

(1997) 10 AP CK 0040
In the Andhra Pradesh High Court
Case No : A.S. No. 1518 of 1989

Mahboob Bi Sahed and Others

APPELLANT

Vs

Shaik Abdul Razack Sahed and Others

RESPONDENT

Date of Decision : 29-10-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1998) 2 ALD 81 : (1998) 2 ALT 277

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : Mr. R. Subba Rao, for the Appellant; Mr. M.S.R. Subrahmanyam, for the Respondent

Judgement

1. The unsuccessful plaintiffs in O.S. No. 175 of 1985 on the file of the Subordinate Judge, Srikalahasti are the appellants herein.
2. For the purpose of convenience the parties, are addressed as plaintiffs and defendants as arrayed in the original suit O.S. 175/1985. The plaintiffs instituted the above suit for a declaration of the plaintiffs' title over the plaint schedule property and for a permanent injunction restraining the defendants and their men from interfering with the plaintiffs' possession and enjoyment of the plaint schedule property and for costs of the suit.
3. Before the tnat Court the case of the plaintiffs' in brief is as follows : According to the plaintiffs, the plaint schedule property originally belonged to one Mohammed Ghouse Saheb Gori as his self-acquired separate property. He had put up a house and was living in the said site with his family members. The plaint schedule property was also shown in the name of the said Mohammed Ghouse Saheb Gori as his self-acquired separate property. According to the plaintiffs, the plaint schedule property was also shown in the name of said Mohammed Ghouse Saheb Gori in the books maintained for account and for village site of Srikalahasti in the year 1910. The said Mohammad Ghouse Saheb Gori died about 33 years back leaving the plaintiffs as his legal representatives

who continued to be in peaceful possession and enjoyment of the plaint schedule property and also perfected their title by adverse possession. The plaintiffs claim that they paid non-agricultural land tax on the suit property and also paid taxes to the Gram Panchayat, Srikalahasti and later on to the Srikalahasti Municipality. Accordingly to the plaintiffs, the entries made in property tax demand register for the years 1955-56, 1959-60 and 1963-64 clearly show that the plaintiffs are in occupation of the plaint schedule property.

4. The plaintiffs assert that the first defendant has no manner of right, title or interest in the suit property and he was never in possession of the same. The plaintiffs 1 and 2 are illiterates. The 3rd plaintiff worked in the provisional shop of the 1 st defendant by which time the 4th plaintiff was a minor. The plaintiffs allege that taking advantage of their position, the 1 st defendant manipulated a plan and some property receipts to a portion of the plaint schedule property. The 1st defendant obtained the property tax receipts in his name though in fact the 3rd plaintiff paid the tax. It is further alleged that in order to cover up his fraud with a sole purpose of grabbing the property, the first defendant filed O.S.No.379 of 1974 against the plaintiffs for a declaration of his title and for delivery of possession of a portion of the schedule mentioned properties on the file of the District Munsif, Srikalahasti. The plaintiffs plead that as they are all innocent and ignorant people and they could not put forward their case effectively before the Court and lost the suit. Against the judgment and decree of the trial Court in O.S.No.379/1974 and appeal in A.S.No.117/1977 was filed and the same was dismissed. Against the dismissal of the appeal in A.S.No.117/1977, the plaintiffs preferred Second Appeal No.348/1983 which was also ultimately dismissed by this Court.

5. According to the plaintiffs, the first defendant has again hatched a plan by getting another plan approved by the Municipality, Srikalahasti, to construct a permanent house by ousting the plaintiffs from their lawful possession and enjoyment of the suit property. Thus, the plaintiffs allege mala fides against the defendants and the present suit was instituted for a declaration of the plaintiff's title over the plaint schedule property and for a permanent injunction restraining the defendants and their men from interfering with the plaintiffs' possession.

