted for the purpose of running the school and accordingly as the patta for the suit property stood in the name of Venkatasubba Reddiar, in continuation of the decision of the villagers, the sons of Venkata Subba Reddiar, namely, Venkatesan, Ramachandran and Pattabi executed the settlement deed on 06.12.1961 in favour of the High School committee established for the opening of the school and the settlement deed clearly recites that the suit property should be utilised only for the running of the school and not for any other purpose and further also would recite that in the event of the school not being continued, the suit property would revert back to the villagers of Jakkampettai and however, it is put forth that the school did not continue to function and consequently, the suit property had been reverted back to the villagers of Jakkampettai. However, in the guise of holding the suit property, the defendant, as the correspondent and Head Master of the school is endeavouring to plot out the suit property and alienate the same in favour of the third parties by utilising his influence and therefore, with a view to protect the suit property from the defendant, according to the plaintiffs, they had been necessitated to lay the suit against the defendant for appropriate reliefs.



6. The defendant resisted the plaintiffs' suit contending that the suit laid by the plaintiffs in the representative capacity is not legally sustainable and also disputed the claim of the plaintiffs that the suit property belongs to the villagers of Jakkampettai. However, the defendant would admit that the suit property was settled in favour of the school committee during 1961, which committee was established only for the purpose of opening Rabindranath Tagore High School in the village and accordingly admitted the execution of the settlement deed dated 06.12.1961 by the sons of Venkata Subba Reddiar in favour of the school committee established for the opening of the school. It is put forth by the defendant that it is false to state that the suit property got reverted to the villagers on the failure of the continuation of the running of the school and according to the defendant, at the time of opening the school, he was the correspondent and also the Head Master of the school. However, due to debt problems, as the school was unable to be continued owing to the abovesaid events, the school was closed by the Government. However, for the running of the school, according to the defendant, various debts were incurred and therefore, the committee members were burdened with the discharge of the debts and as they were unable to discharge the debts, it was decided by the committee members that the defendant should discharge the debts and in the lieu thereof, take the suit property and the other properties and based on the said decision, according to the defendant, the suit property and the other properties were entrusted to the possession of the defendant and it is only the defendant who had discharged the debts incurred for the running of the school and the plaintiffs knew very well about the abovesaid facts and the first plaintiff along with the one Govindasamy Reddiar preferred a suit against the defendant and the others in O.S. No. 358 of 1982 for the relief of declaration and injunction and thereafter did not endeavour to prosecute the suit further and suppressing the same, the present suit has been laid by the plaintiffs and hence, the suit laid by the plaintiffs is barred under the principle of Res-judicata and the second plaintiff recently came to the village for his livelihood and therefore, the second plaintiff is not entitled to file the suit along with the first plaintiff in the representative capacity on behalf of the villagers. It is only the defendant, who has been in the possession and enjoyment of the suit property in his own right as above stated and therefore, the plaintiffs are not entitled to claim the reliefs as prayed for and the suit is liable to be dismissed.

7. In support of the plaintiffs' case P.Ws.1 to 5 were examined and Ex.A1 was marked. On the side of the defendant's, D.Ws. 1 to 2 were examined and Exs.B1 to B6 were marked.

8. The courts below, on an appreciation for the materials



placed on record, both oral and documentary, and the submissions made by the respective parties, were pleased to grant the reliefs in favour of the plaintiffs as prayed for. Impugning the judgment and decree of the courts below, the present second appeal has been preferred by the defendant.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- 1) Having regard to the scope and ambit of Order 1 Rule 8 C.P.C whether the present suit as filed by the plaintiffs is maintainable in law?
- 2) Whether in law the plaintiffs' suit is hit by the principles of Order 2 Rule 2 C.P.C?

Subsequently, the following additional substantial question of law was also formulated.

"Whether in law, in the light of Order 9 Rule 9 of Civil Procedure Code, the dismissal of earlier suit for default as evidenced under Ex.B2 does not bar the present suit and as such the judgment and decree of the courts below are sustainable in law"?

