



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 5.08.2021

Delivered On : 25.08.2021

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(PD)(MD).No.311 of 2018

and

C.M.P.(MD)No.1455 of 2018

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1.Balaiyaa
2.Kumarasamy
3.Ganesan (Died)
4.G.Irulayi
5.G.Isakki Raja
6.P.Sakthi Rahini

... Petitioners/Petitioners/
Defendants

Vs.

1.Iruli
2.Petchi

... Respondents/Respondents/
Plaintiffs

(Petitioners 4 to 6 are brought on record as legal heirs of deceased 3rd petitioner vide Court order dated 12.08.2020, made in C.M.P.(MD)No.3552 of 2020 in C.R.P.(MD)No.311 of 2018 by SSSRJ)

PRAYER: This Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 27.10.2017, made in I.A.No.22 of 2017 in O.S.No.85 of 2015, on the file of learned Additional District Munsif, Srivilliputtur.

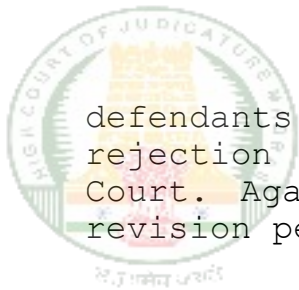
For Petitioners : Mr.Ajmal Khan, Senior Counsel
For M/s.Ajmal Associates

For Respondents : Mr.R.Vijayakumar
For Mr.K.N.Balasubramanian

ORDER

This petition has been filed to set aside the order in I.A.No.22 of 2017 in O.S.No.85 of 2015 dated 27.10.2017, on the file of the learned Additional District Munsif, Srivilliputtur.

2.The petitioners 1 to 3 herein are the defendants and the respondents herein are the plaintiffs in the suit. The respondents herein have filed a suit in O.S.No.85 of 2015, for a prayer of declaration and for injunction regarding the suit properties. The



defendants 1 to 3 have filed a petition in I.A.No.22 of 2017, for rejection of the plaint. That petition was dismissed by the trial Court. Against the same, the revision petitioners have filed the revision petition.

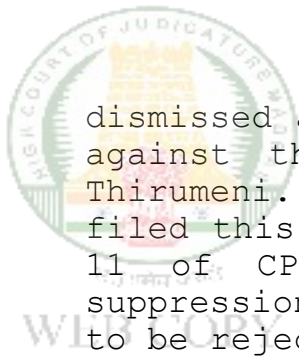
3. Brief substance of the petition in I.A.No.22 of 2017 reads as follows:

(i) The respondents have filed a suit for declaration and for injunction claiming that the petitioners have no right over the properties situated on the western side of the suit property and that the petitioners obtained a patta without the knowledge of the respondents. The respondents suppressed the earlier litigation between the parties. The suit was bad for suppression of material facts and for res judicata.

(ii) Originally the suit property belong to Subramaniya Moopanar and his brothers Maruthamalai Moopanar, Muthusamy Moopanar. On 12.04.1911, the brothers partitioned the properties. The suit properties and other properties were allotted to the share of Sankara Pandiya Moopanar and that on 28.08.1927, Ayira Kudumban executed a sale deed in favour of the petitioners. After the sale, the brothers of Subramaniya Moopanar, Muthuvel Pandian has no interest or title over the property. Though Subramaniya Moopanar already sold the property, the plaintiffs are claiming the suit property through a sale deed dated 22.11.1984, alleged to have been executed by Muthuvel Pandian, who was having no right over the property. After the purchase from Ayira Kudumban, the petitioners were enjoying the property along with the western side vacant land. On 1945, on the basis of an oral partition, the father of the petitioners 1 and 2 and the grand father of the third petitioner by name Pillaiyar were allotted the suit properties. He constructed the house on the western side of the suit property and used the property for entering the house and as a front courtyard.