6. During the pendency of the suit, the first defendant died and Defendant Nos.2 to 6 were added as legal representatives of the deceased first defendant. The second defendant filed written statement which was adopted by other defendants with the following averments in brief: The defendants denied all the allegations in Para 3 of the plaint that the suit property is self-acquired property of Mohammad Ghouse Saheb Gori and that said Mohammad Ghouse Saheb Gori had put up a house in the said site and lived with his family. According to the defendants, the suit is a fraudulent, frivolous and vexatious one and got instituted by the plaintiffs with a view to cause trouble and harassment to the family of the defendants by misleading the Court. It is also alleged that deceased first defendant instituted suit O.S.No.379 of 1974 on the file of the District Munsif

Court, Srikalahasti, for a declaration of his title to the house bearing No.6-163-A situated in the suit property described as measuring East to west 36 feet and North to South 92 feet with assessment No.332 and for delivery of the possession of the same. According to the defendants, the suit property is one and the same and was subject matter of O.S.No.379 of 1974. Though the present plaintiffs filed Written statement claiming title over the suit property, the lower Court rejected their version while decreeing the suit. According to the defendants, the first defendant got constructed a house bearing No.6-163-A in the suit site and also got constructed another thatched house on the south-west corner. The defendants state that a portion of site was also let out to one Recharla Subbamma on a monthly rent of Rs.150/- by the deceased 1st defendant; that in the year 1965 the 1st defendant permitted the plaintiffs to occupy the house bearing No.6-163-A temporarily free from rent. It is also stated by the defendants that the 1st defendant in his suit O.S.No.379/1974 contended that the husband of the 1st plaintiff Mohammed Ghouse Gori worked as a car driver under the "Raja" of Srikalahasti and was residing in Nagri street; that after the death of Mohammed Ghouse Gori in the year 1965 the plaintiffs still resided in Nagri street for several years and later in the year 1964 they were evicted there-from by the subsequent purchaser of the premises occupied by the plaintiffs; and at that stage the 1st defendant due to his close relationship allowed the plaintiffs to occupy the house in the suit site after constructing a thatched house on the south-western corner after obtaining necessary approved plan from the municipality. According to the defendants the first defendant gave employment to the 3rd plaintiff in his shop on daily wages with a view to help the plaintiff's family which was in strained financial position. The 3rd plaintiff left the employment of the first defendant in the year 1973 and as daughter of the first defendant was in need of accommodation, the first defendant demanded the plaintiffs to vacate the house in the suit site. But, however, the plaintiffs refused to do so and therefore a legal notice was issued to the plaintiffs. Thereafter the 1st defendant filed a suit O.S.No.379/1974. According to the defendants, plaintiffs contested the suit O.S.No.379/1974 by filing necessary written statement which was adopted by all the plaintiffs. The defendants further stated that the Court framed necessary issues and accordingly allowed the suit rejecting the version of the plaintiffs against which the matter was carried in First Appeal No. 117/1997, which was also dismissed. Against the judgment in the said First Appeal, Second Appeal S.A.34S/1983 was preferred and finally it was also dismissed by this Court. Thus the defendants have claimed that the present suit is mis-conceived as the relief sought in the present suit has already been decided in the earlier suit and therefore pleaded principle of res-judicata against the plaintiffs.

7. On the basis of the divergent pleadings, the trial Court framed the following issues .

"1. Whether the suit schedule property is the self acquired property of Mohammad Ghouse Gori.

2. Whether the plaintiffs and their predecessors in title perfected their title by open, hostile, adverse possession and enjoyment of the plaint schedule property ?

3. Whether a portion of the suit schedule property is the subject matter of an earlier suit O.S.No.379 of 74 filed by the 1st defendant against the plaintiffs herein on the file of the Court of the District Munsif, Srikalahasti and A.S.No.117 of 77 on the file of the Sub Court, Tirupati and whether the suit is barred by res judicata ?

4. Whether the 1st defendant is the absolute owner of the plaint schedule property and after his death whether the same is devolved upon the Defendants 3 to 6 ?

5. To what relief ?"

8. On the basis of these issues, the parties were permitted to examine their witnesses and thus on behalf of the plaintiffs PWs 1 to 6 were examined and documents Exs.A1 to A12 were marked. On behalf of the defendants DW1 and DW2 were examined and Exs.B1 to B9 were marked.

