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A.No.4115 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.Nos.4115 of 2021

in

C.S.No.326 of 2021

The Plaintiffs have filed the Civil Suit in C.S.No.326 of 2021 under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure for declaration and permanent injunction.

2. After filing of the Suit, the applicants/defendants have taken out an application in A.No.4115 of 2021 seeking to reject the plaint in C.S.No.326 of 2021, filed by the plaintiffs with exemplary cost.

3. The facts which are leading to the case is as follows:-

The defendants in the Suit are the applicants and the Plaintiffs are the respondents herein. One Mrs.Gangammal by sale deed dated 15.07.1923, purchased an extent of land measuring 7½ grounds comprised in old paimash No.972 and T.S.No.71 registered as document No.792 of 1923. During her life time, she had adopted M.Gurunathan as her son and Nagendiammal as her daughter, being the brother's children of her husband and after her demise, a



Suit in O.S.No.530 of 1948 was filed by the said M.Gurunathan in respect of 7 ½ grounds and the same was ordered in favour of M.Gurunathan. An extent of 3¼ grounds comprised in T.S.No.71 has been handed over to Mrs.Nagendiammal and the same was subdivided as T.S.No.71/2 and 4 ¼ grounds or 10200 sq.ft., has been handed over to M.Gurunathan and the same was subdivided as T.S.No.71/1. After the demise of M.Gurunathan, his wife and children viz., G.Lakshmi, G.Sankarabushanam/1st Plaintiff, G.Neelamegam, G.Sivaraj/6th Plaintiff and Mrs.Bhuvaneswari have inherited his properties as legal heirs of the said M.Gurunathan. Out of 10200 sq ft., an extent of 6600 sq ft had been sold to the third parties and therefore, the respondents/Plaintiffs are in the possession and enjoyment as joint and absolute owners of remaining 3600 sq ft., comprised in T.S.No.71/1, which is described in the Suit schedule A to the plaint and Suit Schedule B property forming part of Suit. Schedule A property has been acquired by the first respondent/first Plaintiff by a registered sale deed dated 30.03.1998 executed by the legal heirs of M.Gurunathan as document No.723 of 1998, which is the subject matter of the present Suit.

4. The case of the respondents/Plaintiffs is that the dispute arose between M.Gurunathan and one Ethirajan in respect of joint patta issued in



respect of land measuring an extent of 3 grounds and 0356 sq.ft., comprised in T.S.No.71/2. The said Gurunathan filed a Suit in O.S.No.9003 of 1973 on the file of XII Assistant City Civil Court, Madras, against K.Ethirajan for possession of a specific portion of suit schedule property, which was dismissed on 06.10.1976, confirming ownership and adverse possession to the said K.Ethirajan against which M.Gurunathan preferred A.S.No.389 of 1977 and the same was dismissed rejecting the plea of leave or license granted to Ethirajan, but negatived the claim of adverse possession. Thereafter, the said Ethirajan had filed a Suit in O.S.No.4747 of 1977 against M.Gurunathan claiming $\frac{1}{2}$ share in respect of lands comprised in T.S.Nos.71/2 & 71/S of Ayanavaram village, based on the joint patta and a preliminary decree was passed on 18.07.1983, against which an appeal suit has been preferred in A.S.No.384 of 1984 on the file of VI Additional City Civil Court, Chennai by the surviving legal heirs of Gurunathan and the same was dismissed on 24.01.1986. Aggrieved by the same, the legal heirs of Gurunathan preferred S.A.No.649 of 1987 before this Court and the same was allowed on 11.07.1996, against which legal heirs of Ethiraj/defendants 1 to 17 filed Civil Appeal No.8720 of 1997 before the Hon'ble Supreme Court. On 26.09.2003, the Hon'ble Supreme Court allowed the Appeal by restoring the judgment passed in O.S.No.9003 of 1973 and by restoring preliminary decree



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passed in O.S.No.4747 of 1977 on the file of the VI Assistant City Civil Court.

