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S.A.No.2085 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.2085 of 2001

1.Rajamanickam

2.Muthusamy

...Appellants

Vs.

1. Dharmar Moopanar (Died)

2. Meenakshiammal

3. D.Rajamanickam

4. Muthulakshmi

5. D.Subramanian

6. D.Perumal

7.D.Jeyaraj

*(R2 to R7 are brought on record as LR's of
deceased sole respondent vide Court order dated 20.12.2019)*

... Respondents

Prayer:- This Second Appeal is filed under Section 100 of CPC., against the judgment and decree in A.S.No.44 of 2000 dated 31.07.2001 on the file of the Subordinate Judge, Srivilliputhur, confirming the judgment and decree in O.S.No.76 of 1999 dated 23.10.2000 on the file of the Principal District Munsif, Srivilliputhur.

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For Appellant : Mr.V.B.Sundhareshwar
For R2 to R7 : Mr.S.Ramesh

JUDGMENT

This Second Appeal is filed against the judgment and decree in A.S.No.44 of 2000 dated 31.07.2001 on the file of the subordinate Judge, Srivilliputhur, confirming the judgment and decree in O.S.No.76 of 1999 dated 23.10.2000 on the file of the Principal District Munsif, Srivilliputhur.

2. The appellant is the defendant in O.S.No.76 of 1999 on the file of the Principal District Munsif, Srivilliputhur. The respondent herein / plaintiff filed suit. The above said suit against the appellant is for partition and the said suit was decreed by the trial Court. Challenging the said preliminary decree and judgment, the appellant / defendant herein filed appeal before the learned Subordinate Judge, Srivilliputhur in A.S.No.44 of 2000. The learned Subordinate Judge, on hearing and considering the materials, dismissed the appeal and confirmed the judgment and preliminary decree passed by the trial Court in O.S.No.76 of 1999. Again, challenging the said dismissal of the appeal by the learned Subordinate Judge, Srivilliputhur, the appellants herein / defendants therein have filed the



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present Second Appeal before this Court by raising the following substantial questions of law:

a) Whether the Courts below are correct in decreeing the suit eventhough it is held in O.S.No.32/43(Judgemnt Ex-B3) that Badrakaliammal is the absolute owner of the first schedule properties and in subsequent proceedings namely O.S.No.120/64 (Judgment Ex-B10) A.S.No.146/66 (Judgment Ex-B13) and S.A.No.1609/69 (Judgment Ex-B14)?

b) Whether the Courts below are correct in decreeing the suit on the basis that half share of Ammamuthammal was not the subject matter in the earlier proceedings including O.S.No.32/43, eventhough the plaintiff has not made such plea in his plant in O.S.No.76/99?

3. While admitting the Second Appeal, this Court has formulated, the following substantial questions of law :

i)Whether the Courts below have committed an error in relying on the settlement deed dated 2.5.1977 executed by Ammamuthammal in favour of the respondent / plaintiff to grant the relief as prayed for in the suit?

ii)Whether the courts below have committed an error in not following the decree and judgment in O.S.No.120 of 1964 on the file of the District Munsif's Court, Srivilliputhur, which was



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subsequently confirmed in A.S.No.146 of 1966 on the file of the District Judge, Ramanathapuram and again confirmed in second appeal in S.A.No.1609 of 1969 on the file of this Court?

4. The case of the respondents is that originally, the predecessors of the appellants herein / defendants, Ammamuthammal and the predecessors of Subramaniya Mooppanar, Badrakaliammal have got a half share in the suit properties and subsequently the Ammamuthmmal executed a settlement deed in Ex.A2. Based on the Ex.A2, the appellants herein / defendants have derived title and they are entitled to half share in the said suit property. Since the Ammamuthammal has got a half share in the suit property, the deceased respondent / plaintiff is entitled to the half share in the said property. Therefore, he filed the suit for partition based on the settlement deed said to have been executed by the Ammamuthammal under Ex.A1.

5. The case of the appellants / defendants is that already, the predecessors in title filed the suit for partition and in O.S.No.32 of 1943. In the suit Ammamuthammal did not claim any right under the said Will and no finding was given regarding the said Will and no property was allotted to



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the Ammamuthmmal from the first schedule property in O.S.No.32/43.