9. The trial Court having framed necessary issues and having permitted the parties to let in evidence, however, primarily went on to examine the principal contention raised by the defendants as to whether the suit is hit by principle of res judicata. An issue to that effect was framed under IssueNo.3. The trial Court at Paras 6, 7, 8, 9, and 10- of its judgment discussed the implication of pleadings and their evidential values and finally at Para 11 of the judgment held that the plaintiffs are barred from filing the suit and are estopped from raising the very same question under the present suit which was already held against them in earlier suit O.S.No.379/1974. Further it also held that principle of res judicata applies in the present case and accordingly dismissed the suit on that ground alone, against which the present appeal is preferred by the appellants.

10. On behalf of unsuccessful plaintiffs appellants herein, Sri R. Subba Rao, learned Counsel raised the principal contention before this Court namely, the lower Court's finding that the principle of res judicata applies to the present case is erroneous inasmuch as it is contended that the property which is the subject matter of the present suit is distinct and is in larger extent than the property involved in the earlier suit and therefore contended that finding of lower Court that the principle of res judicata applies in this case has to be rejected. It is also contended that u/s 11 of CPC what matters are construed to have the implications of res judicata have been indicated and as such, though the parties are one and the same litigated in the earlier suit, but the issues are different and as such, it is contended that principle of res judicata would not apply. It is further contended that as per Section 11 of C.P.C., the Court which tried the first suit should have the competence to try the second suit and if that is the situation, the principles of res judicata would apply. According to the learned Counsel, the suit was instituted in the first instance in the Court of District Munsif, Srikalahasti whereas the second suit was instituted in the Court of Subordinate Judge,

Srikalahasti and therefore contended that the principle of res judicata would not apply. Basing on these submissions Sri R. Subba Rao, learned Counsel has taken me through a series of submissions and the documents relied on by the Courts and also taken me through the documents placed by the parties in the earlier suit O.S.No.379/1974. The learned Counsel has also taken pains to take this Court through various decisions with reference to the interpretation of the provisions contemplated u/s 11 of CPC and submitted that the findings of the trial Court are misconceived in the background of the act that the issues raised in the suit are not similar to that of issues involved in the earlier suit and contended that the suit has to be decreed.

11. In the background of these submissions, Sri M.S.R. Subramanyam, learned Counsel appearing on behalf of the respondents submitted that issue No.5 raised in the earlier suit O.S.No.379/1974 is similar to that of issue No.3 in the present suit which is on the question of identifying the property and the declaration of title to such property . The learned Counsel contended that the trial Court has exhaustively dealt with the issue Nos.3 and 5 in the earlier suit and therefore contended that the trial Court is justified in negating the plea and dismissing the suit only on the ground of principle of res judicata which action according to the Counsel is justifiable. In support of his submissions the learned Counsel also drew my attention to Section 11 of CPC with reference to explanation VIII added to Section 11 CPC and the law laid down by the Supreme Court in Sulochana Amma Vs. Narayanan Nair, and in Church of South India Trust Association Vs. Telugu Church Council, . The learned Counsel has thus primarily opposed the submission made by the learned Counsel for the appellant by taking me to the findings of the trial Courts on the question of res judicata and the ratio laid down by the Supreme Court and contended that the appeal has to be dismissed.

12. As indicated above, both the Counsel have submitted elaborate arguments before this Court in support of their claims. On elaborate hearing of both the Counsel, the issue which predominantly raised is on the question whether the trial Court is justified in rejecting the suit on the ground of res judicata.

13. It is seen that the plaintiffs were the defendants in suit O.S.No.397/1974 on the file of the District Munsif Court, Srikalahasti, which was filed by the defendants in the present suit for a declaration over the suit schedule property. It is further seen that the plaintiffs herein have claimed that the suit schedule property belonged to one Mohammed Ghouse Saheb Gori and that they came into possession of the property after the death of Mohammed Ghouse Saheb Gori and the records particularly the municipal record and other records show that the plaintiffs are in possession and enjoyment of the property for several years. Thus, making a claim of this nature, the lower Court was called upon to frame a specific issue i.e. issue No.5 in O.S. No. 379 of 1974 which is as under :

"(5) Whether the defendants have the ownership and possession in the suit property ?"

In O.S. No. 379/1974 the plaintiffs (defendants herein) have pleaded that the title over the suit property has been decided by the trial Court and the same was subject matter of first appeal and second appeal. This Court in Second Appeal No.348/1983 confirmed the judgment and decree of the trial Court in O.S. No. 379/1974 and that principles of res judicata would operate in this case.

