



S.A.No.824 of 2002

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18/07/2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.824 of 2002

1. T.J.Manoharan (died)

2. Annamary

3. Anthoni Jeyaraj

4. Arulanantham

5. Sesaliya Mary

6. Paapu Amalraj

7. Ignacious Adaikalaraj

(Appellants 3 to 7 brought on record

as LRs of the deceased first appellant,

vide Court Order dated 01.03.2018 made

in C.M.P.(MD).No.7351 of 2018

in S.A.No.824 of 2002)

.. Appellants

Vs.

1. Susairaj Muthiriar (died)

2. Regina Mary (died)

3. Franshiska Mary

4. Martin

5. Flora Rani

(Respondents 2 to 5 brought

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on record as the LR's of the
deceased first respondent ,
vide Court order dated 01.08.2013,
made in M.P.Nos.1 to 3 of 2008
in S.A.No.824 of 2002)
(Memo presented in Court and recorded
as R-2 died and RR-2 to 5 who were already
on record and recorded as LR's of
the deceased R-2,
vide court order dated 02.08.2019)

..Respondents

Second Appeal filed under Section 100 CPC against the judgment and
decree dated 28.12.2001 made in A.S.No.103 of 2001 on the file of the II Addl.
District Court, Tiruchirapalli, reversing the judgment and decree dated
21.11.2000 made in O.S.No.216 of 1996 on the file of the District Munsif Court,
Lalgudi.

For appellants : Mr.P.Thiagarajan

For respondents: Mr.S.Rajasekar for Mr.S.M.A.Jinnah



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JUDGMENT

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The present Second Appeal is preferred by the appellants challenging the judgment and decree dated 28.12.2001 in A.S.No.103 of 2001 on the file of the II Additional District Court, Tiruchirapalli, whereby the First Appellate Court reversed the judgment and decree of the District Munsif Court, Lalgudi in O.S.No.216 of 1996, and decreed the suit filed by the respondents for recovery of possession and damages in respect of the suit properties.

2. The plaint averments, in a nutshell, are as follows:

2.1. The plaintiff claimed that the suit properties described in the schedule, comprising two plots measuring about 28 cents each, and a third plot measuring 16½ cents containing a thope with a tiled house and a small vacant site measuring 24 feet by 20 feet, belonged to him. He stated that he derived title under a registered settlement deed executed by Muthakshi Ammal (alias Soosai Ammal) on 22.11.1965 and had been in possession and enjoyment of the properties since then, asserting that no one else had any right, title, or interest. The first defendant is the plaintiff's brother-in-law, and the second defendant is his wife.

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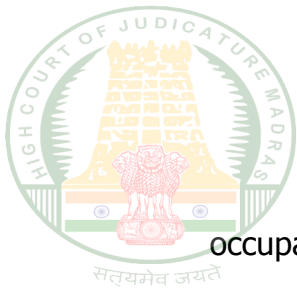
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2.2. The plaintiff alleged that he applied to the Tahsildar for sub-division of the land, following which the Surveyor measured the land on 28.05.1981 and fixed the survey and boundary stones. The defendants, seeking to purchase the land, were refused, and on 31.05.1981, they allegedly attempted unlawful trespass, which was prevented. To protect his rights, the plaintiff filed O.S.No. 1637 of 1981 before the District Munsif Court, Tiruchirapalli, later transferred to the Sub-Court and re-numbered as O.S.No.448 of 1984.

2.3. In that suit, the defendants contended that Muthakshi Ammal had cancelled the plaintiff's settlement deed and executed a new settlement deed in favour of the second defendant on 22.06.1981, along with a Will dated 13.02.1982. The trial Court held that the plaintiff was the absolute owner of the suit properties and that Muthakshi Ammal had no right to cancel the settlement deed, execute another deed in favour of the second defendant, or make the Will. However, since the plaintiff was not in possession, he was not entitled to an injunction. The judgment and decree in O.S.No.448 of 1984 is binding on the defendants. The plaintiff was later dispossessed, and based on the prior findings, the defendants are estopped from denying his title. Consequently, the plaintiff filed the present suit for recovery of possession and for damages for use and

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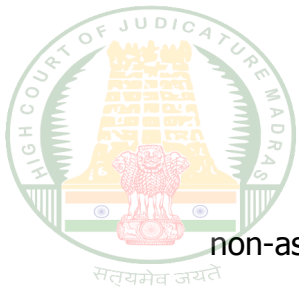


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occupation, claiming Rs.1,500 per annum, including past damages for three years and future damages until delivery of possession.