Against that finding, there was an appeal in A.S.No.70/1944. Subsequently, there was another suit in O.S.No.120 of 1964 between the predecessors of the appellants and respondents. Against the judgment and decree there was an appeal in A.S.No.146 of 1966 and further there was a Second Appeal in S.A.No.1609/1969. In both the suits the judgments and decrees show that Ammamuthammal has no right in the property and therefore the present suit is barred by *res judicata* due to the finding given in the earlier suits. Both the Courts have failed to consider the decisions of the earlier suits and finding regarding the ammamuthammal has no right and interest over the suit property. Therefore, the present Second Appeal came to be filed.

6. The learned Counsel for the appellant would submit that the entire suit property belongs to one Badrakaliammal and she was the absolute owner and title over the property and she executed settlement deed in favour of the parents of the appellant and based on the settlement, they derived title over the suit property. After the death of the appellant's parents, now the appellants are in title and interest over the suit property and they are in possession of the property. The respondents also admitted that they have



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constructed a house in a portion of the property and they are in possession and earlier two suits were filed. The suits were between the predecessors of the appellants and the respondents in O.S.No.32/43 and the same was disposed on 15.11.1943. Against the judgment and decree, there was an appeal in A.S.No.70 of 1944 and yet another litigation in O.S.No.120 of 1964. Against the said judgment and decree an appeal was filed in A.S.No. 146/1966. Against that there was a Second Appeal in S.A.No.1609 / 1969. Therefore, the present suit in OS.No.76 of 1999 is barred by *res judicata* since the title of the Badrakaliammal was declared and confirmed and neither Ammamuthammal or the successors are in title and possession of the property. Unfortunately, both the Courts below failed to consider and appreciate the earlier round of litigation and the findings and the parties also filed copies of the judgments and decrees of the earlier suits and therefore, the Second Appeal has to be allowed and the judgment and decree passed by both the Courts below are liable to be set aside.

7. The learned counsel for the respondents would submit that the Badrakaliammal and Ammamuthammal are the sisters and each entitled to half share and the earlier suit was only in respect of the half share of the



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Badrakaliammal and which is nothing to do with the share of the Ammamuthammal and subsequently, Ammamuthammal executed a settlement deed under Ex.A1 and therefore, the respondents are entitled to half share in the entire suit property. The respondents are claiming the title from Ammamuthammal, the appellants are claiming title from the Badrakaliammal. The earlier suits covered only in respect of the half share of the property not the entire suit property which is not in respect of the share of the Ammamuthaammal. Therefore, the earlier suit will not operate as *res-judicata* to the present suit and both the Courts also have rightly appreciated the earlier rounds of litigation and the judgments of both the Courts below in the earlier suits and also decided by this Court in S.A.No. 1609/1969. All the judgments and decrees clearly show that the present suit properties are nothing to do with the earlier litigation. Therefore, it cannot be operated as *res-judicata*. Both the Courts have rightly appreciated the entire evidence and ordered for partition and passed preliminary decree.

8. While dealing with the Second Appeal under Section 100 of C.P.C., the scope of this Court is very limited and this Court is only answerable to the substantial questions of law formulated by this Court and



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has already stated at the time of admission this Court has formulated the substantial questions of law as mentioned above.

Question No.1:- In order to substantiate his claim, the respondents claimed title through the settlement deed Ex.A1 dated 02.05.1977 said to have been executed by Ammamuthammal in favour of the deceased respondent / plaintiff. On perusal of Ex.A1, the settlement deed in favour of the deceased respondents / plaintiff executed by the Ammamuthammal which clearly shows the undivided half share and which is nothing to do with the share of the Badrakaliammal and the suit itself is only for the half share of the partition property and therefore the contention of the learned counsel for the appellants cannot be accepted that the entire suit property belongs to the Badrakaliammal and Ammamuthammal had no right and interest over the property.