14. Basing on the averments, the trial Court in the present suit has framed the issues and proceeded to examine the context in the light of the oral and documentary evidence available on record.

15. It is also contended by Sri. R. Subba Rao, learned Counsel for the appellants that the suit schedule property in the earlier suit is only small extent i.e 34 square yards, which is a little more than one cent where as the extent of property involved in the present suit is more than 12 1/2 cents. Basing on this extent of the property, which was subject matter of earlier suit, Sri. K Subba Rao, learned Counsel, contended that the suit properties are not similar in these two suits. Thus it is contended that when the property is smaller extent, the larger extent of property involved in the present suit cannot be said to be same property and the ownership to that property cannot be held to be a bar in the present suit. I do not think such a submission could be accepted. The extent of property involved in the earlier suit may be smaller extent, but that property is part of the property in the present suit. A series of documents submitted by the plaintiffs herein are the very same documents filed in the earlier suit, related to the entire property. It is not the case that the documents produced in the present suit, in the lower Court, only related to the earlier suit and that property is not the property involved in the present suit. The lower Court has extensively dealt with the issues at page No. 10 of its judgment and has held that the documents produced before the trial Court in the earlier suit are by the plaintiffs herein and have been pressed into service by them in the earlier suit and the Court had the occasion to deal with all these documents. Thus the lower Court held that the principle of res judicata applies. I entirely agree with the findings of the trial Court which elaborately discussed the implication of the contentions raised in the present suit.

16. On the questing of implication of principle of res-judicata it is to be seen whether the court which decided the earlier suit should also be competent to decide the second suit. According to the learned Counsel for the appellant the first suit was instituted in the Court of District Munsif, Srikalahasu whereas the second suit was instituted in the Sub-Court at Srikalahasti. In order to examine the intricacies, it would be appropriate to trace the provisions after amendment of 1976 brought to Section 11 of CPC. We are now concerned with the Explanation VIII Section 11 CPC brought after 1976 amendment which is extracted hereunder :

"Explanation VIII:--An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not

competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

The implications of this provision has been examined by the Supreme Court in Sulochana Amma 's case (supra). The Apex Court, while examining the scope of Explanation VIII brought by 1976 amendment to Section 11 CPC, held thus:

"..... To keep the litigation unending, successive suits could be filed in the first instance in the Court of limited pecuniary jurisdiction and later in a Court of higher jurisdiction, and the same issue shall be subject of trial again, leading to conflict of decisions. It is obvious from the objects underlying Explanation VIII, that by operation of the non obstante clause finality is attached to a decree of civil Court of limited pecuniary jurisdiction also to put an end to the vexatious litigation and to accord conclusiveness to the issue tried by a competent Court, when the same issue is directly and substantially in issue in a later suit between the same parties or their privies by operation of Section 11. The parties are precluded to raise once over the same issue for trial.

7. It is settled law that explanation to a section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the section or clarify certain ambiguities or clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometimes, it would be added to include something within it or to exclude form the ambit of the main provision or condition or some words occurring in it. Therefore, the explanation normally should be so read as to harmonise with and to clear up any ambiguity in the same section".

The above decision of the Supreme Court makes it clear that when in an earlier suit, the issue raised was tried by a competent Court and the same is direct and substantial issue in the subsequent suit between the parties, then the defendants in the subsequent suit are permitted to take the plea of res judicata. In Church of South India Trust Association's case (supra) the Supreme Court reiterated its earlier decision in Sulochanamma's case (supra) and held that when an issue has been finally decided by a competent Court in an earlier suit, again the very same issue is sought to be adjudicated in another Court, the principle of res judicata would apply without regard to the fact whether the earlier Court has the jurisdiction to try the subsequent suit or not.

17. Following the principles laid down by the Supreme Court in the above two decisions, I am inclined to hold that the appellants are prevented from laying the present suit on similar issues which were already decided by the competent Court in earlier suit O.S.No.397 of 1974. The trial Court, is therefore, justified in dismissing the suit.

18. In view of the above discussion, I am inclined to hold that the appellants cannot succeed in this appeal in view of the lawful findings of the trial Court and therefore, the appeal is dismissed, but in the circumstances, without costs.