

Kuppuswami Vs. Krishnaveni and Others

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Court : Chennai

Decided On : Jun-29-1995

Reported in : AIR1996Mad94

Judge : Abdul Hadi, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 11 - Order 41, Rule 22

Appeal No. : Second Appeal No. 454 of 1995

Appellant : Kuppuswami

Respondent : Krishnaveni and Others

Advocate for Pet/Ap. : Vittal V. Souli, Adv.

Judgement :

1. The first defendant is the appellant in this Second Appeal against the concurrent judgments of the Courts below. Both the courts below have dismissed suit for injunction. But the first defendant has preferred this Second Appeal only with reference to the dismissal of his cross-objection filed when the matter was before the first appellate court in A. S. No. 25 of 1991 filed by the plaintiffs. The suit has been concurrently dismissed by the courts below on the ground that the plaintiffs are the trespassers and hence as trespassers they are not entitled to get an injunction as prayed for. No doubt with reference to the abovesaid trespass, the trial court held in its earlier part of the judgment that there was a trespass or

encroachment by the plaintiffs to the extent of one foot. But the trial court in the latter part of its judgment observed that the said encroachment was five inches. Aggrieved by the abovesaid observation of the trial court regarding the extent of the encroachment, the first defendant filed the above said cross-objection in the abovesaid Appeal filed by the plaintiffs. But the cross-objection has been dismissed no doubt without any discussion by the first appellant court along with the dismissal of the first appeal, and aggrieved by the dismissal of the cross-objection the present Second Appeal is filed by the first defendant.

2. But it must be stated that the abovesaid cross-objection itself would not lie in view of what is contained in O. 41, R. 22, C.P.C., particularly, the explanation thereof. According to the main part of O. 41, R. 22, a respondent may take any cross-objection to the decree of the court below which he could have taken by way of appeal.

Relevant portion of the Explanation is as follows :---

'Explanation : A respondent aggrieved by a finding of the court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding.'

So a cross-objection could be filed only in respect of a finding on which the decree appealed against is based. The decree of the trial court in the present case is based on the finding that the plaintiffs are the trespassers. No doubt, incidentally the trial court has mentioned about the extent of the trespass. But the decree is not based on the extent of the trespass, but is based on the factum of the trespass. Therefore, the abovesaid cross-objection itself is not maintainable. Further I may also state that on this aspect regarding the extent of the encroachment or trespass the finding given by the courts below cannot operate as a res judicata, under S. 11, C.P.C. The rule is that if the plaintiff's suit is wholly dismissed, even an issue decided against the defendant cannot operate as res judicata against the defendant in a subsequent suit, for the defendant cannot appeal from a finding on any such issue, the decree being wholly in his favour. (Vide Mulla C. P. C. 14th Edition I Volume Page 139-140 and the decisions cited therein). Accordingly, there is no merit in this Second Appeal and hence it is

dismissed.

3. Appeal dismissed.

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