An appeal was filed against the earlier judgments and decrees passed in the other suits in O.S.No.32 of 1943 and O.S.No.120 of 1964. The properties are nothing to do with the present suit property. The earlier suits covered only in respect of the shares of Badrakaliammal alone and nothing to do with the share of Ammamuthammal. The appellants have not produced the copies of the plaint in the earlier suits to show that the



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schedule of properties shown in the earlier suit and also the settlement deed said to have executed by the Badrakaliammal in favour of the appellants / defendants are one and the same. If the appellants / defendants claiming title by the settlement deed they have to prove the settlement deed. The earlier suits and also the subsequent suit and the documents produced by the respondents / plaintiff are clearly show that the plaintiff proved that Ammamuthammal has got half share in the suit property. The earlier litigation also referred to that and confirmed that only Badrakaliammal has got half share in the property and Ammamuthammal has got half share in the property. Unless the appellants / defendants produced the settlement deed to prove that the Badrakaliammal has got absolute right in the entire suit property and settled her right through the settlement deed to the appellants/ defendants, they are not entitled to the same. However, the plaintiff has produced the settlement deed executed by the Ammamuthammal in favour of the deceased respondent / plaintiff and examined one of the attestors to the settlement deed and the settlement deed was proved in the manner known to law. Therefore, the suit claim was proved and the trial Court granted the preliminary decree with reference to the half share and ofcourse, the first appellate Court has also confirmed the



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same and therefore, there is no error on the part of both the Courts below by considering the settlement deed Ex.A1 dated 02.05.1977 said to have been executed by Ammamuthammal in favour of the deceased respondent / plaintiff and therefore, this Court does not find any merit in the appeal. Therefore, the first substantial question of law is answered accordingly, against the appellants.

Question No.2: The issue regarding res-judicata is concerned, the appellants have stated that in O.S.No.120 of 1964, the earlier litigation, the rights of the parties have been decided and against the judgment and decree in O.S.No.120 of 1964, an appeal was filed in A.S.No.146 of 1966 on the file of the District Judge, Ramanathapuram and against the said judgment of the District Judge, Ramanathapuram, there was a Second Appeal in S.A. (MD)No.1609 of 1966 on the file of this Court. In the earlier suits, rights and titles of the parties have been decided. Therefore, the findings of the earlier suits operate as res-judicata to the present suit.

A careful reading of the judgment and decree passed in the O.S.No. 120 of 1964 and consequently in the second appeal, the properties covered in the earlier proceedings and the properties covered in the present suits are



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not one and the same and further the appellants have not filed copies of the complaints and proved that the earlier suits covered the entire property and the settlement deed executed by the Badrakaliammal covered the entire property and Ammamuthammal has no interest in the property and Ammamuthammal is not entitled to half share in the property therefore the successors to the Ammamuthammal has no right and share in the property and the successor of the Badrakaliammal alone has got the right and interest over the entire property. Once the appellants have taken stand that the earlier suit operates as *res-judicata* and it is the duty of the appellant to prove that the properties covered in the earlier litigation and the properties covered in the subsequent suit are one and the same and the earlier suit operates as *res-judicata* to the subsequent suit. No doubt in both the litigations, the parties are same and they are the predecessors of the appellants and respondents and the suits were filed and contested only for the half share and not for entire property and the present suit is filed only for the half share of the Ammamuthammal, but not the half share of the Badrakaliammal.

9. Therefore, under these circumstances, the earlier suits in O.S.No.32 of 1943 and O.S.No.120 of 1964, A.S.No.70 of 1944 and S.A.No.1609/1969



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are not operate as *res-judicata* to the present suit, since the appellants have not proved that the properties in both the suits are one and the same.

Especially, the appellants has not produced his title deed that the settlement deed said to have been executed by the Badrakaliammal in favour of the appellants. Therefore, under these circumstances, the substantial question of law is decided against the appellant and in favour of the respondents and the same is answered accordingly. Since it is only a suit for partition and the Ammamuthammal has got half share and subsequently under Ex.A1, she executed settlement deed in favour of the deceased respondent / plaintiff and therefore, the respondents are entitled to get a decree as prayed for and both the Courts have rightly passed the preliminary decree and there is no merit in the Second Appeal and both the substantial questions of law are answered against the appellant and in favour of the respondents.

10. In the result, this Second Appeal is dismissed. No costs.

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Index :Yes/No
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To

1. The Subordinate Judge, Srivilliputhur.
2. The Principal District Munsif, Srivilliputhur.
3. The Record Keeper,
Vernacular Records, Madurai Bench of Madras High Court, Madurai.



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P.VELMURUGAN, J.

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