10. The suit has been laid by the plaintiffs in the representative capacity on behalf of the villagers of Jakkampettai. The parties are not at issue that the suit property had been settled in favour of the school committee by the sons of Venkata Subba Reddiar on 06.12.1961 and the certified copy of the abovesaid settlement deed has been marked as Ex.A1. According to the plaintiffs, the suit property is the property belonging to the villagers of Jakkampettai and utilised for the benefit of the villagers and also the proceeds of the suit property are spent for the purpose of the functions of the village temple and as the villagers had decided to form a school at Jakkampettai, accordingly, the villagers in unison decided to hand over the suit property to the school and as the patta for the suit property stood in the name of Venkata Subba Reddiar, as directed by the villagers, the sons of Venkata Subba Reddiar had executed the abovesaid settlement deed in favour of the school committee and further it is the case of the plaintiffs that the in the event of the school not functioning, the property settled would revert back to the villagers and as according to the plaintiffs, the school had been discontinued and closed, the settlement deed ceased to have any legal force and the suit property has reverted back to the villagers. On the other hand, the defendant, claiming to be the correspondent and Head Master of the school, is attempting to alienate the suit property by plotting out the same to the third parties by using his influence, hence according to the plaintiffs, they had been necessitated to levy the suit for appropriate reliefs.

11. As above pointed out, the defendant has not disputed the



execution of the settlement deed marked as Ex.A1 for the purpose of running the school. As rightly concluded by the courts below, on a perusal of the recitals contained in the settlement deed Ex.A1 as well as the other settlement deed under which another property had been settled in favour of the school marked as Ex.B3, it is noted that there is a clear recital contained therein that the properties comprised under Exs.A1 and B3 had been settled only for the purpose of the formation and running of the school and further it has been made clear that the suit property comprised in Exs.A1 and B3 should not be utilised for any other purpose and it is also recited that the properties comprised therein belong to the villagers and enjoyed by the villagers and as directed by the villagers, the properties had been settled in favour of the school committee for the purpose of opening and running the school. The recitals contained in Ex.A1, in particular, concerning the suit property had not been repudiated by the defendant.

12. From the materials placed on record, it is noted that though the school had been originally started, however, it was unable to be run further and subsequently the school had come to be closed by the Government. The abovesaid facts are not disputed. Therefore, when from the recitals contained in Ex.A1 in particular the suit property had been described as the property of the villagers and only as wished by the villagers, the sons of Venkata Subba Reddiar had decided to execute the settlement deed in favour of the school committee and when the settlement deed clearly postulates that the suit property should be utilised for school purpose and not for any other purpose and when the school is found to have been closed subsequently, naturally, as held by the courts below, the property would revert back to the villagers for their benefit and in such view of the matter, the contention of the defendant that he is still in the possession and enjoyment of the suit property under his own right as put forth by him, as such, cannot be countenanced and rightly rejected by the courts below.

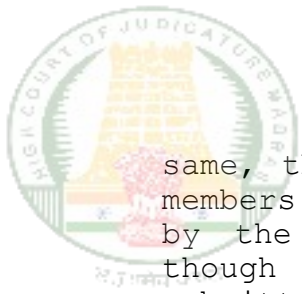
13. The defence taken by the defendant is that the school was run by the members of the school committee and he was the correspondent and Head Master of the school and according to him for the running of the school, the school committee was necessitated to incur heavy debts and unable to discharge the debts and therefore, as per the decision of the committee members, according to the defendant, he was directed to discharge the debts on his own and in lieu thereof take the suit property and thus, according to the defendant, he had discharged the debts incurred by the school and resultantly, had taken the suit property and enjoying the same in his own right and therefore, according to the defendant, the plaintiffs are not



entitled to seek and obtain the reliefs as prayed for.