3.1. The defendants, in their written statement, denied the plaintiff's averments and maintained that the cause of action as stated was misleading. They asserted that the plaintiff's claim of absolute ownership under the settlement deed dated 22.11.1965 was false. Muthakshi Ammal never parted with possession of the properties and remained in peaceful, open possession throughout her lifetime. They emphasized that Patta, kist payments, house tax, and electricity connections remained in her name. The defendants contended that the plaintiff never instituted a suit or asserted title within twelve years of the settlement deed, and therefore, any claim he might have had was extinguished by limitation.

3.2. The defendants further contended that even though the plaintiff had filed O.S.No.448 of 1984 for injunction, the findings therein regarding the validity of the settlement deed and the execution of a new settlement deed in favour of the second defendant and the Will were not binding on them for possession or enjoyment purposes. They submitted that the plaintiff had never taken possession of the properties, paid kist, or discharged house taxes, and that his



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non-assertion over a prolonged period meant that any right he might have had was barred by adverse possession.

3.3. Additionally, the defendants produced documentary evidence to substantiate their claims. They referred to loans obtained from Kookur Society in 1977 and 1979, joint Patta in the name of Muthakshi Ammal and Anna Mary (the second defendant), records of kist payments from 1393 Fasli, and Patta entries in the name of the second defendant. They submitted that these documents demonstrated their continuous possession and enjoyment of the properties. They maintained that the settlement deed executed on 22.06.1981 and the Will dated 13.02.1982 were legally valid, duly executed, registered, and attested, and that the second defendant was the rightful owner of the suit properties. Therefore, the plaintiff was not entitled to any reliefs sought.

4. After completion of pleadings, the trial Court framed the following issues:

- (i) Whether the plaintiff is entitled to the suit properties ?
- (ii) Whether the suit is barred by limitation ?
- (iii) Whether the plaintiff is entitled to get possession of the suit properties ?



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(iv) Whether the plaintiff is entitled to get compensation from the defendants ?

(v) Whether the plaintiff is entitled for the relief sought for in the suit ?
and

(vi) To what relief the plaintiff is entitled in the suit ?

5. During the course of trial, on the side of plaintiff, P.W.1 was examined and Exs.P-1 to P-11 were marked. On the side of defendants, D.W.1 to 6 were examined and Exs.D-1 to D-85 were marked. The trial Court, on a consideration of the oral and documentary evidence, dismissed the suit in O.S.No.216 of 1996, against which, the First Appeal in A.S.No.103 of 2001 was preferred by the plaintiff, which was allowed, against which, this Second Appeal is preferred by the defendants.

6. This Court, by order dated 08.05.2002, formulated the following substantial questions of law:

(i) Is the learned II Additional District Judge correct in holding that the suit is not barred by res-judicata, when admittedly, the title to the suit property was directly and substantially in issue between the same parties in the earlier suit O.S.No.448 of 1984 ?
and

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(ii) Is the learned II Additional District Judge correct in not holding that the suit is hit by the principles laid down under Order 2 Rule 2 of CPC ?

