

(1959) 08 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No's. 562 to 565 of 1957

R. Ganapathy Goundar

APPELLANT

Vs

The State of Madras, Salem and Another

RESPONDENT

Date of Decision : 21-08-1959

Acts Referred:

Citation : AIR 1960 Mad 194 : (1960) ILR (Mad) 264

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

Judgement

(1) These petitions are by the same petitioner and seek the quashing of the orders of the Estates Abolition Tribunal, Vellore, by the issue of a writ

of certiorari in four appeals preferred by him to it, namely, A. S. Nos. 334 to 337 of 1956. These four appeals were dismissed by a common

order and it is therefore not necessary to deal with each of the petitions separately. The petitioner is the landholder of Kokkarayanpettai zamin

estate in Salem Dt. and he made four applications Nos. 17 of 1951, 24 of 1951, 25 of 1951 & 29 of 1951 to the Assistant Settlement Officer,

Pudukottai for the issue of ryotwari patta to him for certain items of lands in the four hamlets of the estate claiming them as his private land.

These applications were dismissed by the Assistant Settlement Officer two on 28-2-1952 and the other two on 28-4-1952, for the reason that the

lands for which patta had been applied had stood registered in the name of his son and that by reason of this fact the petitioner was not entitled to

make any application for patta. There is no doubt that this order of the Assistant Settlement Officer was correct. It was, therefore, not naturally

taken up in appeal. The lands for which patta was applied for stood registered in

the name of the petitioner's undivided son. Subsequent to the dismissal of these applications for ryotwari patta there was a registered partition in the family under which the items of land for which the petitioner had previously made applications or patta fell to the share of the petitioner himself.

When the petitioner thus obtained title in these items of lands he made another set of applications to the Assistant Settlement Officer basing his right to patta on the allotment of the items under the partition. The Assistant Settlement Officer, however, held that the previous order disallowing the petitioner's claim on the ground of lack of title barred the present application on the principle of res judicata and therefore, dismissed the application. From these orders the petitioner preferred appeals to the Tribunal whose numbers I have quoted earlier and the Tribunal confirmed the dismissal on the same reasoning, namely, that the present applications were barred by res judicata.

(2) It is clear that the Tribunal fell into an error in rejecting the applications on the grounds stated by them. For the principle of res judicata to apply there must be an identity of issue to be tried and the issue must have been decided on the merits in the previous proceedings. The previous applications had been dismissed on the ground of want of title. The title now put forward could not be in issue at the stage of the first application and therefore there is no identity of the issues arising for decision. No doubt the previous order had become final but it became final on the question that on that date the petitioner had no title to apply for ryotwari patta. If by reason of a subsequent act namely the partition in the family he obtains title there could be no question of res judicata which would prevent the assertion of the newly acquired title.

The petitioner did not possess title which he now alleges and on the basis of which he now seeks relief. In a case so simple and elementary as this it appears to me that it is needless to cite authority but nothing is better settled in law as to res judicata as that there can be no res judicata regarding a cause of action that has arisen subsequent to the previous suit. Where a previous suit was dismissed because it did not disclose any cause of action and later another suit was filed after the plaintiff had a cause of action and a plea of res judicata was raised a learned Judge of the Allahabad

High Court observed in Mt. Wahidan Vs. Mt. Aliman, .

Under S. 11 C.P.C., the bar arises only where the issue has been directly and substantially raised in a former suit. When there was no cause of

action no matter of the plaint can be said to be directly and substantially in issue in the former suit,

It is clear that the orders of the Tribunal cannot stand and therefore set aside, the rules being made absolute. The Tribunal will restore the appeals

to their file and proceed with them in accordance with law if necessary by remanding the proceedings to the Assistant Settlement Officer for

proceeding with the applications under S. 15 of the Abolition Act. There will be no order as to costs.

(3) Rules made absolute.