14. Considering the materials placed on record, as rightly concluded by the courts below, there is no valid, acceptable and reliable material put forth by the defendant to hold safely that heavy debts had been incurred for the running of the school as claimed by the defendant and that the school committee members had directed the defendant to discharge the alleged debts in lieu thereof and permitted him to take the suit property for his own purpose. Considering the materials available on record, particularly, the document marked as Ex.B6, it is noted that the Rabindranath Tagore High School committee has been registered as a society under the Societies Registration Act and when the court had endeavored to call for the particulars of the annual reports and the statement of accounts submitted by the school from the District Registrar, Cuddalore, the reply had been received under Ex.B6 informing that no statement of accounts and annual reports had been submitted by the school abovestated and despite the reminders, the school having failed to submit the abovesaid documents, according to the District Registrar, Cuddalore, the society, namely, Rabindranath Tagore High School Committee established, had been ordered to be closed and consequently the abovesaid society has been declared as the defunct society by the District Registrar, Cuddalore. It is thus noted that the efforts taken to know about the running of the school as to whether any debts had been incurred for the running of the school, despite reminders, as the school committee members had failed to submit the requisite documents sought for by the District Registrar, Cuddalore, consequently, the society, abovestated has been declared as the defunct society. The position being above, in the absence of any material or record to substantiate that the expenses had been incurred for the running of the school and on the other hand when from Ex.B6, it is found that no statement of accounts at all had been submitted to the authority concerned, in such view of the matter, the claim of the defendant that heavy debts had been incurred for the running of the school, as such, cannot be countenanced and rightly the abovesaid plea had been rejected by the courts below. The courts below had also rightly disbelieved the evidence of D.W.2, who claimed to have advanced a sum of Rs.10,000/-. However, considering the evidence of D.W.2 and the evidence of D.W.1 in toto, when there is no material to substantiate their version and also when their evidence are found to be contrary to each other and when the solvency of D.W.2 has not been established, from the unreliable solitary evidence of D.W.2, it cannot be safely conclude that the school had incurred the debts as sought to be projected by the defendant.

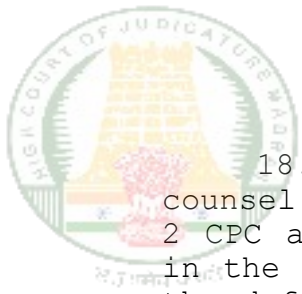
15. As to the running of the school and to establish that the school had been necessitated to incur the debts for the



same, the defendant has not endeavored to examine the committee members who are still alive. No valid reason has been projected by the defendant for the same. Furthermore, the defendant though would claim that the statement of accounts had been submitted to the authority concerned for the running of the school, however, as concluded by the courts below rightly, Ex.B6 belie the abovesaid version of the defendant and when the society formed for the purpose of school has been declared as the defunct society by the authority concerned and when there is no material to hold that the meeting of the school committee had been regularly convened and when the minutes of the so called school committee projected by the defendant marked as Ex.B1 do not advance the defence version particularly considering the inconsistencies pointed by the courts below with reference to the same and when the authenticity of Ex.B1 itself has not been established by the defendant, the same being questioned and rightly appreciated and adjudicated by the courts below in the proper perspective, this Court in the second appeal is not inclined to take a different view with reference to the authenticity of Ex.B1 produced by the defendant.

16. In the light of the abovesaid factors, it is noted that the courts below had properly appreciated the materials placed on record, both orally and documentary, and factual matrix and on the point of law and rightly held that the version projected by the defendant is not sustainable and resultantly upheld the plaintiffs' case.

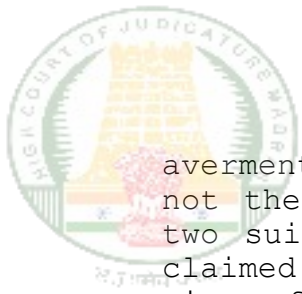
17. In this second appeal, the defendant's counsel contended that the suit preferred in the representative capacity is not maintainable. According to the defendant, the second plaintiff, being the recent habitant of the village, is not competent to speak about the issues involved in the matter. When the suit has been laid by the villagers in common for safeguarding the suit property and to prevent the defendant from alienating the suit property by plotting out the same and when the plaintiffs 1 and 2 have the common intention and on behalf of the villagers they had levied the suit in the representative capacity and the defendant has not examined any reliable witness to hold that the plaintiffs are not competent to institute the suit on behalf of the villagers and when the defendant has failed to establish that he has acquired a valid claim of right, title and interest over the suit property by placing acceptable and reliable documents, in all, it is seen that the suit has been properly laid by the plaintiffs in the representative capacity on behalf of the villagers of Jakkampettai and in such view of the matter, the contention of the defendant that the plaintiffs' suit is not maintainable under Order 1 Rule 8 CPC cannot be countenanced.



