



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.01.2021

PRONOUNCED ON : 11.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.38 of 2020

and

C.M.P.(MD)No.7280 of 2020

WEB COPY

1.V.S.P.Sivan
2.V.S.P.Balashanmugam
3.V.S.P.Murugan
4.Muthurakku
5.Sundaravalli

... Appellants / Respondents 1 to 5 /
plaintiffs

Vs.

1.Balashanmugam
2.Muthurakku
3.Sooriagandhi
4.Annamalai
5.Sivalingam
6.Muthuramalingam

...Respondents 1 to 6/Petitioners/
Defendants 1 to 6

7.Vallikodi ...7th Respondent/6th respondent/7th defendant

PRAYER: This Appeal Suit filed under Section 96 of the Civil Procedure Code, against the fair and decreetal order dated 25.10.2019 made in I.A.No.249 of 2018 in O.S.No.44 of 2018 on the file of the Additional District Judge, Sivagangai.

For Appellants : Mr.S.Meenakshisundaram
Senior Counsel
for Mr.R.Balakrishnan
For R1 : Mr.N.Satheeshkumar

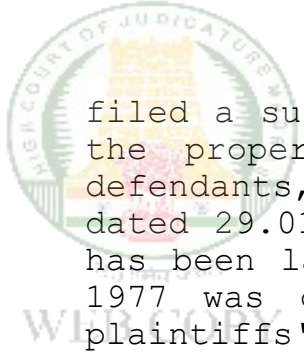
JUDGMENT

Aggrieved over the order of the Additional District Judge, who rejected the suit filed by the appellants on the ground that the entire issue related to the property was already decided and reached the finality in a suit in O.S.No.321 of 1982, the present Appeal Suit is filed.

2. For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Appeal Suit, are as follows:-

The appellants being the plaintiffs before the trial Court



filed a suit for declaration that the plaintiffs are the owners of the property and also for permanent injunction restraining the defendants, besides the decree and judgment in O.S.No.321 of 1982 dated 29.01.1991 is null and void and for other reliefs. The suit has been laid on the ground that the earlier suit in O.S.No.184 of 1977 was decided long back and as per the above judgment, the plaintiffs' ancestors have become the absolute owner of the property. Hence, it is the contention that the suit is O.S.No.321 of 1982 has been filed by the first defendant and his father without considering the earlier judgment passed in O.S.No.184 of 1977. Therefore, the present suit is filed for the relief as referred above.

4. The first defendant filed a written statement disputing the allegations levelled in the plaint. Besides, an application was also filed under Order 7 Rule 11 CPC., to reject the plaint. The trial Judge has found that the suit in O.S.No.321 of 1982 filed by the first defendant and his father for declaration and injunction had reached the finality as against the plaintiffs' father and others and hence, rejected the suit.

5. The learned counsel appearing for the appellants vehemently contended that the application under Order 7 Rule 11 CPC., has been filed on the ground that there is no cause of action for the suit. However, entire reading of the plaint makes it very clear that the plaintiffs have stated various cause of action. To find out whether there is a cause of action or not, the plain averment assumes significance, not even the pleadings of the defendant or the documents. Hence, it is the contention that when the plaint indicates sufficient cause of action to maintain the suit, the same cannot be rejected in *toto*. It is his further contention that the suit has been filed seeking declaration and to set aside the decree and judgment earlier passed in O.S.No.321 of 1982 on the ground that the judgment and decree is only *per incuriam*. Therefore, it is the contention that the suit is maintainable.

6. In support of his submissions, he has relied upon the following judgments:-

- "1)Singapore Reality Private Limited Vs. Government of Tamil Nadu [2020 (6) CTC 487]**
- 2)N.Ravindran Vs. V.Ramachandran [2011 (3) CTC 153]**
- 3)Municipal Corporation of Delhi Vs. Gurnam Kaur [AIR 1989 SC 38]**
- 4)Mamleshwar Prasad and another vs. Kanahaiya Lal through legal heris [AIR 1975 SC 907]"**

7. The learned counsel appearing for the respondents/defendants contended that similar issue has already been decided in a suit in O.S.No.321 of 1982, wherein the plaintiffs'

father Periyasamy was one of the defendant and the suit property was declared in his favour. The suit has reached its finality and the second appeal also dismissed. The present suit has been filed on the same ground seeking declaration on the ground that the Courts have not considered the earlier judgment passed in the year 1987. It is his contention that the suit is nothing but a re-litigation and abuse of process of law and therefore, prayed for dismissed the appeal.

8. In support of his submissions, he has relied upon the following judgment:-

1)Tahsildar Aminjikari Taluk vs. A.V.Radhakrishnan and others [2020 SCC Online Mad 5731]

9. In the light of the submission of both sides now the point arises for consideration in this appeal are:-

1)Whether the order of the trial Court rejecting the suit on the ground of re-litigation is valid in the eye of law?

2) To what other reliefs?

