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A.S.No.467 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.07.2025

Pronounced on : 17.07.2025

Coram:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Appeal Suit No.467 of 2022

Suresh

.. Appellant/Plaintiff

/versus/

Kannagi

.. Respondent/2nd defendant

Prayer: Appeal Suit has been filed under Section 96 of C.P.C., to set aside the order and decreetal order dated 15.02.2022 made in I.A.No.107 of 2019 in O.S.No.34 of 2019 on the file of the III Additional District Court, Kallakurichi.

For Appellant :Mr.R.Nandha Kumar

For Respondent :Mr.R.Bharath Kumar

JUDGMENT

This Appeal Suit is directed against the order of the Court below dated 15.02.2022, passed in I.A. No. 107 of 2019 in O.S. No. 34 of 2019, on the file of the III Additional District Court, Kallakurichi, rejecting the plaint.



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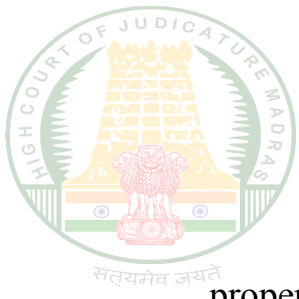
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2. Plaint averments:

The suit for partition was filed by one Suresh, against Athiyappa Gounder and seven others, on the premise that the suit property was originally held by Kurumba Gounder Jahirdhar. On the advent of the Jahir Abolition Act, the State Government acquired the property by way of Government Order dated 05.01.1966. Subsequently, compensation was paid to Kurumba Gounder vide proceedings dated 25.06.1981.

3. Thereafter, under the Inam Settlement Scheme and after due enquiry, patta was issued in favour of Sengoda Gounder, the great grandfather of the plaintiff and Athiyappa Gounder, the first defendant. Joint Patta No. 146, dated 15.11.1977, was issued in the names of Sengoda Gounder and Athiyappa Gounder and the property was enjoyed by their respective branches without disturbance.

4. After the death of Sengoda Gounder on 22.11.1990, the plaintiff seeks partition by claiming that Sengoda Gounder is entitled to $\frac{1}{2}$ share in the

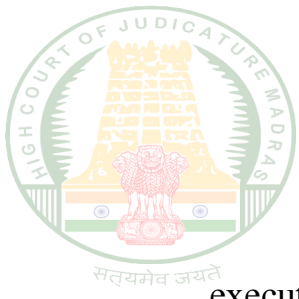


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property covered under Patta No.146 and the remaining $\frac{1}{2}$ share to Athiyappa Gounder. The suit was filed against Athiyappa Gounder, the co-pattadar and others, whom all the plaintiff presumed to have a claim over the property. The plaintiff restricts his claim to $\frac{1}{12}$ share, stating that Sengoda Gounder had four children, one of whom was Selvaraj, who predeceased Sengoda Gounder. Selvaraj had a son by name Rathinam. The plaintiff is the son of Rathinam.

5. The plaintiff states that the first defendant, despite having only $\frac{1}{2}$ share, sold the entire suit property to one Narayanan through a sale deed dated 22.01.1992. Narayanan, in turn, sold the property to the second defendant on 30.04.2001. The plaintiff further contends that the first defendant is claiming ownership over the entire suit property based on a sale deed of the year 1975. However, at that time, the property had already been taken over by the Government being a Jahir land and on the abolition of the Jahir, the suit land was declared as State property. The settlement proceedings had attained finality on 25.08.1976. Therefore, any sale deed allegedly



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executed and registered in 1975 is to be treated as non est in law.

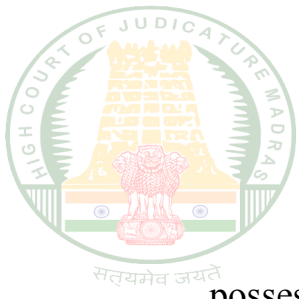
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6. Written Statement averment:

The second defendant, in his written statement, denied the plaintiff's claims as being contrary to facts and law. He specifically denied that a joint patta was issued in favour of Sengoda Gounder and Athiyappa Gounder and also denied the date and manner of Sengoda Gounder's death and succession.

7. The second defendant further denied the allegations of suppression of Government proceedings and false claims in O.S. No. 84 of 1996, filed by Narayanan against the third defendant and others. He asserted that the suit property originally belonged to Thangavel Gounder, Kupppammal and Vellaiyan. Athiyappa Gounder had purchased the property through sale deeds dated 30.06.1975 and 17.10.1975, registered as Document Nos. 2194, 2200, and 3084.

8. Since the purchase, Athiyappa Gounder had been in exclusive



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possession and enjoyment of the property. A patta was issued in his name.

