



S.A.No.1099 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	10.07.2025
Pronounced on	02.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A. No.1099 of 2019

1.Ramachandran
2.Jayakodi
3.Kumudham
4.Sundari

...Appellants/Plaintiffs

Vs.

1.K.Arundhavam
2.Rani

... Respondents/Defendants

Prayer : Second Appeal filed under Section 100 CPC, to set aside the judgment and decree passed in A.S.No.24 of 2013 dated 20.08.2014 on the file of the learned Sub-Ordinate Judge, Chidambaram, in confirming the judgment and decree passed in I.A.No.124 of 2012 in O.S.No.113 of 2010 dated 08.10.2012 on the file of the learned Principal District Munsif, Chidambaram.

For Appellant : Mr.S.Hariharan



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For Respondents : for Mr.A.Muthukumar
Mr.V.Chandramohan for R1
No appearance for R2

JUDGMENT

This Second Appeal has been preferred against the judgment and decree dated 20.08.2014 passed in A.S. No.24 of 2013 on the file of the Sub-Ordinate Judge, Chidambaram, confirming the judgment and decree dated 08.10.2012 passed in O.S. No.113 of 2010 on the file of the Principal District Munsif, Chidambaram.

2.The plaintiff is the appellant herein.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

4.The plaintiffs have filed the above suit for declaring the title to the suit property and for consequential relief of permanent injunction to restrain



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the defendants from in anyway, interfering with the peaceful possession and enjoyment of the Plaintiffs' in the suit property either by executing the decree in O.S.No.1058 of 1981 or otherwise to set aside the decree, on the file of the District Munsif Court, Chidambaram.

4.1. According to the plaintiffs, the suit properties are situated at Sethiathope Village, Chidambaram Taluk, originally belonged to the father of the plaintiff namely Ranganathan. The said Ranganathan died intestate on 17.04.1992. After his demise the suit properties devolved upon his legal heirs namely the plaintiffs who are the son and daughters and 1st defendant who is the wife of the said Ranganathan. Therefore, the suit properties absolutely belonged to the plaintiffs and the 1st defendant. It is submitted that the 2nd defendant filed one I.A.No.124 of 2012 before the trial Court for rejecting the plaint in O.S.No.113 of 2010 by stating that the suit properties originally belongs to Dhanabagayam wife of Subbarayachettiar. She was in possession and enjoyment of the property. Dhanabagayam's son is one Ayyadurai and the 2nd defendant who is the wife of Ayyadurai. The said Dhanabagayam settled the suit property in favour of the 2nd defendant



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by means of a registered settlement deed dated 05.05.1958. The settlement deed was duly executed, validly attested, registered, accepted and acted upon. Thus, the petitioner and her husband became the absolute owners of the suit property. The said Ayyadurai expired in around about 1974 and the petitioner became the sole and absolute owner of the suit property. After the death of Ayyadurai, 5th defendant and her husband trespassed into the suit properties in the year July 1977, taking advantage of the 2nd defendant's helplessness. Hence, the 2nd defendant was constrained to file the suit in O.S.No.1058 of 1981 on the file of this Court for declaration of title and for recovery of possession in the above suit. The 5th defendant was arrayed as 8th defendant and her husband Ranganathan was arrayed as 4th defendant in the above suit. The 5th Defendant, her husband and other defendants claimed title but the same was rightly rejected by the Court. The decree and judgment dated 03.07.1990, declared the 2nd defendant's title in respect of Northern 0.87 cent in item Nos.1 & 2 and for recovery of possession of the said items from the defendants free from obstruction. Aggrieved over the decree and judgment in O.S.No.1058 of 1981 the 5th defendant filed in Appeal in A.S.No.31 of 1990 on the file of Sub Court, Chidambaram. After



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contest the appeal was dismissed on 28.10.1996. Aggrieved over the judgment and decree in A.S.No.31 of 1990 the respondents 1 to 5 preferred the second appeal before this Court and the same was also dismissed on 13.02.2007 confirming the decree and judgment passed in O.S.No.1058 of 1981 and the 2nd defendant thereafter filed the execution petition to take delivery of the properties. The plaintiffs in order to prolong the litigation and to deprive the defendants from enjoying the fruits of the decree, filed the present vexatious suit. It is contended that the suit itself is not legally maintainable. since it is barred by principles of *res judicata*. Hence, the suit is liable to be rejected.

