



WEB COPY



A.No.4437 of 2022

A.No.4437 of 2022
in C.S.No.100 of 2022

SENTHILKUMAR RAMAMOORTHY, J.

The first defendant in the suit seeks rejection of the plaint by this application.

2. The suit was filed by the first respondent herein for a declaration that it is the owner of the immovable property described in the schedule to the plaint; for a consequential direction to the applicant to handover vacant possession of the property to the plaintiff; and for a permanent injunction to restrain the applicant from encumbering the suit schedule property. The present application is filed largely on the grounds that the plaint does not disclose a cause of action and that the suit is barred by *res judicata*.

3. Learned counsel for the applicant submitted that the applicant had filed an earlier suit (O.S.No.1368 of 2002) to restrain the first respondent from demolishing the superstructure and from disturbing the peaceful



A.No.4437 of 2022

possession of the applicant in respect of the suit schedule property. He pointed out that the said suit was decreed by judgment and decree dated 11.01.2020. The first respondent carried the matter in appeal and such appeal was dismissed by judgment dated 27.11.2015. By referring extensively to the judgment in the appeal suit, particularly paragraphs 16, 23 to 34 thereof, learned counsel submitted that the appellate Court concluded that the first respondent is not the owner of the relevant property. On such basis, he submitted that the appellate Court rejected the contention of the first respondent that an injunction cannot be granted against the true owner of the property. Learned counsel pointed out that the judgment dated 27.11.2015 has attained finality because no appeal was preferred against the same.

4. By placing reliance on the judgment of a Division Bench of this Court in *E.Dhavamani and others -vs- G.Sankarabushanam and others*, (2022)7 MLJ 590, learned counsel submitted that the plaint is liable to be rejected in this case because it is clearly barred by *res judicata*. In addition, learned counsel relied upon the following judgments:



A.No.4437 of 2022

1. *S.E.Zarina Begum and others -vs- P.M.S.Latiff* 2016(3) CTC 444.

2. *M.Perumal and others -vs- Vijayakumari and others* 2017(1) CTC 517.

3. *Mohala and another -vs- M.Siva and others* 2019(1) CTC 177.

5. Learned counsel also pointed out that eviction proceedings were instituted and that an order was passed in such eviction proceedings. By drawing reference to G.O.Ms.No.600, he pointed out that the Government Order pertains to the sanction of expenditure for the purchase of a parcel of land by the Government Bus Service, Madras City. Therefore, he contended that this document does not establish the ownership of the first respondent / plaintiff over the land.

6. In reply, learned AAG submitted that the order of the appellate Court was to the effect that the respondent can only be evicted by due process of law. Consequently, he contended that it is not necessary for the first respondent / plaintiff to file an appeal against the judgment of the appellate Court. He also submitted that *res judicata* and limitation are matters for trial.



A.No.4437 of 2022

WEB COPY

7. An application to reject the plaint is required to be decided based on the statements made in the plaint. Ordinarily, such application cannot be sustained on the ground of *res judicata* unless it is evident from statements in the plaint and documents relied upon by the plaintiff that the suit is barred by *res judicata*. In this case, undoubtedly, the plaintiff referred to the judgments in O.S.No.1368 f 2002 and A.S.No.532 of 2010 in the plaint. The said judgments are also on record. To that extent, the contention of learned counsel for the applicant is liable to be accepted and the said judgments may be looked into. Upon examining the above judgments, it is evident that O.S.No.1368 of 2002 was filed by the applicant herein for injunctive relief in respect of non interference with the applicant's possession of the relevant property. The appeal was obviously directed against the judgment and decree in the said suit. The present suit, as briefly mentioned earlier, is *inter alia*, for declaration of title with regard to the suit schedule property and for delivery of vacant possession by the applicant / first defendant to the plaintiff. As per Section 11 of the Code of Civil Procedure, *res judicata* would apply only if the matter directly and substantially in



A.No.4437 of 2022

issue in the relevant suit was directly and substantially in issue in an earlier suit between the same parties and such earlier suit was adjudicated on merits. From the reliefs prayed for in the two suits in question, such conclusion cannot be drawn at this juncture. However, it is left open to the applicant to raise the issue of *res judicata* and request that an issue be framed in respect thereof.

8. On perusal of the plaint, it appears that the plaintiff asserts title by stating that the relevant property was purchased by the plaintiff. Apart from G.O.Ms.No.600 dated 14.02.1950, the plaintiff relies upon correspondence. A copy of the patta is enclosed as supporting evidence. It certainly cannot be concluded that the statements in the plaint do not disclose a cause of action. For these reasons, A.No.4437 of 2022 is dismissed without any order as to costs.

19.12.2022
(1/2)

rna



WEB COPY



A.No.4437 of 2022

SENTHILKUMAR RAMAMOORTHY, J.

rna

A.No.4437 of 2022
in C.S.No.100 of 2022

19.12.2022