Later, Athiyappa Gounder executed a General Power of Attorney in favour of Sengoda Gounder, who was his father-in-law. However, since Sengoda Gounder acted against the interest of the principal, the Power of Attorney was revoked on 06.10.1986. Therefore, according to the second defendant, the great-grandfather of the plaintiff never had title over the property, except the limited authority conferred under the power of attorney for a short period.

9. Application to reject the plaint:

In the application to reject the plaint, the defendant placed on record that with respect to the suit property, earlier a suit in O.S.No.17 of 1987 was filed by Sengoda Gounder against Athiyappa Gounder for declaration and permanent injunction. A decree in favour of Athiyappa Gounder was passed on 13.09.1990 by the Sub Court, Vriddhachalam. Aggrieved by the said decree, Sengoda Gounder preferred an appeal in A.S.No.174 of 1991 before the District Court, Cuddalore, which was dismissed by order dated 01.10.1992.



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10. In the said proceedings, Sengoda Gounder admitted that he was the power agent of Athiyappa Gounder and instituted O.S.No.12 of 1977 on behalf Sengoda Gounder against third parties. By this conduct, the right of Athiyappa Gounder only over the property was established, as Sengoda Gounder represented Athiyappa Gounder only as his agent in respect of the suit property. Therefore, the plaintiff, who claims to be the great-grandson of Sengoda Gounder, is estopped from filing a fresh suit for declaration of title in respect of the same property.

11. Since the dispute regarding title over the property has attained finality after the decree passed in O.S. No. 17 of 1987, which was confirmed in A.S. No. 174 of 1991, there cannot be another suit for the very same cause of action. The pleas relating to handover of the property to the Government after Jahir abolition Act and the alleged joint patta issued in favour of Sengoda Gounder and Athiyappa Gounder are newly invented facts, which were never pleaded by Sengoda Gounder, who is the predecessor-in-title of



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the plaintiff.

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12. Court Finding:

In light of the earlier proceedings and the decree passed in respect of the suit property. The application under Order VII Rule 11 of CPC seeking rejection of the plaint on the ground of *res judicata*, duly considered by the trial Court and allowed. Consequently, the plaint was rejected by order dated 15.02.2022. Being aggrieved, the present appeal.

13. Appeal Grounds and Response:

The learned counsel appearing for the appellant/plaintiff submitted that, even if there was a earlier decree of declaration of title in respect of the suit property that it would not preclude the appellant from filing a present suit for partition, especially when he traced the right through the joint patta issued by the Government after Jahir Abolition Act, the document not been considered in the earlier proceedings.

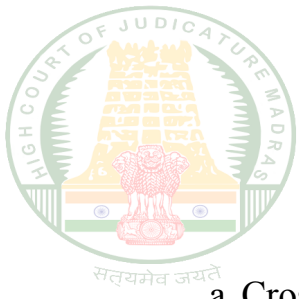


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14. He further submitted that the suit property was assigned by the Government jointly to Sengoda Gounder and Athiyappa Gounder under the Inam Settlement Scheme and the assignment dated 15.11.1975 was never challenged by the first defendant, Athiyappa Gounder. Therefore, Athiyappa Gounder cannot claim exclusive rights over the entire extent of the property. His right in the suit property is limited to $\frac{1}{2}$ share and he cannot alienate the share of Sengoda Gounder based on the sale deed dated 17.10.1975, which is non-est in law in view of the subsequent joint patta assignment in favour of Sengoda Gounder and Athiyappa Gounder, vide proceedings dated 15.11.1975.

15. It is also submitted that Narayanan, the vendor of the first respondent, had filed O.S. No. 84 of 1996 against Selvaraj (grand father of the appellant) and his brothers, seeking declaration, recovery of possession, and mesne profits. The said suit was dismissed on 12.12.1996. Aggrieved by the dismissal, Narayanan filed an appeal in A.S. No. 10 of 1997, which was allowed on 23.07.1997. A further appeal filed in S.A. No. 1276 of 1997, and



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a Cross Objection No. 72 of 1999 dismissed and the judgment of the first appellate court was confirmed.

16. It was only when the first respondent, who purchased the property from Narayanan, filed the execution petition for delivery of possession, the plaintiff came to know about the decree passed in O.S. No. 84 of 1996. It is hence contended that the decree obtained by Narayanan is through false claims, contrary to the Inam Settlement assignment. Therefore, the decree is liable to be declared null and void and consequently, the plaintiff to be allotted 1/3 share in the suit property.

17. It is further contended the plaint, which contains entire facts and grounds for seeking a declaration that the judgment and decree in O.S. No. 84 of 1996 is null and void, cannot be rejected summarily without being subjected to trial. Even the plea of *res-judicata* can be decided only after trial being a disputed fact.