(iii) After the demise of Pillaiyar, his legal heirs are in the enjoyment of the property. One Thirumeni and the respondents 1 and 2 tried to interfere the possession of the petitioners. A case against Thirumeni and the respondents 1 and 2 was filed before the District Munsif Court, Srivilliputtur in O.S.No.613 of 1989 for declaration and for permanent injunction. The respondents 1 and 2 appeared through their counsel and the learned counsel for the first respondent filed a counter. There was no statement regarding the sale deed dated 28.11.1984. Decree was passed on 08.12.1993 in O.S.No.673 of 1989. The defendants 5 and 6 in the suit filed an appeal before the learned Principal District Judge, A.S.No.140 of 1994. The appeal was dismissed on 01.07.1997. The second appeal in S.A.No.359 of 1999 was filed before this Court and the same was remanded to the trial Court for fresh consideration.

(iv) The plaintiffs are not having any right over the suit property. After the case was remanded, the case was once again



dismissed and the final decree was also passed. No appeal was filed against the judgment either by the plaintiffs or by the said Thirumeni. Only with some ulterior motive, the petitioners have filed this suit and the suit has to be dismissed under Order 7 Rule 11 of CPC. The suppression of the earlier suit amounts to suppression of facts and the suit is frivolous and prayed the suit to be rejected.

4. Brief substance of the counter in I.A.No.22 of 2017 reads as follows:

The petitioners have to prove his case. The suit property was never enjoyed as a pathway or as a courtyard. The suit property in the earlier suit and the present suit are not the same. The petitioners have to prove that the suit properties are the same and the parties are the same. The statement regarding the earlier suit and the second appeal are all unknown to the respondents. The petitioners are not having any right to file this petition under Order 7 Rule 11 of CPC and this petition has to be dismissed.

5. After hearing both sides, the trial Court dismissed the petition. Against which, the revision petitioners have preferred this Civil Revision Petition.

6. On the side of the revision petitioners, it is stated that the present suit is barred by res judicata, since the earlier suit in O.S.No.639 of 1989 ended in favour of the defendants. The suit property in the earlier case and the present case is one and the same. The present plaintiffs are the parties to the earlier suit. The present suit is an abuse of process of law and it has to be rejected. The present suit is false, frivolous and vicious. The sale deed in favour of the plaintiffs is not valid. The vendor has no title to the suit property. The question of ownership was already decided in the earlier suit and the plaintiffs are estopped and the subsequent suit filed by the plaintiffs is barred by res judicata.

7. On the side of the revision petitioners, it is stated that the property mentioned in the earlier suit in O.S.No.613 of 1989 and the present suit in O.S.No.85 of 2015 are the same and the parties are the same. It is further stated that already O.S.No.613 of 1989 ended up to second appeal in S.A.No.359 of 1999, in favour of the present defendants 1 to 3. The respondents are again re-agitating the same matter and hence, the plaint has to be rejected.

8. The learned counsel for the petitioners would rely upon a judgment of the Hon'ble Supreme Court in the case of **M.Nagabhushana v. State of Karnataka and others** reported in **(2011) 3 Supreme Court Cases 408**, wherein it is stated as follows:

"Constitution of India - Art. 136 - Abuse of process of court/law-exemplary costs of Rs.10 lakhs imposed as a deterrent - appellant reagitating its case



already decided by Supreme Court in AIMO case, (2006) 4 SCC 683, before High Court and then questioning those judgments before Supreme Court, is nothing but abuse of process of Court - such litigative adventure of appellant is contrary to principles of res judicata as well as principles of constructive res judicata and principles analogous thereto- main purpose of filing this appeal was to hold up, on one or other pretext, implementation of earlier decision of Supreme Court"

9.The learned counsel for the petitioners would rely upon a judgment of this Court in the case of **Commissioner of Bishop v. R.Ayyamperumal Nadar and ten others** reported in **2020 (3) CTC 319**, wherein it is stated as follows:

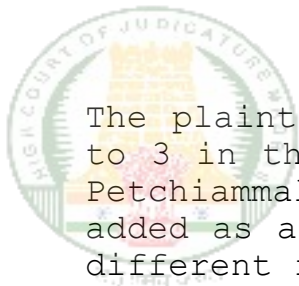
"Held, parties in earlier suit and properties set out in earlier suit are one and same - right in respect of suit properties already decided in previous suit on basis of evidence already adduced by parties - rights of parties having been substantially decided in earlier suit, present suit is nothing but re-litigation and abuse of process of law - suit barred by principles of Res judicata."