10. The suit has been filed for the relief referred above including declaration to declare the decree and the judgment passed in O.S.No.321 of 1982 is null and void. It is not the case of the plaintiffs in the present suit that the decree in the above suit namely, O.S.No.321 of 1982 was obtained by the playing fraud on the Court or a result of any fraud and what was sought to be urged in the plaint is that the Courts have not taken note of the earlier suit in respect of the suit property in O.S.No.184 of 1977 dated 26.07.1979. Therefore, the allegations and the grievance of the plaintiffs is that in the previous suit, the ancestors of the plaintiffs were declared to be the owners of the property. The above evidence has not been properly discussed and therefore, the decree and the judgment passed in O.S.No.321 of 1982 was a result of *per incuriam*. Though an application was taken out under Order 7 Rule 11 CPC, it is well settled that the suit can be rejected under Order 7 Rule 11 only on the limited grounds set out therein, which reads as follows:-

"11.Rejection of plaint:- The plaint shall be rejected in the following cases:-

- a) where it does not disclose a cause of action;*
- b)where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do,*
- c)where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court fails to do so;*

d)where the suit appears from the statement in the



plaint to be barred by any law;
c)where it is not filed in duplicate;
d)where the plaintiff fails to comply with the provisions of Rule-9;"

11. At the same time, the Courts are not powerless to strike off or to reject the suit, which appears to be an abuse of process of law or nothing but a re-litigation. It is to be noted that main grievance of the plaintiffs herein is that their ancestors were declared as the owners of the property in the year 1979 in a suit in O.S.No.184 of 1977. It is to be noted that thereafter, in respect of the same subject matter, the suit has been filed seeking declaration by the defendants' father in O.S.No.321 of 1982. The said suit was contested hotly and reached upto the second appeal level. In fact the second appeal in S.A.No.261 of 1997 was also dismissed by this Court. These facts are not in dispute. Therefore, the contentions of the plaintiffs herein that the above judgment is nothing but *per incuriam*, cannot be countenanced in the eye of law. If such contentions is accepted and approved by this Court, it will give license to the losing party to file an another suit to set aside earlier concluded judgment on the ground that the said judgment has not considered the relevant documents.

12. It is to be noted that the suit O.S.No.321 of 1982 was not disposed of ex-parte. It was admittedly decided and went upto second appeal level. Further, the so called declaration in favour of the appellants' ancestors was granted in the year 1979. Even during the pendency of the suit in O.S.No.321 of 1982, the said right has not been established. Therefore, such view of the matter now it cannot be contended that judgment in O.S.No.321 of 1982 is *per incuriam*. The document No.15, namely Exs.A13 to A15 makes it very clear that decree and judgment in O.S.No.184 of 1977 was also filed before the trial Court in O.S.No.321 of 1982, which is also discussed in Paragraph No.11 of the judgment in O.S.No.321 of 1982.

13. Therefore, now it cannot be stated that the judgment has been passed by ignoring the earlier judgment. In view of the above, this Court is of the view that when an issue has already reached finality, the parties cannot be allowed to re-agitate the same. Such view of the matter, this Court is of the view that the present suit is nothing but an abuse of process of law and also re-litigation.

14. In the judgment relied by the the learned Senior Counsel appearing for the reported in the case of **Singapore Reality Private Limited Vs. Government of Tamil Nadu [2020 (6) CTC 487]**, it has been held that the issue of rejection of plaint for re-litigation to be decided on case on to case basis. Absolutely, there is no issue with regard to the above judgment.



15. In the judgment in the case of **N.Ravindran Vs. V.Ramachandran [2011 (3) CTC 153]**, the Hon'ble Division Bench of this Court has held that while considering an application under Order 7 Rule 11 CPC., the Court is not required to take into consideration the defence set up by the defendant in his written statement or other documents. The question as to whether the plaint discloses any cause of action and whether it is barred by any law is to be decided by looking at the above averments contained in the plaint itself and not the defence set up in the written statement.

16. The issue in the present suit has already been decided and reached finality. If at all there is any grievance for the appellants as to the above judgment, the only remedy available for them is to file an appeal against the said judgment. No re-litigation can be allowed by way of filing an another suit seeking to set aside the above judgment.

17. In this regard, it is relevant to refer the judgment in T.Arivanandam Vs. T.V.Satyapal reported in AIR 1977 SC 2421, wherein the Honourable Supreme Court has held as follows:-

"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."

18. 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."

19. The above judgments are squarely applicable to the facts of this case.

20. Considering the above judgments, this Court is of the



view that the present suit is nothing but an abuse of process of law and re-litigation. Accordingly, the order of the trial Court is confirmed. The present Appeal Suit is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ta

To

1.The Additional District Judge, Sivagangai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2C)

A.S. (MD) No.38 of 2020

and

C.M.P. (MD) No.7280 of 2020

11.01.2020

PM(CO)

KK(04.02.2021) 6P 4C