5. The learned counsel for the applicants/defendants submitted that the respondents/Plaintiffs have already raised the issue of survey number and the same was rejected by the Lower Court and the same was confirmed by the Hon'ble Supreme Court and reached finality and the very same issue cannot be re-agitated by way of another suit and therefore, the Suit is liable to be rejected. Further, the learned counsel submitted that when a proceedings have attained finality, the parties are bound by the judgment and are estopped from questioning it and they cannot litigate again on the same cause of action nor can they litigate any issue which was already considered for decision in the earlier litigation. Therefore, the learned counsel submitted that the Suit is barred under the principles of *res judicata* in agitating the very same matter once over again and the Suit is liable to be rejected on the ground that the suit is hit by *res judicata*.

6. Per contra, the learned counsel appearing for the respondents/plaintiffs submitted that the plaint schedule property comprised in T.S.No.71/1 is an independent property with different boundaries and the



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same is different from the subject property of decree in O.S.No.4747 of 1977, and the property in the said final decree is totally a different property from that of the properties as a whole or in part and which is not at all relevant to the Schedule property in E.P.No.1247 of 2015, and hence application under Section 47 has been filed before the Execution Court and the same has been dismissed on 20.09.2017. Therefore, the learned counsel submitted that the contention of the applicants/defendants that the suit is barred by *res judicata* does not arise and hence, the application is liable to be dismissed.

7. Heard the learned counsel appearing for the parties and perused the materials placed on record.

8. The short issue which falls for consideration in the application is that whether the Suit is liable to be rejected under Order VII Rule 11 of CPC, as the applicants/defendants raised the contention that the Suit is hit by *res judicata*.

9. Section 11 of the Code of Civil Procedure Code titled as 'Res judicata' states that no court shall try any issue which was directly or substantially in issue between the same parties and which has been heard and



finally decided by a competent court. Thus, unless an issue directly and substantially raised in the former case is heard and decided by the competent court, the principle of *res judicata* will not be attracted.

10. In the present case the principles of *res judicata* will not be attracted for the following reasons:

It is submitted by the applicants/defendants that a preliminary decree was passed by the trial court on 18.07.1983 in O.S.No.4747 of 1977, against which the respondents/plaintiffs preferred an appeal in A.S.No.384 of 1984 and the same was dismissed by confirming the preliminary decree. Thereafter, the respondents/plaintiffs preferred further appeal in S.A.No.649 of 1987 before this Court and the same was allowed. Aggrieved by the same, the applicants/defendants preferred SLP before the Hon'ble Supreme Court in C.A.No.8720 of 1997. The Hon'ble Supreme Court by judgment dated 26.09.2003, set aside the judgment of this Court made in S.A.No.649 of 1987 and confirmed the preliminary decree passed by the Trial Court in O.S.No.4747 of 1977 and thus, the order passed by the Trial Court has become final and conclusive. Therefore, the learned counsel for the applicants/defendants submitted that Suit is hit by *res judicata* and the same is liable to be rejected.



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10.1 On the other hand, the learned counsel for the respondents/plaintiffs submitted that the Suit schedule property is an independent property with different boundaries and the same is different from the subject property of decree in O.S.No.4747 of 1977 and hence, the contentions raised by the applicants/defendants that the Suit is barred by principles of *res judicata* and the Suit is not maintainable, do not arise.

11. Admittedly, it is seen from the plaint that both the Plaintiffs and the defendants have been fighting for a quite longtime with regard to the subject property. The issue raised by the applicants/defendants cannot be decided at an early stage but however, it can be decided only after a full fledged trial and hence, the application is liable to be dismissed.

12. It is a settled legal proposition of law that at the time of deciding the application filed under Order VII Rule 11, this Court has to look into the averments in the plaint and the documents annexed with, and need not look into the defence taken by the applicants/defendants under Order VII Rule 11 of CPC. Therefore, a careful reading of the plaint itself clearly shows that the plaint discloses cause of action and the applicants/defendants have not



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established any valid reason to reject the plaint as contemplated under Order VII Rule 11 CPC and accordingly, the Application in A.No.4115 of 2021 is dismissed.

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Pre-Delivery Order in

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