

(2011) 06 MAD CK 0138
In the Madras High Court
Case No : S.A. No. 213 of 2006

Govindan Asari, G. Miller, D. Suseela and G. Angappan	APPELLANT
Vs	
Govindasamy Chettiar	RESPONDENT

Date of Decision : 17-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0138

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : V. Bhiman, for the Appellant; R. Meenal, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—This Second appeal is focussed by the legal heirs of the original Defendant, animadverting upon the judgment and decree

dated 28.10.2005 passed by the Subordinate Judge, Kallakurichi, in A.S. No. 84 of 2003 modifying the judgment and decree dated 9.4.2003

passed by the III Additional District Munsif, Kallakurichi, in O.S. No. 125 of 2001, which was filed for declaration and permanent injunction.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3. A summation and summarisation of the relevant facts absolutely necessary and germane for the disposal of this Second Appeal would run thus:

(a) The Respondent herein, as Plaintiff, filed the suit for declaration and permanent injunction.

(b) Written statement was filed by original Defendant resisting the suit.

(c) Whereupon the trial Court framed the issues. On the Plaintiff's side, P.W.1 and P.W.2 were examined and Exs.A1 to A8 were marked. The

Defendant examined himself as D.W.1 along with D.W.2 and Exs.B1 and B2 were marked.

(e) Ultimately the trial Court decreed the suit as prayed by the Plaintiff, excluding an extent of 1 ½ cents which is under the occupation of the

Defendant.

3a. Being aggrieved by and dissatisfied with the said judgment and decree of the first appellate Court, the appeal was filed by the Plaintiff claiming

right even over that 1 ¾th extent of land. Whereupon the appellate Court granted relief even in respect of the said extent of 1 ¾th extent of land.

4. Challenging and impugning the judgment of the first appellate Court, the legal heirs of the original Defendant preferred this second appeal on

various grounds and also suggesting the following substantial questions of law:

1. Whether the lower appellate Court is right in reversing the decree and judgment of the trial Court. When admittedly the Defendant is in

possession of the property which he has purchased?

2. Whether the courts below are right in decreeing the appeal when the earlier suit between the same parties have been decided on merits and in

such a case the present suit itself is hit by doctrine of res judicata?

3. Whether the lower appellate court is right in setting aside the decree and judgment of the court when the decree in O.S. No. 1143 of 1997 in

the earlier suit has become final and the Defendant had not preferred any appeal and he is estopped from filing the present suit? (extracted as such)

5. My learned predecessor adopted as such the above substantial questions of law.

6. Heard both sides.

7. The gist and kernel and the piths and marrow of the arguments as put forth by the learned Counsel for the Appellants would run thus:

(i) The appellate Court upset the reasoned judgment of the trial Court, without appreciating the fact that the Defendant has been in possession and

enjoyment of the said extent of 1 ½ cents for more than two decades.

(ii) The trial Court considering the fact that the Defendant raised the construction to the knowledge of the Plaintiff during the year 1995 and that

even then the Plaintiff was keeping quiet, dismissed the claim of the Plaintiff and recognised the right of the Defendant over the extent of 1 ½

cents.

(iii) The appellate Court wrongly understood the purport of the earlier judgment and set aside the judgment of the trial Court in the present suit. In

fact, the present suit, as against which the appeal and the second appeal arose, was hit by res judicata for the reason that in the earlier suit O.S.

No. 1147 of 1993, the right of the Defendant was recognised and upheld by the Court; but the said fact was not taken into consideration by the

first appellate Court.

Accordingly, the learned Counsel for the Appellants herein would pray for setting aside the judgment and decree of the first appellate Court and

for confirming the judgment and decree of the trial Court.

8. In a bid to torpedo and pulverise the arguments as put forth and set forth on the side of the Defendant, the learned Counsel for the Plaintiff

would submit that the earlier judgment and decree as found exemplified in Exs.A5 and A6 are pertaining to an extent of 2 ½ cents of land, which

the Plaintiff herein sold to the Defendant and for that the Defendant herein as Plaintiff therein obtained the judgment and decree and in such a case,

over and above the said extent of 2 ½ cents, the Defendant herein is having no right to lay claim for any extra extent. Accordingly, the first

appellate Court considering the acts involved in the matter rendered the judgment warranting no interference in the second appeal.