7. Learned counsel for the appellants/defendants submitted that the respondents/plaintiffs filed the suit for recovery of possession, and the defendants denied the title of the plaintiffs. The plaintiffs filed the suit without seeking a declaration of title, which, according to the appellants, is not maintainable. In the earlier suit filed by the respondents in O.S.No.448 of 1984, the question of title was examined, which is directly and substantially the issue in the present suit. Therefore, the suit is barred by the principles of res judicata. Ex.A-1 can be considered only as a Will and not as a settlement deed. The respondents have to prove the Will in accordance with law. It is a well-settled principle of law that a Will must be proved as per the legal procedure; therefore, the respondents cannot claim rights under Ex.A-1. Exs.B-61 to B-63 were executed by Muthakshi Ammal, who was the owner of the properties, but these had been proved by the defendants lawfully. The evidence of D.W.3, the scribe of Exs.B-61 to B-63, attested to the execution of those documents. Once Ex.A-1 is construed as a Will, it was cancelled by subsequent documents, namely Exs.B-61 to B-63, and the plaintiffs cannot claim title under Ex.A-1. Admittedly, possession is with the appellants, and the respondents cannot claim possessory

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title, as Ex.A-1 was not acted upon. Once Ex.A-1 is held to be a Will, it is superseded by the subsequent instruments, and the respondents cannot claim title to the same. Although the question of title is incidental to the issue of injunction, it was decided in the earlier suit O.S.No.448 of 1984. Therefore, the present suit is barred by the principles of res judicata. Unless the respondents establish a separate cause of action for the present suit filed for recovery of possession, the suit is hit by Order 2 Rule 2 of the CPC. The other reasons assigned by the first appellate Court for decreeing the suit are erroneous and liable to be set aside. Consequently, the learned counsel for the appellants sought that the substantial questions of law be answered in favour of the appellants and prayed that the present Second Appeal be allowed by setting aside the judgment and decree passed by the first appellate Court.

8. Learned counsel for the respondents/plaintiff submitted that the suit properties originally belonged to Muthakshi Ammal, who executed a settlement deed in favour of the respondents dated 22.11.1965. During her lifetime, she handed over the properties in her possession. Furthermore, the settlement deed was acted upon, and during 1981, the respondents surveyed the properties and applied for Patta. At that time, the appellants attempted to interfere with the possession of the properties, prompting the respondents to file the earlier suit



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O.S.No.1637 of 1981 before the District Munsif Court, Tiruchirapalli. This suit was subsequently transferred to the Subordinate Court, Tiruchirapalli, and re-numbered as O.S.No.448 of 1984, which was dismissed on the ground that the respondents had not proved their possession. However, there was a finding that the respondents had rights in the suit properties. Consequently, the respondents filed O.S.No.774 of 1990 before the Subordinate Court, Tiruchirapalli, which was later transferred to the District Munsif Court, Lalgudi, and re-numbered as O.S.No.216 of 1996.

9. Learned counsel for the respondents further contended that in O.S.No. 448 of 1984, the trial Court found that the respondents had not proved possession, and therefore, the suit for recovery of possession came to be filed. Though the appellants had raised a plea that the denial of title raised by the respondents was barred by the principles of res judicata, the first appellate Court rejected the said plea and held that the subsequent suit was not barred by res judicata. The first appellate Court also negated the contentions of the appellants regarding the respondents' title. However, the first appellate Court found that Ex.A-1 was a Will executed by Muthakshi Ammal, who died in 1988, whereas the earlier suit in O.S.No 448 of 1984 was dismissed in 1989. The respondents thereafter filed the present suit, which is the subject matter of the



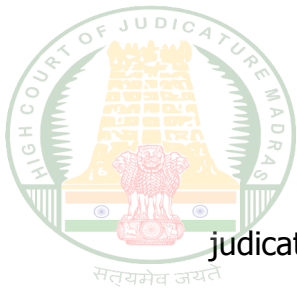
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Second Appeal, in 1990. The first appellate Court, therefore, held that the suit was not barred by limitation. The appellants did not deny the execution of Ex.A-1 but contended that it had been cancelled under Exs.B-61 to B-63. The first appellate Court found Ex.A-1 to be genuine, while Exs.B-62 and B-63 were not proved and were allegedly concocted by the appellants, and therefore would not bind the respondents. On this basis, the lower appellate Court reversed the judgment and decree of the trial Court and allowed the First Appeal in A.S.No. 103 of 2001. Challenging the same, the defendants have filed the present Second Appeal, contending that before the trial Court, the appellants had raised a plea of res judicata, which was negated by the trial Court. Even before the first appellate Court, the respondents maintained that the earlier suit was one for bare injunction, and hence the subsequent suit was not barred by res judicata, since no declaration of title had been sought and the issues framed in the earlier suit were only incidental and not directly and substantially in issue.

