



Second Appeal No.1133 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.1133 of 2007

M.Sundar Appellant

-Vs-

L.Narayanan Respondent

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 27.09.2006 made in A.S.No.89 of 2005 on the file of the learned II Additional Sub Court, Villupuram preferred against the judgment and decree dated 30.09.2004 made in O.S.No.53 of 2002 on the file of the learned Principal District Munsif's Court, Villupuram.

For Appellant : Mrs.R.Meenal

For Respondent : Mr.T.Agilesh

J U D G M E N T

The plaintiff is the appellant. The plaintiff claimed that the suit schedule property was originally owned and possessed by one Govinda Naicker. He had alienated the property by way of a registered document dated 12.04.1943 in favour of one Manickam Udayar. In turn, the said Manickam Udayar alienated



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the property in favour of Dhanalakshmi Ammal on 17.02.1944. The father of the plaintiff Neelakandan had purchased the property from the said Dhanalakshmi Ammal by way of a registered sale deed dated 25.10.1958. According to him, it is a land with an extent of 12 feet X 107 feet situated in Survey No.43/6 at Thirupugazh Street, Villupuram Town in Villupuram District. He claimed that his father executed a registered testament on 09.06.1991 including the suit schedule property and on the death of his father on 07.04.1999, he inherited the estate. The further case was that about 3 ½ feet X 104 feet of the land had been acquired by the Tahsildar in order to form a road called Gopala Gounder lane. He claimed that the defendants were interfering with his peaceful possession of the land and therefore he filed the present suit.

2.The Second Appeal was admitted on 07.11.2007 and the following substantial questions of law were framed for consideration.

“(i) Whether in law the Courts below are right in holding that the suit is barred by res judicata when the suit property is different in the two suits?

(ii) Whether in law the Courts below are right in failing to see that unless the respondent's right under Ex.B2 settlement is upheld in A.S.No.122/1990 by this Court, he could not claim any right in the suit property?”



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3. The defendant entered appearance and brought to the notice of the Court that the very same subject matter had been gone into in a previous proceedings filed in O.S.No.237 of 1991 on the file of the Additional District Munsif at Villupuram. In the present case, the only difference is Neelakandan had died and the plaintiff claimed to be the legatee, had presented the fresh suit. Both Neelakandan as well as the present appellant have litigated for the same title. Neelakandan having lost till the appellate Court and let that decree become final, same is binding on his son or legal representative. The trial court and the lower Appellate court have rightly appreciated the principles laid down under Section 11 of C.P.C., and have dismissed the suit and confirmed the appeal which requires no interference in my hands.

4. Learned counsel for the appellant vehemently contended that the suit property in the present suit is different from the suit property in the previous suit and therefore res judicata will not apply. I am not able to accept this contention. Res judicata deals with the issue involved in the suit and not on the identity of the suit property. In the present case as well as in the previous case, the issue was whether it was a common passage. Both the Courts below have found the issue to be identical. For ready reference, the plan appended to the plaint in O.S.No.237 of 1991 and the plan appended to the plaint in O.S.No.53 of 2002 are extracted hereunder.



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respondent. The appeal fails and it is liable to be dismissed. It is accordingly dismissed.

6. In fine, the judgment and decree passed by the learned II Additional Sub Judge, Villupuram in A.S.No.89 of 2005 dated 27.09.2006 in confirming the decree and judgment of the Principal District Munsif, Villupuram in O.S.No.53 of 2002 dated 30.09.2004 is confirmed and the suit shall stand dismissed. No costs.

17.03.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

To

- 1.The I Additional Sub Judge, Villupuram.
- 2.The Principal District Munsif, Villupuram.



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V.LAKSHMINARAYANAN, J.

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