

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM :

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MS. JUSTICE R.N.MANJULA

O.S.A.No.107 of 2021

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

..Appellant

Vs

1.S.Ramesh Babu
2.Nithyanandam

...Respondents

Prayer: Appeal filed under Order XXXVI Rule 9 of Madras High Court Original Side Rules read with Clause 15 of the Letters Patent to set aside the order and decretal order dated 16.10.2020 in A.No.1612 of 2020 in C.S.No. 716 of 2019.

Prayer in A.No.1612 of 2020: Application filed under order XIV Rule i of O.S.read with order VII Rule 11 of CPC to reject the plaint in CS.No.716 of 2019.

Prayer in CS.No.716 of 2019:

Suit filed under order VI Rule 1 of O.S.Rules read with order VII Rule 1 of CPC praying (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 here under is a property earmarked 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 Bare Injunction, restraining the 1st and 2nd Defendant herein, their men, agents or anyone on their behalf from in any way interfering with the peaceful possession and

enjoyment of the suit schedule property, morefully described in the schedule hereunder without any due process of law
(d) with the costs of the above suit.

For Appellant : Mrs.A.Karthika Ashok

For Respondents : Mr.T.Gowthaman

JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

The appellant is the plaintiff in the suit. The suit has been filed in C.S.No.716 of 2019 for declaration, declaring the appellant as the owner of the suit property on the premise that the predecessor in title of the respondents having gifted it in favour of the appellant while getting the layout sanctioned as vesting has taken place since the suit property has been earmarked for the purpose of public land, namely, children play ground and among other things, the claim made by the respondents cannot be sustained.

2. The learned Single Judge allowed the application filed by the respondents invoking Order VII Rule 11 of CPC on the ground that it is misuse of process of law and it is a re-litigation in a different form and, therefore, the principle of res judicata would apply. Challenging the same, the present appeal has been filed.

3. Learned counsel appearing for the appellant submitted that the issue qua the public purpose and vesting has not been gone into in depth in the earlier round of litigation. The documents filed would clearly show that the grandmother of the respondents, at the time of getting the layout approval has gifted the said property vesting it with the appellant to be used for public purpose. Law is quite settled that once the lay out is sanctioned indicating the public purpose, vesting would take place and, therefore, the said vesting is free from encumbrance. Incidentally, the erstwhile owner of the property would lose title. In such view of the matter, the earlier proceedings initiated by the respondents being the suit filed for permanent injunction will not take away the title of the appellant.

4. Per contra, learned counsel appearing for the respondents submitted that the principle of res judicata and the issue estoppel would apply. In a suit for injunction, the incidental question of title can be gone into. Injunction follows title. As against the appellant, the respondents had a better title. This Court has held the title in favour of the respondents and on

that basis decreed the suit. The application filed under Order 41 Rule 27 CPC was also dismissed. The Special Leave Petition filed was dismissed both on the ground of delay and merit. Therefore, no interference is required.

5. We are not inclined to go into the facts. Suffice it to say that the respondents filed a suit in O.S.No.2777 of 1999 for permanent and mandatory injunction on the basis of title by making the appellant as a party defendant. The suit was decreed and the appeal filed by the appellant raising the very same ground sought to be raised in the present proceeding including before us was allowed. Thereafter, the second appeal filed by the respondents was allowed. During the pendency of the second appeal, the appellant sought to invoke Order 41 Rule 27 CPC. The learned Single Judge allowed the appeal while dismissing the application filed seeking to mark additional documents, inter alia, holding that even the gift deed has not been marked and, therefore, the four parameters required will invoke the aforesaid provision are not satisfied. The Special Leave Petition filed in S.L.P(c)Nos.4964 of 2018 was dismissed both on the ground of delay and merits.

6. With the above said narration, we are in agreement with the decision of the learned Single Judge. Re-litigation in any form is impermissible. There is not only a question of res judicata but also the issue estoppel that would arise. As rightly submitted by the learned counsel appearing for the respondents, the suit filed is not maintainable. Perhaps knowing well, the appellant has sought for the following relief which is 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 earmarked 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 Judgement 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 BARE 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;"

7. The relief if granted would amount to reviewing the earlier decree granted. We are at a loss to understand as to how the said relief can be sought for which is including the declaration to declare the earlier decree as not being a bar apart from a prayer seeking a decree for permanent injunction.

8. We have perused the order passed in the second appeal. The learned Single Judge passed an order on the premise that the respondents have got title and accordingly granted mandatory injunction and injunction. It is trite that the relief for permanent and mandatory injunction can be granted based upon the title as it follows such a title. Therefore, the only remedy open to the appellant is to seek the review of the order, if so advised, and not by way of a separate suit and that too after the initiation of the suit in the year 1999 by the respondents.

9. With the above said observations, the appeal stands dismissed. No costs. Consequently, connected C.M.P.Nos. 5016, 5018 and 5019 of 2021 are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssm

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to M/s.Karthikaa Ashok, Advocate, S.R.No.22714

+1cc to Mr.T.Gowthaman, Advocate, S.R.No.22861

PM(CO)
CB(25/06/2021)

O.S.A.No.107 of 2021

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