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S.A.No.439 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2025

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

S.A.No.439 of 2014

and

MP.No.1 of 2014

Sukkur Sahib (died)

- 1 Askar S/o Late Lhammed Sahib All Are
Residing At Bangarupettai Village Street
Kunnathur Village & Post Arni Taluk
Tiruvannamalai Dt.
- 2 Sakila
D/o Late Hameed Sahib
- 3 Isama
D/o Late Lhameed Sahib
- 4 Sikkanthar
S/o Late Lhameed Sahib
- 5 Hasina
D/o Late Lhameed Sahib
- 6 Thanjun Bee
W/o Late Lhameed Sahib
- 7 Fathima Bivi



S.A.No.439 of 2014

WEB COPY

W/o Late Sukkur Sahib 622/5 Bangarapettai
Street Kunnathur Village & Post Arni Taluk
T.v. Malai District.

8 Rahima
W/o Shanavullayh No. 1/27 Cheriyan Nagar
4th Stret New Washerkanpet Chennai 81.

9 Sharpun
W/o Anifa Gandhi Road Masjid Street
Ranipet Vellore District.

10 Rajima
W/o Latle L Rahiman No. 5/107 Bangarapettai
Street Kunnathur Post Arni Taluk T.v.
Malai District.

11 Jokara
W/o Abdul Rahiman Puduvannarapet
Chennai 81. ...

Appellants

Vs

1 Sheriff Sahib (died)
1. Bakthul Bee W/o K.s. Sheriff Sahib
Bangarupettai Street Kunnathur Villae &
Post Arni Talukk Tiruvannamalai District.

2 Gulab
S/o Late K.s. Sheriff Sahib

3 Akthar Bee
D/o Late K.s. Sheriff Sahib



S.A.No.439 of 2014

WEB COPY

- 4 Jameel Basha
S/o Late K.s. Sheriff Sahib
- 5 Sarthar
S/o Late K.s. Sheriff Sahib
- 6 Hawama
S/o Late K.s. Sheriff Sahib
- 7 Hussain
S/o Late K.s. Sheriff Sahib
- 8 Shafiya
S/o. Late K.s. Sheriff Sahib
- 9 Bhadvu
S/o Late K.s. Sheriff Sahib

....

Respondents

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgement and decree of the learned Subordinate Judge, Arni dated 18.06.2012 made in A.S.No.25/2006 confirming the judgement and decree of the learned Additional District Munsif, Arni dated 28.07.1997 made in OS.No.732 of 1995.

For Appellants : Mr.G.Jeremiah
For Respondents : Mr. P.Satheesh Kumar



S.A.No.439 of 2014

WEB COPY

JUDGEMENT

The appellants are the legal heirs of the deceased 1st and 2nd defendants, as well as the 3rd defendant. The deceased plaintiff had filed a suit against defendants 1, 2 and 3, seeking a relief of declaration and permanent injunction. The trial Court decreed the suit in favour of the plaintiff. The first appeal, preferred by the defendants, was dismissed by the First Appellate Court by confirming the judgement and decree of the trial Court. Aggrieved over that the legal heirs of the deceased 1st and 2nd defendants, along with the 3rd defendant, have filed this Second Appeal.

2. The short facts, as it appears from the plaint, are that the suit property belonged to one V.N. Fakir Mohamed. The plaintiff purchased the suit property by virtue of a sale deed dated 07.12.1986 and he has been in enjoyment of the same. After two years he came to know that in the sale deed, the survey number had been mentioned mistakenly; he got a rectification deed executed by the vendor V.N. Fakir Mohamed. The defendants are also residing in the same street where the suit property is



S.A.No.439 of 2014

situated, and he has got no iota of right over the suit property. However, the defendants claim false rights over the suit property, and they are trying to encroach on the same. The same was prevented by the plaintiff. However, the defendants continue to claim undue rights and tried to disturb the possession of the plaintiff; hence, the plaintiff has filed the suit for declaration and consequential permanent injunction.

3.The defendants 1 to 3 have filed a written statements alleging that, based on the same averments, the plaintiff had previously filed a suit in O.S. No. 198/1987 before the Additional District Munsif Court, Arani. However, in that suit, the plaintiff did not specify the boundaries of the property. The defendants had also filed a written statement in the said suit. An extent of 1 acre and 65 cents in S.No. 163/2 originally belonged to Munusamy Reddy, Govindasamy Reddy, and Venkatesa Reddy. They sold portions of the suit property to various persons, either jointly or individually. The suit property was purchased by Syed Jaffar Sahib, who later passed away. During his lifetime, he executed a sale agreement in favor of one Fakkier Sahib on



S.A.No.439 of 2014

WEB COPY

11.09.1984, and subsequently, Fakkier Sahib purchased the property. After his demise, his wife, Chotti Bee Ammal, sold the suit property to the 2nd defendant. Since then, the 2nd defendant has been in possession and enjoyment of the suit property.

3.1. As the 1st defendant has been in continuous possession and enjoyment of the suit property for more than the statutory period, he claims entitlement to the same. The original suit in O.S.No. 198/1987 was dismissed on 08.07.1992. The petition filed in I.A.No. 876/1992 for restoration of the suit was also dismissed on 18.12.1992. Additionally, the civil miscellaneous petition filed in C.M.A. No. 15/1993 before the Arani Sub Court was dismissed on 28.06.1994. In the earlier suit, the plaintiff had not specified the four boundaries, whereas in the present suit, the survey number has been changed. Additionally, the revision petition filed challenging the orders passed in C.M.A. was also dismissed on 26.05.1995. The suit has been filed concerning the very same property that was the subject matter of the earlier suit. Merely changing the survey number and



S.A.No.439 of 2014

specifying the four boundaries does not make it a different property. The plaintiff has not explained how the suit property originally belonged to V.N. Fakir Mohamed or his vendor, Syed. The plaintiff filed the suit by suppressing the fact that the earlier suit in O.S. No. 198/1997 had been dismissed. The plaintiff did not seek permission in the earlier suit to file a fresh suit; hence, the present suit is not maintainable under Order 23 Rule 1 of the CPC. As the 2nd defendant has been in possession and enjoyment of the suit property, the suit should be dismissed.

