



S.A.No.725 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.725 of 2023

and

C.M.P.No.23068 of 2023

1. P.Shanmugasundaram ... Appellant

Vs.

1. Rajammal

2. D.Jayakumar

3. D.Jayanthi

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree passed in A.S.No. 7 of 2021 on the file of the Learned II Additional District and Sessions Court, Coimbatore, dated 29.08.2022 by confirming the judgment and decree in O.S.No.1248 of 2005 on the file of Learned V Additional District Munsif of Coimbatore, dated 01.12.2020.

For appellant : Mr.B.Nedunzhelian

For respondents : No appearance



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JUDGMENT

The plaintiff who has filed the suit for declaration and injunction is the appellant before this Court.

FACTS OF THE CASE:

2. The facts of the case are as follows.

(2.1) The plaintiff filed the suit in O.S No.1248 of 2005 on the file of the V Additional District Munsif Court, Coimbatore, seeking

(a) declaration that the registered sale deed dated 11.11.1974 executed by the first and second defendants in favour of the third defendant and the sale deed dated 05.03.1980 executed by the third defendant in favour of the fourth defendant is null and void, sham and nominal;

(b) permanent injunction restraining the defendants, their men and agents or anyone claiming through them, in any manner, from interfering with his peaceful possession and enjoyment of the suit schedule properties.



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(2.2) The plaintiff had come to the Court contending that the suit properties originally belonged to the first and second defendants.

They had executed a sale deed dated 15.04.1970 for a sum of Rs.75/- in favour of Palanisamy Konar, the father of the plaintiff and on the very same date, they had also executed a deed of sale in favour of Palanisamy Konar's wife, Chinna Ammani. The property purchased by Palanisamy Konar has been described as the first item of the suit property and the property purchased by his wife as the second item of the suit property. Thereby, under a sale deed dated 10.05.1970, the first and second defendants had sold their property to the plaintiff for a sum of Rs.95/-. Since both these sale deeds were below the value of Rs.100/- they had not been registered.

(2.3) On 21.01.2005, Palanisamy Konar passed away. Totally suppressing the above sale deeds, the suit properties were sold to the third defendant by the first and second defendants under a sale deed dated 11.11.1974 and under a registered sale deed dated 05.03.1980, the properties were sold to the fourth defendant. The plaintiff would



contend that the first and second defendants have no right to execute the sale deed in respect of the properties that have been already purchased by the plaintiff and his family.

(2.4) The plaintiff would further submit that the fourth defendant had attempted to trespass into the suit property on 15.04.1995 along with her henchmen, which prompted the plaintiff to file the suit in O.S.No.651 of 1995 on the file of the District Munsif, Coimbatore. The suit was dismissed and an appeal was filed in A.S.No.84 of 2004 on the file of I Additional Subordinate Court, Coimbatore, which was also dismissed. The suit in O.S.No. 651 of 1995 was one for declaration as well as for permanent injunction.

(2.5) The plaintiff would submit that taking advantage of the dismissal of the suit and appeal, on 09.07.2005, the defendants had attempted to trespass into the suit properties. However, this was thwarted by the plaintiff. The plaintiff had, therefore, come forward with the instant suit in O.S.No.1248 of 2005 seeking an injunction.



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(2.6) The fourth defendant had filed a written statement *inter alia* denying the allegations contained in the plaint. He would contend that earlier, the plaintiff, along with his father, had filed a suit in O.S.No.651 of 1995 seeking a declaration that the sale deeds dated 11.11.1974 and 05.03.1980 are null and void and for an injunction which is the very same prayer that is sought in the instant case. This suit has been dismissed and the appeal has also been dismissed. Therefore, the present suit has to be dismissed on the ground of *res judicata* and further, it is the defendants who were in the possession and enjoyment of the suit schedule properties.

TRIAL COURT:

3. The Trial Court had framed the following issues.

(a) Whether the suit is barred by resjudicata?

(b) Whether the plaintiff is entitled for the relief of declaration that the alleged sale deed dated 11.11.1974 No.2690/1974 and alleged sale deed



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dated 05.03.1980 No.842/1980 are void as prayed for?

(c)Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

(d)What other relief to entitled to the plaintiff?

4. The plaintiff had examined himself as P.W.1 and marked Exs.A1 to A9. On the side of the defendants, the fourth defendant had examined himself as D.W.1 and marked Exs.B1 to B15.

5. The learned Judge has held that the instant suit is clearly barred on account of the fact that the earlier suit for the very same relief has been dismissed after contest and the appeal filed against the said judgment and decree also has been dismissed. The judgement and decree in O.S.No. 651 of 1995 has been marked as Ex.A7 and judgment and decree in A.S. No. 84 of 2001 has been marked as Ex.A8. The learned Judge has also held that the present suit is barred



by *res judicata*.

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6. The trial court has also, on a detailed analysis of oral evidence of the plaintiff, held that the plaintiff was well aware of the proceedings and therefore the instant suit is clearly barred, aggrieved by which, the plaintiff had filed the appeal in A.S No.7 of 2021 on the file of the Sub Court, Coimbatore. The learned Judge, by a judgment and decree dated 29.09.2022 was pleased to dismiss the appeal. It is aggrieved by this judgement and decree that the present appeal has been filed by the plaintiff.

7. Heard the learned counsel for the appellant.

DISCUSSION:

8. The plaintiff had earlier filed O.S No. 651 of 1995 for the very same relief. This suit has been dismissed after contest and subsequently, the appeal filed challenging the same, has also ended in dismissal. Therefore, the instant suit once again for the same relief is clearly barred and not maintainable and both the Courts below have



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also rightly dismissed the same.

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9. Further, the plaintiff has sought to declare the sale deeds executed in the year 1974 and 1980 as null and void in the year 2005. There is no explanation for this inordinate delay. The earlier suit in O.S.No. 651 of 1995 had been dismissed on 28.03.2001 and the appeal in A.S.No. 84 of 2001 had been dismissed on 05.02.2004.

10. After the dismissal of the appeal in A.S.No.84 of 2001, the present suit has been filed. The plaintiff has not filed a further appeal against the judgment and decree in A.S. No. 84 of 2001 and therefore, both the Courts below have rightly dismissed the suit. I see no reason to interfere with the same.

Accordingly, this second appeal is dismissed. Consequently, connected C.M.P. stands closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order
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8/10



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To

1. The II Additional District and Sessions Judge, Coimbatore.

2. The V Additional District Munsif, Coimbatore.

3. The Section Officer, V.R. Section,
High Court, Madras.

P.T.ASHA, J.,

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