18. The second contention put forth by the defendant's counsel is that the plaintiffs' suit is barred by Order 2 Rule 2 CPC and the same has been formulated as the question of law in the second appeal. However, no such plea has been raised by the defendant in the written statement that the plaintiffs' suit is barred by Order 2 Rule 2 CPC. The abovesaid substantial question of law, in my considered opinion, is mis-conceived and not required to be answered as such.

19. It is mainly contended by the defendant's counsel that the first plaintiff along with one Govindasamy Reddiar has laid the suit against the defendant and others in O.S.No.358/82 seeking for the reliefs of declaration and injunction qua the suit property and however, failed to prosecute the said suit and consequently the abovesaid suit has been dismissed for default and hence, according to the defendant, the present suit laid by the plaintiffs in the representative capacity is barred under Order 1 Rule 9 CPC and accordingly sought for the dismissal of the plaintiffs' suit on that ground. The suit register extract of O.S. No.358/82 has been marked as Ex.B2. On a perusal of the same, it is found that the abovesaid suit has not been laid in the representative capacity and further the plaintiff in the abovesaid suit is Sri Pattabiramasamy temple by managing trustee Loganatha Reddiar, son of Kannusamy Reddiar residing at Jakkampettai and further the abovesaid suit has been laid not only against the defendant but also against 11 other persons. Whereas, the present suit has been laid by the villagers of Jakkampettai in the representative capacity. Therefore, it is found that the plaintiffs and the defendant in the present suit and in O.S. No.358/82 are not one and the same.

20. In the present suit, the plaintiffs have claimed that the suit property belongs to the villagers of Jakkampettai and the proceeds of the suit property had been utilised for the performance of the temple festivals and accordingly claimed that on the failure of the running of the school, the suit property got reverted back to the villagers and accordingly sought for the reliefs prayed for. Whereas in O.S. No.358/82 it has been averred that the suit property belongs to the plaintiff's temple namely, Sri Pattabiramasamy temple and further there are averments contained in the abovesaid suit that the suit property had been settled for the purpose of running the school by way of the settlement deed dated 06.12.1961 and further it has been averred that on the closure of the school, the first plaintiff, as the managing trustee of the temple, has taken over the possession of the suit property and on 29.04.1982 leased out the same to the second plaintiff and that it is only the second plaintiff who is enjoying the suit property and thus in the abovesaid suit the reliefs of declaration and permanent injunction had been sought for. It is thus found that the



averments put forth in the present suit and in O.S. N.358/82 are not the same and are different and the cause of action for the two suits are not one and the same and furthermore the reliefs claimed in the abovesaid suits are also not similar. In such view of the matter, the contention of the defendant's counsel that the present suit laid by the plaintiffs is barred under Order 9 Rule 9 CPC in view of the non prosecution of the earlier suit in O.S.No.358/82 cannot be sustained as such.

21. From the contents of the suit register marked as Ex.B2, it could be gathered that the suit in O.S.No.358/82 had come to be dismissed on account of the non appearance of the plaintiff therein and there is nothing contained in Ex.B2 that on the date of the dismissal of the abovesaid suit on 20.11.1986 only the plaintiff was absent and the defendants mentioned therein were present as provided under Order 9 Rule 8 CPC. In such view of the matter, when the plea of bar of the plaintiff's suit under Order 9 Rule 9 CPC has not been put forth by the defendant before the courts below and the materials available on record is also not pointing out as to whether the suit in O.S.No.358/82 had been dismissed on Order 9 Rule 8 CPC or dismissed under Order 9 Rule 3 CPC, it has become incumbent to take the dismissal of the suit in O.S. No.358/82 to be under Order 9 Rule 3 CPC and in such view of the matter, it is found that the present suit is not barred by virtue of Order 9 Rule 4 CPC and therefore, rightly entertained by the courts below for being tried on merits.