10. Heard both sides and perused the materials available on record.

11. Before delving into the substantial questions of law, it is relevant to note that the first appellate Court considered the stand taken by the appellants herein and held that the subsequent suit is not barred by the principles of res

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judicata. The findings of the trial Court in the earlier suit were only incidental and not substantial. However, the appellants have now taken a contradictory stand, contending that the subsequent suit is barred by the principles of res judicata. For this purpose, it is pertinent to refer to paragraphs 19 to 25 of the judgment of the first appellate Court in A.S.No.103 of 2001 on the file of the District Court, Tiruchirappalli, which are extracted below:-

"19. Now, based upon the facts, the contention of the learned counsel for the defendants/respondents is that the earlier decision in O.S.448 of 1984 do not operate as res-judicata on the following two grounds: (i) The question of title was gone into by the Court only incidentally and since the issue was not directly and substantially in issue in the former suit, the decision in O.S.No.448 of 1984 do not operate as res-judicata; (ii) There is no appeal as against the finding in that case. The appeal lies only as against the decree or order passed by the Court. Since the suit was dismissed there was no right to appeal. Even though the issue with regard to the title was against the defendants/respondents, they had no right to take up the matter in appeal and therefore, the issue with regard to the title is not finally decided and therefore the finding of the lower Court on a particular issue do not become res-judicata. Therefore the plea of res-judicata has to be answered on the aforesaid two points:

Whether the finding in a suit for injunction with regard to the title operates as res-judicata.

20. Now the learned counsel for the appellant / plaintiff has relied upon the decision reported in AIR 1929 Calcutta 449 (MURAD BISWAS Vs. BASTI MANDAL) whereunder it has been held as follows:-

"Decisions arrived at in previous suit though dismissed operates as res judicata.



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Held that even the question of status having been already decided in that suit did operate as resjudicata."

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21. On the other hand, the learned counsel for the respondents relies upon the decision reported in AIR 2000 Supreme Court 1238 (Sajjadanashin Sayed MD., B.E.Edr. Vs. Musa Dadabhai Ummer) wherein guideline has been issued to decide when the issue can be construed as directly or substantially in issue and when the issue is collaterally or incidentally in issue. According to the above decision as issue is directly and substantially in issue in the earlier proceedings when that particular issue was 'necessary' to be decided for adjudicating on the principle issue. If the judgment was in fact based upon that decision, then it would be res-judicata in a latter case. The material test to be applied is whether the Court considers the adjudication of the issue material or essential for its decision. It has also been pointed out that because issues have been framed, it should not be construed that those issues are directly and substantially in issue. The relevant paragraph is extracted below for easy reference:

"The test to determine whether an issue was directly and substantially in issue in earlier proceedings or collaterally or incidentally, is that if the issue was necessary to be decided for adjudicating on the principal issue and was decided. It would have to be treated as 'directly and substantially on the principal issue and if it is clear that the judgment was in fact based upon that decision, then it would be res-judicata in a latter case. One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue. It is not to be assumed that matters in respect of which issues have been framed are all of them directly and substantially in issue. Nor is there any special significance to be attached to the fact that a particular issue is the first in the list of issues. Which of the matter are directly in issue and which collaterally or incidentally, must be determined on the facts of each case. A material test to be applied is whether the Court considers the adjudication of the issue material and essential for its decision".

Now applying the facts of the case to the above decision the Court can very easily come to the conclusion that the decision of the title in the prior suit is absolutely necessary to give judgment. Perusal of the plaint, written statement

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and the issues and the judgment go to show that the issue with regard to the title though decided in a suit for injunction is a matter which was directly and substantially in issue in the prior suit and therefore it amounts to res-judicata. The claim of the plaintiff in the prior suit is that he has got title by virtue of the settlement deed. The case of the defendants is that the settlement deed do not confer title upon the plaintiff and in any event the settlement deed has been cancelled by the settlor and that the defendants have got title to the suit property by virtue of the cancellation deed, execution of yet another settlement deed and also by virtue of the Will. Therefore, the claim of title between the plaintiff and the defendants was directly and substantially in issue in the prior suit and therefore, the finding amounts to res-judicata.

