

**Appu Vs. Mannadiar**

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**Court :** Kerala

**Decided On :** Sep-30-1960

**Reported in :** AIR1961Ker298

**Judge :** C.A. Vaidialingam, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11

**Appeal No. :** C.M.A. No. 90 of 1959

**Appellant :** Appu

**Respondent :** Mannadiar

**Advocate for Def. :** K. Kuttikrishna Menon and; V. Balakrishna Eradi, Adv.

**Advocate for Pet/Ap. :** V.P. Gopalan Nambiar and; P.C. Balakrishna Menon, Adv.

**Judgement :**

**C.A. Vaidialingam, J.**

1. This is an appeal by the defendant against the order o remand passed by the learned District Judge after recording his opinion on the question of res judicata already decided by the trial court. As I am of the opinion that this order of remand is justified, I do not think it necessary or desirable to express any opinion on the

merits, which will have to be gone into by the trial court.

2. It is enough to state that the suit was for recovery of possession on the basis of title of Maruthakkavu Temple paramba of an extent of about 99 cents.

3. The suit was contested On the ground that the defendant has obtained an oral lease about 25 years back from a karnavan of the plaintiff's tarward on condition of his paying an annual rent of Re. 1/-and this is to be utilised by the defendant for lighting a lamp in front of the said temple. He also pleaded that the suit itself is barred by res judicata on the ground that in respect of an acquisition proceeding evidenced by Ext B 4, the position of the defendant as a tenant of at any rate a part of the property has been upheld by a court and he has can allowed to draw out a portion of the compensation on that basis. Therefore, the plea' of the defendant was that the principle must be applied and extended to his having the tenancy right over the entire properties which are the subject-matter of the present suit also.

4. The learned District Judge, though ha framed several issues and he has practically considered almost all those issues, ultimately in the concluding portion of his judgment said that he was o the view that the prior proceedings evidenced by L. A. O. P. 170 of 1953, Sub-Court, Falghat, namely, Ext. B-4, apportioning compensation to the defendant as tenant of the plot acquired therein operates as res judicata and as such the suit will have to be dismissed. This finding was really on additional issue No. 7, namely, as to whether the suit is barred by reason of the decision in L. A. O. P. No. 170 of 1953, Sub-Court, Palghat. In this view, the learned District Munsiff thought it unnecessary to record any findings on issues 1 to 5. Similarly, ho has also stated that he does not record any finding on issue 6.

On the basis of his finding on additional issue No. 7 he dismissed the plaintiff's suit. There was an appeal by the plaintiff to the learned District Judge of Palghat and he has gone into this matter and differed from the view taken by the trial court on the question of res judicata. The learned Judge was of the view that the decision in L. A. O. P, No. 170 of 1953 relied upon by the lower Court, namely, Ext. B-4, does not operate as res judicata in the present proceedings. On this basis, the learned Judge reversed the decree of the trial court and remanded the

suit for fresh disposal on the various other points that arose for decision in the suit. It is against this order of remand passed by the learned District Judge that this C. M. A. has been filed by the defendant

5. According to Mr. P. C. Balakrishna Menon, learned counsel for the appellant, the view of the learned Judge that Ext. B-4 docs not operate as res judicata in the present proceedings is not correct. After hearing Mr. Balakrishna Menon appearing for the appellant and Mr. Kuttikrishna Menon appearing for the respondent, I am satisfied that the order under appeal, passed by the learned District Judge does not call for any interference at the hands of this court. I am not able to appreciate the reasoning of the trial court on the question of res judicata regarding Ext, B-4. No doubt, the legal position as propounded by Mr. Balakrishna Menon, namely, that decisions given not only in suits but also in other proceedings will operate as res judicata, is correct. But the question is, was the point, namely, regarding the status and position of the defendant in regard to the entire extent of properties comprised in the present dispute, before the land acquisition court.

It is only under those circumstances that that decision can be put as against the plaintiff as res judicata in these proceedings. Ext. B-4 itself does not throw any light on this except saying that the present defendant who was party No. 15 in those proceedings, was also entitled to get a portion of the compensation. Admittedly the subject-matter of the land acquisition covered by Ext. B-4 was an extent of only 33 cents. There was absolutely no necessity for the plaintiff either to accept or to deny the position of the defendant as a tenant in respect of the other properties. In fact, it was absolutely unnecessary for any of the parties to even refer to any such facts. No doubt, the present defendant appears to have laid the basis for the claim that he is making in the present litigation, and has stated in Ext. B-5, that apart from the 33 cents, he is also in possession as a lessee of some more extent of property. As to what is the extent of the property so claimed by him on the basis of a tenancy right itself is not clear.

I am prepared to accept the position that the land acquisition proceedings recognising the defendant's position as a tenant in respect of the 33 cents and 33 cents alone which was the subject of the acquisition proceedings, will certainly be

binding on all parties. But that will not assist the appellant in going further and saying that the said decision will operate as res judicata in respect of other properties which were not the subject of land acquisition proceedings. The decision relied upon by Mr. Balakrishna Menon in Raj Lakshmi Dasi v. Banamali Sen, AIR 1953 SC 33 and in particular the observations of the learned Judges at p. 39, Paragraph 19, in my opinion, do not advance the case of the learned counsel for the appellant.

6. In the result, the order of remand is confirmed and this Civil Miscellaneous Appeal is dismissed with costs. No leave.

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