9. All the aforesaid substantial questions of law are taken together for discussion, as they are inter-linked and interwoven with one another.

10. Indubitable and indisputable or atleast the undeniable facts would run thus:

(i) The Plaintiff namely Govindasamy Chettiar herein sold an extent of 2 mh extent of land to the Defendant as per Ex.B1, out of the total extent of

land of 14-1/2 cents, which the Plaintiff purchased under Exs.A1 to A4. In Ex.B1- the title deed of the Defendant, the Eastern boundary is found

specified as the property of the Plaintiff.

(ii) The earlier suit O.S. No. 1147 of 1993, which was filed by the Defendant herein, for declaration of title and for injunction, as evidenced by

Ex.A5 and A6-the judgment and decree, would reveal that the Defendant herein, who was the Plaintiff therein, filed the suit for getting declaration

of his title over an extent of 2 ½ cents, which he purchased under Ex.B1 from the Plaintiff herein, who was the Defendant therein, and such a suit

was decreed on 6.7.1995.

(iii) Here, the trial Court gave a finding that during the year 1995 the Defendant herein Govindsasami Asari, over and above 2 ½ cents of land,

encroached into an additional extent of 1 ½ cents of the Plaintiff's land and raised the construction, for which the Plaintiff herein did not object

and whereby the trial Court rejected the prayer of the Plaintiff in respect of the said 1 ½ cents of land.

11. It is ex facie and prima facie clear that the trial Court misunderstood the gamut of the case. No question of acquiescence, res judicata or

estoppel would arise in this case. The first appellate Court, au fait with law and au courant with facts clearly pointed out that while filing the suit

O.S. No. 1147 of 1993 based on Ex.B1, the very Defendant herein, who was the Plaintiff therein, would clearly and categorically state that the

Plaintiff herein, who was the Defendant therein, happened to own land on the East of the said extent of 2 ½ extent of land, which constitute the

subject matter of Ex.B1 and in such a case, without any rhyme or reason, the Defendant herein would contend that over and above 2 ½ cents, he

is entitled to an additional extent i.e. 1 ½ cents, by virtue of enjoyment for over 20 years. Had there been any such thing, while filing the earlier

suit in the year 1993, as referred to supra, the Defendant herein would have made reference to it and he would not have gone to the extent of

specifying the Eastern boundary for the said 2 ½ cents contemplated in the said suit O.S. No. 1147 of 1993 as the property of the Plaintiff

herein, who was the Defendant therein.

12. As such, logically and acceptably, legally and appreciably the first appellate Court rendered the judgment, granting the relief to the Plaintiff

herein even in respect of the said extent of 1 ½ cents of land, which the trial Court rejected.

13. The question of res judicata does not arise at all in this case, because the earlier suit filed by the Defendant herein was in respect of 2 ½ cents

only, but now the present suit filed by the Plaintiff herein, who was the Defendant therein, was for an extent excluding the earlier suit property

measuring 2 ½ cents. Hence, the question of pressing into service the principle res judicata does not arise.

14. The present suit as against which the second appeal has arisen was filed in

the year 2001, so to say, well before 12 years from the date of judgment in the earlier suit, which was of the year 1993 and in such a case, the question of acquiring adverse possession or prescriptive title would not arise at all even by phantasmagorical thoughts.

15. In the result, the substantial questions of law are answered as under:

(i) Substantial question of law (1) is answered to the effect that the lower appellate Court was right in reversing the judgment and decree of the trial

Court, because an extent of 1 ½ cents, which is under the possession of the Defendant was not covered by Ex.B1.

(ii) Substantial Questions of law (2) and (3) are answered to the effect that the principle of res-judicata is not applicable to the present suit for the

reason that the earlier suit was in respect of an extent of 2 ½ cents covered by Ex.B1, whereas, the present suit is for a different extent and it is

based on different set of facts.

16. Accordingly, the second appeal stands dismissed. However, there is no order as to costs.