22. The learned counsel for the respondents/defendants contends that the lower Court itself has used the word incidentally (இடை நிகழ்வாக)/ Therefore, the finding is only incidental and it was not substantial. Just because the lower Court has used the word 'incidentally', it cannot be decided that it was in issue only incidentally and not directly. As per the guideline given in the Supreme Court decision, the essential matters to be considered is whether the judgment was based upon that decision on a particular issue. Whether the issue was directly in issue or collaterally in issue must be determined only based upon the facts and circumstances of each case. The facts in this case only go to show that the issue with regard to the title was directly and substantial in issue and therefore the contention of the learned counsel for the respondents/defendants that it was in issue incidentally cannot be accepted.

23. The next question to be decided on the plea of res-judicata is that, with reference to a finding alone whether there is right to appeal and if there is no appeal whether the earlier finding operate as res-judicata. The learned counsel for the appellant/plaintiff has relied upon decisions reported in 1969 (2) Andhra Weekly Reporter 246 (Bansilal Batwa Vs. Laxmirarayan) whereunder it has been held as follows:

"A party to suit can maintain an appeal against a decision of the trial Court when certain findings which would be res-judicata in other proceedings are against him, though the suit is decided in his favour for other reasons."



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As per the decision, even though the suit is decided in favour of a particular party, if any finding is against him and if it would operate as res-judicata in any other proceedings, certainly the party can take up the matter in appeal.

24. on the other hand the learned counsel for the respondents/defendants relies upon the following two decisions in order to support his contention that no appeal is possible against the adverse findings against the successful party.

(i) In AIR 1974 Supreme Court 1126 (Ganga Bai Vs. Vijay Kumar), it has been held as follows: No appeal can lie against a mere finding for the simple reason that the Code does not provide for any such appeal."

(ii) In the decision reported in AIR 2000 Madras 1 (M/s.Ram Mohan and Co., Vs. M/s.Ganesar Ginning Co. P. Ltd) it has been as follows:

"A party in whose favour the proceedings have ended, could not have filed an appeal against a finding, such a finding cannot operate as res-judicata. An appeal can lie only as against the decree or order for which an appeal is expressly provided under O.43 R.1 CPC and no appeal can be allowed as against a mere finding."

25. The decisions cited by the learned counsel for the respondents/defendants being the decisions given by the Apex Court itself has to be accepted. As per the decisions relied upon by the learned counsel for the respondents, since there is no appeal against a finding which is against a successful party, the decision arrived at by the lower Court on that particular finding will not amount to res-judicata. Even though the plea of res-judicata Court, the plea of res-judicata with regard to the right of appeal on a finding against a successful party is accepted and this Court hold that the earlier decision in O.S.448/84 do not amount to res-judicata on the second point and therefore this Court is now bound to decide the title."



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12. It is to be noted that the first appellate Court held that the principles of res judicata would not be applicable against the respondents regarding the title, as the earlier suit was filed only for bare injunction and the issues framed therein concerning title were only incidental. The appellants herein did not file any appeal or cross-objection against the findings of the trial Court. Further, even at the stage of the First Appeal, they maintained that the findings regarding title would operate as res judicata. However, they have now taken a contrary stand in one of the grounds, and the appellate Court has not given any finding that the earlier finding did not operate as res judicata.

13. Therefore, this Court finds that, being fact-finding Courts, both the Courts below have duly considered the plea of res judicata, which is a mixed question of law and fact. On examining the pleadings, oral and documentary evidence, and the legal position, and having regard to the discussion made by the lower appellate Court, particularly in paragraphs 24 and 25 of its judgment, this Court proceeds to consider and answer the substantial questions of law accordingly.