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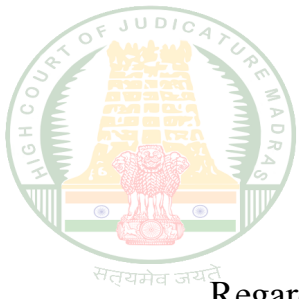
18. Per contra, the learned counsel appearing for the respondent submitted that the sale deeds in favour of Athiyappa Gounder, dated 30.06.1975 and 17.10.1975, were already tested in the first round of litigation between Sengoda Gounder and Athiyappa Gounder in O.S. No. 17 of 1987. Since the plaintiff claims through Sengoda Gounder, who is his great-grandfather, he cannot claim a better title than what his predecessor possessed.

19. Heard the learned counsels. Records perused.

20. Point for determination:

Whether the plaintiff/appellant re-agitating a settled issue?

21. The suit filed by Sengoda Gounder for declaration, in O.S. No. 17 of 1987, was dismissed on 13.09.1990. The first appeal was also dismissed on 01.10.1992 and the second appeal, in S.A. No. 1432 of 1993, was dismissed on 22.11.1993, thereby the matter has attained finality.



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Regarding title over the suit property, the decree in O.S.No.17 of 1987 is against Sengoda Gounder.

22. Narayanan, who purchased the suit property from Athiyappa Gounder on 22.01.1992, filed O.S. No. 62 of 1993, which was subsequently renumbered as O.S. No. 84 of 1996. The grandfather of the plaintiff, Mr.Selvaraj was one of the defendants in the said suit. This suit also pertained to the same property and relief sought was declaration of title and possession.

23. In the said suit, Narayanan contended that he had purchased the property from Athiyappa Gounder, however, the branch of Sengoda Gounder preventing him from taking possession. In the written statement filed by Selvaraj, the plaintiff's grandfather, it was only contended that the suit property was un-surveyed Jahir land. No plea stating that joint patta was issued to his father Sengoda Gounder under the Inam Settlement Scheme in 1977.



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24. If such a patta had indeed been issued, there was no reason for Selvaraj to suppress it while defending against the claim of Narayanan for declaration and possession.

25. The second round of litigation, which commenced in O.S. No. 62 of 1993 instituted by Narayanan, reached its finality after the dismissal of the Second Appeal in S.A. No. 1276 of 1997 on 05.02.2007, which was later confirmed by the Hon'ble Supreme Court in Civil Appeal No. 2312 of 2011, dated 23.08.2017. Thus, the decree declaring title and possession in favour of Narayanan stands confirmed.

26. The grandfather of the plaintiff and other descendants of Sengoda Gounder, who had contested the suit and lost, cannot convey any right in the suit property to their legal heirs. The plaintiff's attempt to interfere with possession and enjoyment of the suit property by making frivolous claims of title has been rejected by judicial pronouncements again in the revision petition filed in the execution proceedings.



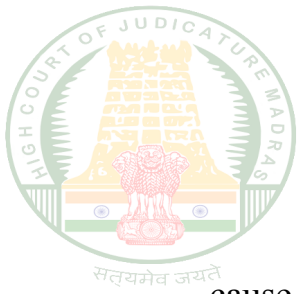
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27. When the plaintiff's predecessors sought a declaration of title specifically on the plea that the suit property fell under the Jahir Abolition Act and their claim was dismissed by the High Court, which upheld the Trial Court's order and directed delivery of possession in favour of the respondent. The O.S.No.34 of 2019, filed by the great grandson of Sengoda Gounder, in the third round of litigation in respect of the same suit property, rightly rejected by the trial Court.

28. The learned counsel appearing for the appellant advanced a novel argument that the right of the appellant cannot be curtailed by rejection of the plaint. When a new fact has now come to the appellant's knowledge regarding the nature of the property and assignment in favour of his great grandfather, Sengoda Gounder.

29. This Court given to anxious consideration to the submissions. The spirit of Order VII Rule 11 CPC, is intended to prevent perpetual litigation and re-agitating settled dispute on frivolous ground on the same



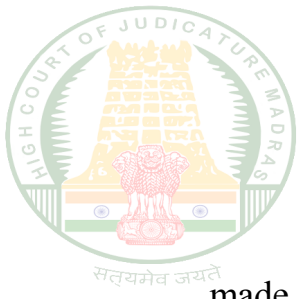
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cause of action. The present suit squarely fall under the classification of re-litigating issue which has reached finality. Hence, barred by law of *res judicata*.

30. This is a third-generation litigation in respect of the same subject matter. The first round of litigation between Sengoda Gounder and Athiyappa Gounder arose in O.S. No. 17 of 1987, and reached finality on the dismissal of S.A. No. 1432 of 1993 on 22.11.1993. Notably, at that time, Sengoda Gounder did not claim any right as a joint pattadar with Athiyappa Gounder. In fact, he had acted as power of attorney holder of Athiyappa Gounder, to the extent of filing a suit on behalf of Athiyappa Gounder. Having admitted the title of Athiyappa Gounder and having not claimed any right under the alleged Inam Settlement Scheme, he had forfeited any right in the suit property.

