



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 23.11.2021

JUDGMENT PRONOUNDED ON : 30.11.2021

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CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A. (MD) .No.220 of 2005

A.Ajees
S/o.Ahamed Thambi ...Appellant/1st Respondent/1st Defendant
.Vs.

1.Mohammed Ismail
S/o.Ahamed Hussain ... 1st Respondent/Appellant/Plaintiff

2.Hariruthramanengalae
S/o.Prathabaruthra Manengalae ... 2nd Respondent /2nd Respondent/
2nd Defendant

(R2-Exparte - No notice necessary given up) (Vide EB)

PRAYER : Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree passed in A.S.No.80 of 2002 on the file of Principal District Court, Thanjavur dated 27.02.2003 reversing the judgment and decree passed in O.S.No.46 of 1998 on the file of District Munsif Court, Thiruvaiyaru, dated 28.03.2002.

For Appellant : Mr.M.R.Sreenivasan
Advocate
For Mr.R.Nandakumar
Advocate
For R1 : Mr.M.P.Senthil
Advocate

JUDGMENT

The first defendant is the appellant herein.

2. O.S.No.46 of 1998 was filed by one Mohammed Ismail for the relief of permanent injunction. The first defendant in the said suit namely A.Ajees has filed O.S.No.33 of 2000 before the same Court namely the District Munsif Court, Thanjavur for the relief of mandatory injunction and recovery of possession. Both the suits were



heard together and a common judgment was delivered on 28.03.2002. As per the said Judgment, O.S.No.46 of 1998 was dismissed and O.S.No.33 of 2000 was allowed.

3.As against the said judgment, Mohammed Ismail filed A.S.No.80 of 2002 and A.S.No.81 of 2002 before the Principal District Court, Thanjavur. Both the appeals were heard together and a common judgment was delivered on 27.02.2003. A.S.No.80 of 2002 was allowed and O.S.No.46 of 1998 was decreed as prayed for. A.S.No.81 of 2002 was allowed and O.S.No.33 of 2000 was dismissed. As against the said common judgment, the first defendant in O.S.No.46 of 1998 and the first respondent in A.S.No.80 of 2002 has filed the present second appeal.

4.The second appeal was admitted on the following substantial question of law:

Whether the lower Appellate Court was correct in granting a decree for injunction in favour of the plaintiff when he was not able to show his title in respect of the property, what is found in the schedule to the plaint?

5.When the first appeal was taken up for hearing, the learned counsel for the first respondent has raised a preliminary objection that the first appellant has not chosen to file any second appeal as against the judgment and decree in A.S.No.81 of 2002 in which the present appellant's suit for recovery of possession and mandatory injunction has been dismissed. He further contended that when two suits are tried jointly and a common judgment is delivered, the judgment debtor has to file an appeal as against both the suits. If only one appeal is filed as against one decree, it is hit by the principles of *res judicata* under Section 11 of C.P.C.

6.In the present case, the suit properties in both the suits are one and the same. The appellant's suit for mandatory injunction and recovery of possession has been dismissed by the First Appellate Court and the first respondent's suit for permanent injunction has been decreed by the First Appellate court. Without challenging the decree in A.S.No.81 of 2002, the present second appeal challenging the judgment and decree in A.S.No.80 of 2002 alone is not maintainable. The Three Judges Bench of Hon'ble Supreme Court in **2015-1-L.W.-1** has held that where two suits were jointly tried and a common judgment is delivered, non-filing of appeal as against one of the decrees will operate as *res judicata* under Section 11 of C.P.C.

7.In the present case, the appellant has not chosen to challenge the decree made in O.S.No.33 of 2000. Hence, I find that the present second appeal is not maintainable and it is barred under Section 11 of C.P.C. Since the second appeal is not maintainable, this Court has not gone into the question of considering the



substantial question of law. The second appeal is dismissed. No costs.

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Sd/-

Assistant Registrar (CS-III)

/ /2022

Sub Assistant Registrar(CS)

msa

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Principal District Judge,
Thanjavur.
2. The District Munsif,
Thiruvaiyaru.

Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai - 2 Copies

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-36655[F] dated 01/12/2021)

+1 CC to M/s.R. NANDAKUMAR, Advocate (SR-36642[F] dated 30/11/2021)

Judgment made in
S.A(MD) .No.220 of 2005
30.11.2021

AM (CO)
GC (20.01.2022) 3P 7C