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14. The main contention of the learned counsel for the appellants is that the respondents' suit was filed for recovery of possession only. They denied the title of the respondents and contended that the respondents filed the suit without seeking a declaration of title, which, in their submission, is not maintainable. They argued that the question of title had already been directly and substantially adjudicated in the earlier suit, O.S.No.448 of 1984. According to the appellants, Ex.A-1 can only be treated as a Will and not as a settlement deed, which the respondents must prove according to law. They submitted that Exs.B-61 to B-63, executed by Muthakshi Ammal, supersede Ex.A-1. Since possession is admittedly with the appellants and Ex.A-1 was not acted upon, the respondents cannot claim title or possessory rights under Ex.A-1. Therefore, the suit is barred by the principles of res judicata. Further, unless a separate cause of action is established, the suit is also hit by Order 2 Rule 2 of the CPC. Consequently, the appellants prayed for the judgment and decree of the first appellate Court to be set aside and the trial Court's decree restored.

15. The main contention of the learned counsel for the respondents is that the suit properties originally belonged to Muthakshi Ammal, who executed a registered settlement deed in their favour on 22.11.1965. During her lifetime,

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she handed over the properties in her possession, and the settlement deed was acted upon. In 1981, the respondents surveyed the properties and applied for Patta. The appellants allegedly attempted to interfere with possession and survey, prompting the filing of the earlier suit, O.S.No.448 of 1984, originally filed as O.S.No.1637 of 1981 for injunction. That suit was dismissed solely on the ground that the respondents had not proved possession, but it was held that the respondents had rights in the properties. Subsequently, the respondents filed the present suit, O.S.No.216 of 1996, for recovery of possession and damages. The respondents contended that Ex.A-1 is genuine, admitted by the appellants, and that the appellants' claims regarding cancellation and execution of Exs.B-61 to B-63 were unproved.

16. Learned counsel for the respondents further contended that the appellants cannot now rely on res judicata because they denied it during earlier proceedings. Both the Courts below held that the earlier suit filed for injunction did not bar the present suit. The appellants' current defense rests on the contention that the settlement deed dated 22.11.1965 was subsequently cancelled and replaced by Ex.B-61 and B-62 in favour of the second defendant and a Will, Ex.B-63. The respondents submitted that these documents were not proved according to law. Even assuming that the respondents were out of



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possession for more than twelve years, there is no evidence of adverse possession by the appellants. Therefore, the plea of limitation and adverse possession is without merit. On the basis of the evidence and the findings of the Courts below, it is clear that Ex.A-1 settlement deed in favour of the respondents is genuine. The appellants have failed to prove any valid cancellation or replacement under Exs.B-61 to B-63. The present suit is therefore not barred by res judicata. The first substantial question of law is answered in favour of the respondents.

17. As far as the second substantial question of law is concerned, in the second suit, there was no specific plea taken by the appellants that the suit is hit by Order 2 Rule 2 CPC, and there was no issue framed in that suit. One of the issues framed by the trial Court was as to whether the suit is barred by limitation, and the trial Court answered that issue in favour of the appellants. However, subsequently, the first appellate Court negated the said issue by answering it against the appellants, holding that Ex.A-1 is a Will and that Muthakshi Ammal died in the year 1988. Therefore, the earlier suit filed by the respondents was dismissed holding that the plaintiff was not in possession. Ex.A-1 / Will came into force only after the death of the original owner in 1988, and both the Courts below also held that Exs.B-61 to B-63 are not valid. When

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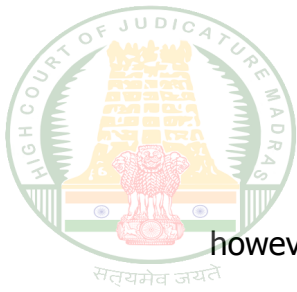


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these documents are not valid, the present suit, filed in the year 1990, was filed within the limitation period since the original owner died in 1988 and the Will came into force thereafter.