4.2.The petition of the defendants was resisted by the plaintiffs by filing counter in which it is stated that it is false to state that the suit property belonged to the Dhanabagayam wife of Subbaraya Chettiyar and that the said Dhanabagayam was in possession and enjoyment of the properties who settled the suit properties in favour of the 1st defendant and her husband by means of a registered settlement deed dated 05.05.1958. Neither the 2nd defendant nor her vendor Chinnapillai has title over the suit



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properties and that they were never in possession and enjoyment of the suit properties. The plaintiffs 1 to 4 were minors on the date of filing of the suit in O.S.No.1058 of 1981 till the disposal of the Second Appeal in S.A.No.542 of 1997. At the time of filing the suit the factum of attaining majority during pendency of the second appeal was not recorded. The suit and the appeals were not conducted properly and the rights of the minor plaintiffs have not been protected. Hence, the Judgement and decree in O.s.No.1058 of 1981 is liable to be set aside. Therefore, the plaintiffs were constrained to file the above suit for declaration and injunction and to set aside the decree in O.S.No.1058 of 1981. Hence, prayed for dismissal of the petition filed for rejection of plaint.

5.The trial Court upon considering oral and documentary evidence let in on either side allowed the said applications for rejection of plaint. Aggrieved by this, the plaintiffs have preferred the first appeal in A.S.No.24 of 2013 against the order passed in I.A.No.124 of 2012 in O.S.No.113 of 2010 dated 08.10.2012. The 1st Appellate Court upon considering the materials placed before it dismissed the appeal and



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confirmed the judgment and decree passed in I.A.No.124 of 2012 in O.S.No.113 of 2010 dated 08.10.2012 by the trial Court. Challenging the same, the present second appeal is preferred.

6.At the time of admission, the following substantial question of law is formulated by this Court:

"Whether the Courts below were right in rejecting the plaint on the ground that the suit is barred by res judicata, overlooking the fact that the prayer in the very suit is to set aside the judgment and decree in O.S.No.1058 of 1981?"

7.The learned counsel appearing for the appellant/plaintiff submits that since the suit in O.S.No.113 of 2010 was filed to set aside the decree passed in O.S.No.1058 of 1981 and therefore, the principle of res judicata has no application. The suit can be maintained for setting aside the decree passed in earlier suit and that therefore, the rejection of plaint under Order 7 Rule 11 CPC is erroneous. He further submitted that the plaintiffs have sought to set aside the decree passed in O.S.No.1058 of



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1981 since there are many grounds to be scrutinized by adjudication of the suit. It is further submitted that the averments raised in the plaint cannot be construed as that the suit appeared to be barred by *res judicata* and therefore, the judgment and decree of the Courts below are liable to be set aside. It is further submitted that in Order 7 Rule 11 of CPC that phrase "barred by any other law" does not include *res judicata* and for invoking the doctrine of *res judicata* the Courts have to consider the facts raised in the earlier suit, findings recorded by the Courts and the decrees passed thereon. The 2nd defendant failed to satisfy any one of the same and therefore, the Courts below ought to have rejected the petition instead of rejecting the plaint. He further contended that the plea of *res judicata* cannot be established in the absence of records of the earlier judgment and decree and therefore, the plea based on the existence of a former pleading cannot be entertained. He further submitted that the 2nd defendant has only produced Ex.A.1, the judgment and decree of the second appeal in S.A.No.542 of 1997 and since no other documents have been filed, the plea based on the existence of a former pleading cannot be entertained when the pleading on which the rest is based on has not been



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produced. He further submitted that to reject the plaint on the ground that the suit is barred by any law, only averments in plaint has to be referred to and the defence taken by the defendant would not be considered. To support of this contention, he has relied upon the judgments in the case of *Srihari Hanmandas Totala vs Hemant Vithal Kamat* reported in *(2021) 9 SC 99* and *Gurbux singh vs. Bhooralal* reported in *AIR 1964 SC 1810*. Hence, prayed for setting aside the judgment and decree passed by the Courts below.

8.On the other hand, the learned counsel appearing for the 2nd defendant contended that the suit in O.S.No.1058 of 1981 was filed by the 2nd defendant for declaration of her title in the suit property and for recovery of possession. In the above suit, the 2nd defendant claimed that the suit properties belonged to one Chinnapillai and she sold the properties to Dhanabagayam by Sale deed dated 30.12.1949 and the said Dhanabagayam settled the suit properties under settlement deed dated 05.05.1958 in favour of the 2nd defendant and her husband Appadurai. Hence, the 2nd defendant alone is the absolute owner of the suit property



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in which the plaintiffs have no right whatsoever. Hence, the trial Courts decreed the suit in O.S.No.1058 of 1981 in favour of the 2nd defendant and the same was confirmed by the 1st Appellate Court and in the Second Appeal. Since the issue of ownership has reached finality, the plaintiffs cannot maintain the present suit. Hence, the suit is barred by the principles as of *res judicata*.