31. Furthermore, in the second round of litigation, the plaintiff's grandfather, Selvaraj, was one of the defendants in O.S.No.62 of 1993, filed by Narayanan for declaration of title and possession. In that case, Selvaraj



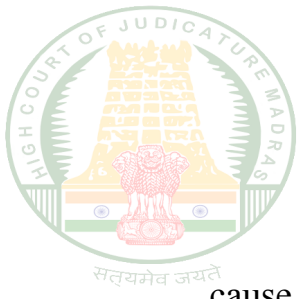
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made an entirely different claim, stating that the suit property was unsurveyed Jahir land. In his written statement, he did not plead that the property was assigned to his father Sengoda Gounder under a joint patta with Athiyappa Gounder. He again suffered a decree of declaration of title and possession at the hands of Narayanan, who had purchased the property from Athiyappa Gounder.

32. Subsequently, in E.P. No. 121 of 2017, filed for delivery of possession based on the decree in O.S.No.84 of 1996, the same plea that the property was covered under the Jahir Abolition Act was raised by the petitioner (plaintiff herein). This contention was considered and rejected by both the Execution Court and the High Court in C.R.P. No. 6 of 2025, and the findings were rendered against the plaintiff/petitioner.

33. A new suit, with a new set of facts that were never canvassed by the appellant's grandfather and great grandfather, namely Selvaraj and Sengoda Gounder, is now being projected in an attempt to create a fresh



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cause of action for the present suit.

34. A dispute that has been heard and finally decided cannot be re-agitated in a different form or through a different person. The principle of finality of litigation and the bar under *res judicata* squarely apply to the facts of the case under consideration.

35. The learned counsel for the appellant, rely on ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and others***, the judgment of the Hon'ble Supreme Court, wherein the Court has summarised the guiding principles under Order 7 Rule 11(d) CPC in the following terms:

“25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarised as follows:

25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

25.2. The defence made by the defendant in



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the suit must not be considered while deciding the merits of the application.

25.3. To determine whether a suit is barred by res judicata, it is necessary that (i) the “previous suit” is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.

25.4. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the “previous suit”, such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.”

It is also worth referring ***Keshav Sood Vs. Kirti Pradeep Sood and others*** reported in (2023) 6 MLJ 392 (SC), wherein the Hon’ble Supreme Court has held as below:-

“5.As far as scope of Rule of Order VII of CPC is concerned, the law is well settled. The



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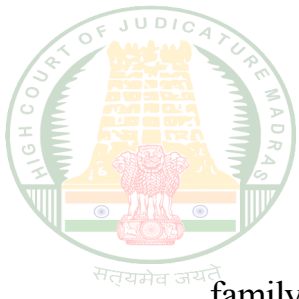


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Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.

6.Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the trial Court and the judgment of the appellate Courts. Therefore, we make it clear that neither the learned single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits.”

36. In the present case, the issue of title was already the subject matter of O.S. No. 17 of 1987, in which Sengoda Gounder himself was the plaintiff. He lost the suit up to the High Court. Thereafter, there can be no further adjudication on title by any party claiming under Sengoda Gounder. To add, in the second round of litigation, initiated by Narayanan, when the



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family members of Sengoda Gounder interfered with his possession and rights, they were again unable to establish title. Even in the execution proceedings arising out of the decree passed in O.S.No.84 of 1996, the third attempt made by the appellants to establish title failed. In these circumstances, the present round of litigation is clearly an attempt to re-litigate a settled issue which constitutes an abuse of the process of law.

37. This Court cannot close his eyes to previous judicial proceedings that have reached finality, while considering an application for rejection of the plaint on the ground of *res-judicata*. If an unscrupulous litigant suppresses earlier proceedings and attempts to re-agitate a settled issue, the Court is bound to look beyond the pleadings, in order to ascertain whether there has been suppression of material facts and whether the subsequent suit amounts to misuse of judicial process. Court cannot confine itself to the plaint pleadings, especially when the pleadings lack honest disclosure of material and necessary facts.



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38. In light of the above, this *Appeal Suit stands dismissed* and the order of the Trial Court rejecting the plaint is confirmed. There shall be no order as to costs.

17.07.2025

Index:yes

Internet:yes/no

Speaking order/non speaking order

Neutral citation:yes/no

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To

1.The III Additional District Court, Kallakurichi.

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



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DR.G.JAYACHANDRAN,J.

rpl

Pre-delivery judgment made in
Appeal Suit No.467 of 2022

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