18. Further, the appellants have not proved that they had established a hostile title. The appellants themselves admitted that the original owner, during her lifetime, was enjoying the properties and was in possession, whereas the respondents were not in possession. Even if the appellants' claim under Ex.B-63 were true, they could claim possession only after 1988, after the death of the original owner, and they would have to prove title beyond the statutory period. One of the observations made by the Court is based on the original ownership. When the appellants claimed title, they pleaded that they had cancelled the settlement deed dated 22.11.1965 during the first suit, while the original owner was alive. They did not examine her or substantiate the cancellation. Moreover, the signatures were in doubt, and the evidence of D.Ws.2 and 3 was discarded by the Courts below. The appellants did not take steps to compare the admitted thumb impression of the owner in Ex.A-1 with Exs.B-61 to 63. The appellants also contended that the suit is hit by Order 2 Rule 2 CPC. As discussed above, the earlier suit was filed only for bare injunction. The appellants attempted to interfere with the peaceful possession and enjoyment of the properties;

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however, possession was not proved at that time, and the original owner was alive. Ex.A-1 is treated only as a Will, and a suit filed for declaration during the owner's lifetime is not maintainable. The subsequent suit was filed only for recovery of possession, which arose after the death of the original owner. Therefore, the subsequent suit is not hit by Order 2 Rule 2 CPC. In this context, it is useful to extract Order 2 Rule 2 CPC:

"Order 2: Frame of suit:

Rule 2 : Suit to include the whole claim: (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim: Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs: A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

19. From a reading of Order 2 Rule 2 CPC, it is clear that when a first suit is filed, all causes of action and reliefs must be pleaded and sought for. If any relief is left out, a subsequent suit may be barred. However, in this case, both



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Courts below, being fact-finding Courts, held that the original owner died only in 1988, and Ex.A-1 came into force thereafter. The earlier suit was only to restrain the appellants from interfering with possession. The Court had held that the respondents had right and title over the properties, but were out of possession. The respondents subsequently filed the suit for recovery of possession. Both Courts below held that the respondents had right and title, although out of possession. While the trial Court held the suit was barred by limitation, the first appellate Court, as the final Court of fact-finding, re-appreciated the evidence and held that the suit is not barred by limitation. The suit was filed in 1990, within three years after the Will came into force in 1988, i.e., within the statutory period. Therefore, the present suit is not hit by Order 2 Rule 2 CPC. The second substantial question of law is answered accordingly.

20. The first appellate Court, being the final fact-finding Court, clearly re-appreciated Ex.A-1, which, though described as a settlement deed, was found to come into effect only after the lifetime of the original owner. Exs.B-61 to B-63 were held not genuine and not proved in accordance with law. The evidence of the attesting witnesses and the scribe was also discarded. In the Second Appeal, the Court shall determine the substantial questions of law and cannot re-appreciate the evidence unless the findings of the first appellate Court are shown

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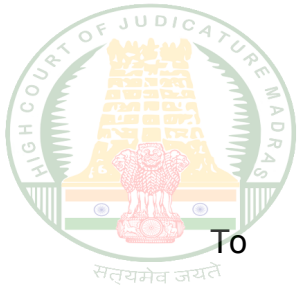
to be perverse, erroneous, or contrary to law. Ex.A-1 has rightly been treated only as a Will, and since the appellants themselves admitted that the original owner had cancelled the document, the burden lay upon them to establish that Ex.A-1 was validly cancelled and that title had passed to them under Exs.B-61 to B-63.

21. Having regard to the factual and legal circumstances, this Court, in Second Appeal, cannot go into the depth of the factual matrix or re-appreciate the evidence. In view of the nature of the earlier proceedings and the issues adjudicated therein, the plea of res judicata will not come into play in the present case. For all the aforesaid reasons, the Second Appeal stands dismissed. There shall be no order as to costs.

18.07.2025

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To

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1. The District Munsif-cum-Judicial Magistrate, Lalgudi.
2. The Second Additional District (PCR) Judge, Tiruchirapalli.
3. Section Officer, V.R. Section, Madurai Bench of Madras High Court, Madurai.



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S.A.No.824 of 2002

P.VELMURUGAN, J

CS

Pre-delivery Judgment

in S.A.No.824 of 2002

Judgment delivered

on 18/07/2025

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