



SA.No.1313 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.1313 of 2006

and

M.P.Nos.1 of 2006 and M.P.No.2 of 2008

Raja

... Appellant

- Vs -

Gantharadadai Ammal

... Respondent

Second Appeal is filed under Section 100 of the Civil Procedure Code aggrieved by the Judgment and decree made in A.S.No.31 of 2002 dated 30.01.2004 on the file of the Principal Subordinate Court, Tindivanam, confirming the Judgment and decree made in I.A.No.725 of 1998 in O.S.No.608 of 1980 dated 08.12.2000 on the file of District Munsif, Gingee.

For Appellant	: M/s.D. Ravi Chander
For Respondent	: Mr.R. Bharath Kumar



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JUDGMENT

This second appeal is arising out of the final decree application filed in I.A.No.725 of 1998. From the submissions made by the learned counsel for the appellant the I.A.No.725 of 1998 was dismissed by the Trial Court on the ground of *res judicata* in view of the order in earlier final decree application in I.A.No. 64 of 1985 as closed. Against which the appellant herein has preferred A.S.No.31 of 2002 that was also dismissed confirming the Judgment and Decree of the Trial Court vide order dated 30.01.2004. Aggrieved with the same the petitioner in I.A.No. 725 of 1998 is before this Court as the appellant.

2. The learned counsel for the respondent herein would vehemently submits that the very order passed by the first appellate Court is well merited. In this regard the learned counsel for the respondent herein would invite the attention of this Court, in respect of the review petition filed in I.A.No.1938 of 1992 in I.A.No.64 of 1985 before the trial court. The learned counsel also invited the attention of this Court about the filing of an appeal in pursuance of dismissal of the said review petition on 15.06.1992 in C.M.A.No.70 of 1993 in C.M.A.No.70 of 1993.



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3. This Court has perused the order passed in C.M.A.No. 70 of 1993.

Wherein the appeal was dismissed on the ground of absence of appeal remedy against the review petition. Though the said C.M.A was dismissed, admittedly the appellant did not move any revision against in I.A.No.1938 of 1992 the order of review petition or against the order of C.M.A.

4. Therefore, the learned counsel for the respondent herein would submit that, without filing a revision against the order of earlier round of litigation, the very attempt on the part of the appellant herein to file the fresh final decree application is hit by the principles of *res judicata*. But this Court is respectfully disagreeing with the submission made by the learned counsel for the respondent, on the simple reason that, admittedly, no order has been passed in the earlier final decree application viz in I.A.No.64 of 1985. The same was simply closed without allotting any definite portion of the property with specific boundary to either of the party. To put it in other words, inspite of contesting the suit since 1982 till date, no remedy was provided to any of the parties for the period of 43 years. The learned counsel for the respondent would also submit that the very ground by which the present final decree



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application has been filed is based upon a “Will”. No doubt the “Will” has to be proved in the manner known to law.

5. On perusal of records, this Court is of the view that the filing of the Review application and C.M.A has misdirected the proceedings in a maveric direction without gone into the merits of the matter. However, the subsequent application filed by the appellant herein in I.A.No.725 of 1998 was for the relief of final decree. As held by the Judgment of the Hon'ble Supreme Court reported in **2022 SCC Online SC 737 in the case of Kattukandi Edathil Krishnan and another Vs Kattukandi Edathil Valsan krishnan and others**, it is the duty of the Court to grant final decree, not withstanding any application filed by the party there for. Apart from that, as held elsewhere in the order that the instant I.A.No. in 725 of 1998 was not hit by the principles of *res judicata* in view no orders has been passed on merits in I.A.No.64 of 1985.

6. Therefore, this Court is of the view that, in view of granting relief to the parties to have the final decree as laid down by the Hon'ble Supreme Court **Kattukandi Edathil's** case, this appeal is liable to be allowed.



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7. In the result, this appeal is allowed, thereby the matter is remitted back to the Trial Court and Trial Court is directed to restore I.A.725 of 1998 to its file and dispose of the same according to its own merits within a period of 3 months from the date of receipt of copy of this order. Further both the parties are directed to appear before the Trial Court on 05.12.2023. No order as to costs. Consequently the connected miscellaneous petitions are closed.

01.11.2023

smn

To

1. The Principal Subordinate Court, Tindivanam
2. The District Munsif, Gingee.



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C.KUMARAPPAN, J

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