9.The trial Court and the First Appellate Court have appreciated the above facts in a proper perspective manner which warrants no interference by this Court.

10.Heard both sides and records perused.

11.On perusal of records, it is seen that the suit in O.S.No.1058 of 1981 is decreed in favour of the 2nd defendant and her claim to the southern 0.29 cents in the 1st item was negatived. Aggrieved over that, the father of the plaintiff namely Renganathan filed A.S.No.31 of 1990 before the Sub Court, Chidambaram. During pendency of the appeal suit



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the said Renganathan died. The plaintiffs and the 1st defendant were impleaded as legal heirs as and as appellants in the appeal suit. At that time, the plaintiffs were minors and they were represented by the mother as next friend / guardian, the said appeal was dismissed and against which the second appeal was preferred in S.A.No.542 of 1997 on the file of this Court by the 1st defendant and the plaintiff's who were minors at the time represented by their mother. The second appeal was also dismissed on 19.02.2007. The plaintiffs in the present suit submits that the entire proceedings in O.S.No.1058 of 1981 and appeals are not valid and will not affect the rights of the plaintiffs. It is further submitted that the plaintiffs were not aware of the suit in O.S.No.1058 of 1981 and the appeals till its disposal. It is submitted that only in May 2007 the plaintiffs came to know about the Court proceedings with regard to the suit properties and they were not conducted in a proper manner either by Renganathan or by the 1st defendant mother of the plaintiffs. It is submitted that their parent failed to protect the rights of the minors and therefore, decree passed against them is not enforceable and the same is liable to be set aside. Hence, they were constrained to file present suit for



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12. Thereby, the short facts involved in this second appeal is that whether, the present suit is barred by *res judicata* inspite of the relief claimed by the plaintiffs in the suit for setting aside the judgment and decree in O.S.No.1058 of 1981. It is not in dispute that the subject matter in O.S.No.1058 of 1981 and in the present suit are one and the same. It is also not in dispute in the earlier suit i.e., in O.S.No.1058 of 1981 the plaintiffs were minors and were impleaded in the above suit after the death of their father and were represented by the next friend mother, the 1st defendant in the present suit.

13. It is also not in dispute that the suit was filed and decreed in favour of the 2nd defendant which was confirmed by the 1st Appellate Court and in the second appeal. Nothing is on record to show that how, from whom, when and where, the plaintiff's came to know about the suit



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14.The defendants have filed an application in I.A.No.124 of 2012 under Order 7 Rule 11 of CPC, to reject the plaint on the ground that the present suit was barred by *res judicata*.

Section 11 *res judicata* reads as follows :

Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

15. It is specific contention of the appellants/plaintiffs that the Courts below failed to consider the sale deeds and registered documents marked on the side of the plaintiffs which has established the plaintiff's



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predecessor in title. The above facts were fully decided on merits in O.S.No.1058 of 1981 in trial Court and in the Appellate Courts. The present suit has been filed as second round of litigation for the same property and with the same parties for the relief to set aside the decree in O.S.No.1058 of 1981. According to the plaintiff, his mother namely the 1st defendant came to contest the above suit in a proper manner and protect the interest of the plaintiffs who were minors at the time.

16. On perusal of records, it is seen that the 1st defendant, mother of the plaintiff have raised all reasonable grounds in the second appeal and the same was considered by this Court in S.A.No.542 of 1997. Considering all facts and circumstances of the case, the second appeal preferred by her was dismissed. At this stage, a plain reading of the plaint itself makes it clear that the substantial question of law, facts and issues have been already decided between the parties. Moreover, in the absence of any allegation and proof against the mother, showing collusion with the defendants are malafide neglecting the interest of her children i.e., the plaintiffs in the present suit, the submissions made by the appellants that the former suit was not properly conducted by the mother of the



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plaintiff's cannot be accepted. I also wish to observe that I am not unmindful of the position of law that the question of limitation and *res judicata* are mixed questions of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in cases like this, where it is glaring from the plaint averments that the suit is barred by *res judicata*, this Court is not inclined in granting the relief, since it would be meaningless to drive the parties back to the trial Court. Hence, the present suit is clearly barred by the principles of *res judicata*. Hence, the trial Court as well as the 1st Appellate Court have rightly decided the petition filed under Order 7 Rule 11 CPC and rightly rejected the plaint in O.S.No.113 of 2010 which warrants no interference by this Court.

17. Accordingly, this second appeal stands dismissed. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vsn

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1. The Sub-Ordinate Judge, Chidambaram,
2. The District Munsif, Chidambaram
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
vsn

Pre- delivery judgment made in
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