22. As above pointed out, when the present suit and the suit in O.S. No.358/82 are not similar, particularly, even with reference to the parties mentioned therein, the nature of the claim of the suit property and the cause of action, all are found to be not identical and on the other hand found to be different, on that ground also it is seen that the present suit is not barred under Order 9 Rule 9 CPC. Hence, the plea put forth by the defendant's counsel that the present suit is to be rejected under Order 9 Rule 9 CPC is unsustainable.

23. In a similar situation, the Apex Court in the decision reported in 2018 11 SCC 449 (Dharampal (dead) through legal representatives v. Punjab Wakf Board and others) has discussed the position of law and the same is extracted below:

Civil Procedure Code, 1908 - Or.9, 8, 4 and 3 -
Dismissal of suit under Or.9 R.3 or Or.9 R.8 CPC 0
Filing of fresh suit subsequent to - - Permissibility.

- Held, it permissible in former case (i.e on dismissal of earlier suit under Or.9 R.3) by virtue of provision under Or.9 R.4 CPC - But fresh suit is



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barred in latter case (i.e. on dismissal of earlier suit under Or.9 R.8) by virtue of provision under Or.9 R.9 CPC - In present case, it was neither clear from record nor was counsel for appellant able to point out as to whether dismissal of earlier suit was under Or.9 R.3 or Or.9 R.8 - However, taking dismissal of earlier suit to be under Or.9 R.3, held, present suit was not barred by virtue of R.9 R.4 - Even otherwise also, parties and even part of cause of action qua defendants being different in both suits, present suit was maintainable despite dismissal of earliner one.

....

23. Second, assuming for the sake of argument, we consider this plea on merits then also, in our opinion, it has no substance. It is not clear from the record nor was the learned counsel for the appellant able to point out as to whether the dismissal of earlier suit (No.74 of 1971) was under Rule 3 or Rule 8 of Order 9 of the Code.

24. In our opinion, in order to examine such plea, what is relevant at the first instance is to find out as to whether dismissal of the suit is under Rule 3 or Rule 8 of Order 9 of the Code. If it is under Rule 3 then filing of fresh suit is permissible as provided under Rule 4 but if the dismissal is under Rule 8 then fresh suit may be barred as provided under Rule 9.

25. So far as the present case is concerned, we take the dismissal of earlier suit (No.74 of 1971) to be under Rule 3 and, therefore, in our opinion, the present suit was not barred by virtue of Rule 4 and was, therefore, rightly entertained by the courts below for being tried on merits.

26. Apart from what is held above, even otherwise, in our opinion, the present suit could be filed notwithstanding dismissal of the earlier suit because the earlier suit was filed only against one defendant i.e. father of defendant 1 on a cause of action which accrued against one defendant at that time whereas the present suit was filed against three defendants out of which two defendants were not parties to the earlier suit. So the parties and even part of the cause of action qua defendants were different in both the suits. It is for all these reasons, so far as the first submission of the learned counsel is concerned, it has no merit and hence rejected.



Applying the abovesaid principles of law to the case at hand, in all, when it is noted that the plaintiffs' claim of derivation of title and even the cause of action qua the defendant/defendants are different in the present suit and in O.S.No.358/82 and when there is no material to hold that the suit in O.S. No.358/82 had been dismissed under Order 9 Rule 8 CPC, all put together, would lead to the conclusion that the present suit is not barred under Order 9 Rule 9 CPC.

24. For the reasons aforesated, the substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiffs and against the defendant.

25. In conclusion, the judgment and decree 30.03.2007 passed in A.S. No. 53 of 2006 on the file of the Principal Subordinate Court, Tividivanam, confirming the judgment and decree dated 31.08.2006 passed in O.S. No.85 of 2003 on the file of the Additional District Munsif Court, Tindivanam, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

bga

To

1. The Principal Subordinate Judge,
The Principal Subordinate Court, Tividivanam
2. The Additional District Munsif
The Additional District Munsif Court, Tindivanam.
3. Section Officer, VR Section, High Court, Madras

+1cc to Mr.S.Kaithamalaikumaran, Advocate, Sr.No.6130

+1cc to Mr.J.Ramakrishnan, Advocate, Sr.NO.6222

Pre-delivery Judgment

made in

S.A.No.1045 2008

BR(CO)

KKV/09/09/2021