10.The learned counsel for the petitioners would rely upon another judgment of this Court in the case of **Mohammed Khan (dead) through Legal Representatives v. Ibrahim Khan and another** reported in **(2018) 14 Supreme Court Cases 495**, wherein it is stated as follows:

"Civil Procedure Code, 1908 - S. 11 - Res judicata - Applicability - matter directly and substantially in issue in earlier suit, that is, claim of title to suit property - doctrine of res judicata, held, applicable - Ground that plea taken in earlier proceedings are different in subsequent proceedings, no relevant."

11.On the side of the respondents, it is stated that in the previous suit, the petitioners were different. The defendants in the first suit is Thiruvani, Petchiammal and Parvathi ammal. The plaintiffs in the present suit are Iruli and Petchi. The parties are different. It is stated that the properties are also different. The suit property in the earlier suit is G.R.1281/62 and the present suit for GR 1281/223. Both the properties are different. The res judicata is mixed question of law and facts and the case of the plaintiffs cannot be thrown at the threshold and the question of res judicata can be decided only after adducing evidence.

12.On the side of the revision petitioners, it is stated that the parties are the same. The name of the second defendant in the earlier suit is Petchiyammal, wife of Mariyappan. The second plaintiff in the present suit is Petchi, wife of Mariyappan and the



The plaintiffs 2, 3 and 4 in the earlier suit are the defendants 1 to 3 in the present suit and the parties are the same. The name of Petchiammal is shortened as Petchi and the name of Irulammal is added as a plaintiff to give an impression that the present suit is different from the earlier suit.

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13. On the side of the petitioners, it is stated that all the boundaries mentioned as the second schedule in the earlier suit are the same with regard boundaries of the present suit. Only the second boundary in the earlier suit was mentioned as property belonged to the plaintiffs. In the present suit, it was mentioned as common property of the village. Only for the purpose of the suit, the second boundary was slightly changed. In the earlier suit itself, the Court has decided that Subramaniya Moopanar has no right over the property. The present petitioners are claiming right through the son of Subramaniya Moopanar. The first plaintiff claimed title through Muthuvel Pandian, who is son of Subramaniya Moopanar.

14. A perusal of the records reveals that the earlier suit property is GR 1281/62. The present suit property is GR 1281 /223. The southern boundary in the previous suit is the plaintiffs' property (revision petitioners herein). The southern boundary in the present suit is "Duraismiyapuram common land". Whether the properties are the same or they are different cannot be decided by this Court at this stage. Since there is a difference in the survey number and there is difference in the southern boundary, this Court cannot throw away the case at the threshold. Whether Subramaniya Moopanar has no right over GR 1281/223 cannot be decided by the Court without appreciating the evidence. There is difference in the Survey number and there is difference in the southern boundary and hence, the question of res judicata cannot be decided in the present revision petition. The petitioners are at liberty to raise all these points before the trial Court. It is left for the trial Court to decide the question of res judicata.

15. For the above reasons, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

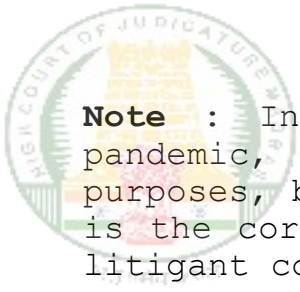
Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)

MRN



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To

1.The Additional District Munsif,
Srivilliputhur.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-27233[F] dated
25/08/2021)

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RK(3.09.2021) 6P 3C