



OSA.No.152/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

OSA.No.152/2024 & CMP.No.18913/2024

Sankari Narayanan

... Appellant

Vs.

1.Dhanalakshmi

2.R.Sreedhar

3.Premalatha

... Respondents

Prayer : Original Side Appeal filed under 36 Rule 2 of Original Side Rules read with Clause 15 of Letters Patent against the fair and decreetal order dated 30.04.2024 in A.No.739/2017 in CS.No.859/2016 and allow the appeal thereby reject the plaint in CS.No.859/2016.

For Appellant

: Mr.V.Srikanth for Mr.K.Elangoo

For R2

: Mr.D.S.Ramesh



WEB COPY



OSA.No.152/2024

JUDGMENT

[Order of the Court was made by S.S.SUNDAR, J.,]

- (1)The present Original Side Appeal is directed against the order of the learned Single Judge dated 30.04.2024 in Appln.No.739/2017 filed by the appellant herein under Order 7 Rule 11 of CPC to reject the plaint in CS.No.859/2016 on the ground that plaintiffs have no cause of action, as the suit is barred in view of the judgment and decree in a previous suit.
- (2)Brief facts that are necessary for the disposal of this appeal are as follows:-
- (3)The appellant is the 2nd defendant in the suit in CS.No.859/2016 filed by the respondents 1 to 3 herein for permanent injunction and mandatory injunction to demolish the construction put up in the suit B schedule property comprised in S.No.28/1 in Ayanavaram Village.
- (4)The appellant who is the 2nd defendant in the suit, filed an application in A.No.739/2017 to reject the plaint on the ground that the father of the respondents herein, earlier filed a suit in OS.No.9095/1984 on the file of



WEB COPY

the 18th Assistant City Civil Court, Chennai, for declaration in respect of the very same property comprised in S.No.28/1. It is the contention of the appellant that the father of the respondents originally filed a suit in OS.No.8569/1972 for injunction and the same was dismissed. It was thereafter the father of respondents filed another suit in OS.No.9095/1984 to set aside the judgment and decree passed in the previous suit in OS.No.8569/1972. It is the further case of the appellant that the suit property in OS.No.9095/1984 is an extent of 18 cents comprised in TS.No.28/1 in Ayanavaram Village and that the suit is barred by principles of *res judicata*.

(5) It is admitted that the suit in OS.No.9095/1984 was filed by the father of respondents herein. The said suit was dismissed and an appeal suit was filed by the father of the respondents in AS.No.401/2003. A Second Appeal was also filed by him as against the judgment and decree in AS.No.401/2003 before this Court and the Second Appeal in SA.No.137/2005 was also dismissed. Despite these admitted facts, the learned Judge considered the judgment and decree that was passed in OS.No.9095/1984. It is seen that the suit in OS.No.1995/1984 and the



OSA.No.152/2024

WEB COPY

previous suit in OS.No.8569/1972 are against a Cooperative Society which had not claimed any right in the property belonged to the father of respondents in S.No.28/1. The said Society is known as Perambur Cooperative Building Society. It purchased the property in S.No.18/1. However, the case of the respondents' father is that a small portion which is in the enjoyment of the said Society, falls within S.No.28/1 and therefore, the suit came to be filed.

(6) It is seen from the plaint and written statement and the findings of the Trial Court in OS.No.1995/1984 that the whole dispute is whether any portion of the property which is in the enjoyment of the defendants in the said suit, falls within S.No.28/1. In fact, the title of father of respondents in respect of the property in S.No.28/1 is admitted. Even though the father of the respondents claimed that a small portion which the defendants were in enjoyment, falls within S.No.28/1, the finding of the Trial Court as well as the Appellate Court is that the disputed property does not fall within S.No.28/1 but located in S.No.18/1 which does not belong to the plaintiff, namely, the father of the respondents.

(7) The judgment and decree in AS.No.401/2003 passed by the learned 18th



OSA.No.152/2024

WEB COPY

Assistant Judge, City Civil Court, Chennai also reflects only the finding that the property in dispute falls in S.No.18/1 and not in S.No.28/1. It is in the said circumstances, the learned Single Judge found that the cause of action, subject matter and the parties in the earlier suit are entirely different and therefore, the application filed under Order 7 Rule 11 of CPC cannot be sustained on facts.

(8) It is to be noted that the plaintiffs in the present suit claimed that the appellant and other defendants have encroached into their property in S.No.28/1. The subject matter of the present suit is not the subject matter of the earlier suit as held by the learned Single Judge. As admitted by the appellant, the parties are entirely different and the appellant is not claiming under the defendants in the earlier suit. For all the above reasons, the learned Single Judge, having regard to law settled by this Court and after referring to several precedents, held that the application filed under Order 7 Rule 11 of CPC is liable to be dismissed.

(9) This Court is unable to find any error or irregularity in the order of the learned Single Judge in dismissing the application in A.No.739/2017 dated 30.04.2024 filed under Order 7 Rule 11 of CPC. We need not



OSA.No.152/2024

elaborate this judgment again referring to various precedents.

(10) On the admitted facts, this Court finds no merit in this appeal and hence, this Original Side Appeal stands **dismissed**.

(11) The appellant has also filed a written statement in the suit. Having regard to the fact that the suit is pending for more than eight years, this Court is inclined to direct the learned Trial Judge to dispose of CS.No.859/2016 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [K.R.S., J.]
03.09.2024

AP

Internet : Yes



WEB COPY



OSA.No.152/2024

S.S. SUNDAR, J.,
and
K.RAJASEKAR, J.,

AP

OSA.No.152/2024



WEB COPY



OSA.No.152/2024

03.09.2024