4. In the reply statement, the plaintiff stated that the earlier suit filed in O.S. No. 188/1997, pertained to S. No. 163/2 and that the suit property has no connection with the said property. Even if it is presumed otherwise, no judgment was passed on merits in the earlier suit; hence, the plaintiff is not precluded from filing a fresh suit. The suit property was given to the plaintiff's vendor, V.N. Fakir Mohamed, by Chotti Bee Ammal through an oral gift ('Hiba'), and he accepted and enjoyed the property accordingly. The plaintiff's vendor was in possession and enjoyment of the suit property



S.A.No.439 of 2014

for more than the prescribed time limit for adverse possession. Hence, the plaintiff is also entitled to claim title through adverse possession.

5. On the basis of the above pleadings, the trial Court has framed the following issues:

- "1. Whether the plaintiff is absolute owner of the suit property?*
- 2. Whether the plaintiff seeking permanent injunction as against the defendant?*
- 3. Whether the suit property mentioned in O.S.No.198/1987 and the suit property in the suit are one and the same?*
- 4. To what other relief?*

5.1. Later on the trial Court has framed the additional issues dated 09.12.1996:

- "1. Whether the plaintiff is entitled to file the suit?*
- 2. Whether the plaintiff seeking permanent injunction against the defendant?*
- 3. Whether the plaintiff is entitled to adverse possession?*
- 4. To what other relief entitled?"*

6. During the course of the trial, on the side of the plaintiff, five



S.A.No.439 of 2014

witnesses have been examined as P.W.1 to P.W.5 and Ex.A1 to A14 were marked. On the side of the defendant, three witnesses have been examined as D.W.1 to D.W.3 and Exs.B1 to B18 were marked. The court documents have been marked as Ex.C1 and C2.

7. At the conclusion of the trial and on considering the evidence available on record, the trial Court has decreed the suit. The first appeal preferred by the defendants was dismissed by confirming the judgement and decree of the trial Court. Aggrieved over that the legal heirs of the deceased defendants 1 and 2 along with the 3rd defendant have filed this appeal by claiming that the following substantial questions of law would arise in the appeal:

“1. Whether the courts below are correct in law in entertaining the suit when it had been established that the plaintiff was guilty of suppression the filing and dismissal of earlier suit in OS.No.198 of 1987 in respect of the same suit property?

2. Whether the courts below are correct in law in overlooking the mandate of Order 9 Rule 9 C.P.C?



S.A.No.439 of 2014

WEB COPY

8. The learned counsel for the appellants submitted that in view of the dismissal of the earlier suit, the plaintiff is estopped from filing a new suit without obtaining prior permission from the Court. However, this aspect was not properly appreciated by the Courts below.

9. The earlier suit filed by the plaintiff was dismissed for default, and the petition filed by the plaintiff for restoration of the suit was also dismissed, even up to the High Court. It may be presumed that the suit property involved in the earlier suit and the present suit is one and the same. However, the fact remains that no judgment on merits was delivered in the earlier suit, as it was dismissed for default. Therefore, the earlier suit cannot be considered as *resjudicata* so as to estop the plaintiff from filing a fresh suit in respect of the same property.

10. In fact the present cause of action for the suit property is not one and the same and on which the earlier suit has been filed. Some times the very same cause of action might arise to compel a party to file a fresh suit.



S.A.No.439 of 2014

WEB COPY

The Courts below have rightly appreciated the issues involved in the suit and have arrived at a right conclusion. Hence, I find no ground to admit the second appeal on any question of law, much less a substantial question of law. Hence, the appeal is not fit for admission.

11. In the result, the Second Appeal is **dismissed**. The judgement and decree dated 18.06.2012 made in A.S.No 25 of 2006 on the file of the Sub Court, Arani is confirmed and the judgement and decree dated 28.07.1997 made in O.S.No. 732 of 1995 on the of the Additional District Munsif, Arni is upheld. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2025

jrs

Index: Yes/No

Speaking: Non-Speaking Order

Internet: Yes/No

Neutral:Yes/No



S.A.No.439 of 2014

R.N.MANJULA, J

jrs

To

1.The Additional District Munsif, Arni.

2. The Sub Court, Arani.

3. Bakthul Bee W/o K.S. Sheriff Sahib Bangarupettai Street, Kunnathur Villae & Post, Arni Talukk Tiruvannamalai District.

4. GULAB

S/o Late K.S. Sheriff Sahib

5. Akthar Bee

D/o Late K.S. Sheriff Sahib

6. Jameel Basha

S/o Late K.S. Sheriff Sahib

7. SARTHAR

S/o Late K.S. Sheriff Sahib

8. HAWAMA

S/o Late K.S. Sheriff Sahib

9. HUSSAIN

S/o Late K.S. Sheriff Sahib

10. SHAFIYA

S/o. Late K.S. Sheriff Sahib

11. BHADVU

S/o Late K.S. Sheriff Sahib

S.A.No.439 of 2014