

Gnanambal Vs. Parvathi

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Court : Chennai

Decided On : Mar-29-1892

Reported in : (1892)ILR15Mad477

Judge : Muttusami Ayyar and ;Best, JJ.

Appellant : Gnanambal

Respondent : Parvathi

Judgement :

Best, J.

1. The question for decision in this appeal is whether the District Judge is right in holding the suit to be barred as res judicata by the order (F), dated 25th October 1884.

2. This order (F) allowed a claim preferred by the present respondents to this same house on its being attached in execution of a decree obtained by one Naranappa (in Original Suit No. 31 of 1884) against Subbayyan and Rangasami Ayyan, the former of whom is this respondent's maternal grandfather and also father-in-law, being the adoptive father of the latter (Rangasami Ayyan), who is respondent's husband. It appears that, on respondent's claim to the house being allowed as above, the then plaintiff brought a suit under Section 283 of the Code of Civil Procedure (Original Suit No. 331 of 1885) which was dismissed (see

Exhibit G).

3. The present appellant does not claim through the former plaintiff (Naranappa). She obtained her decree in Original Suit No. 325 of 1888 against Subbayyan's son (Rangasami Ayyan, respondent's husband) for a debt on a bond executed by Subbayyan. On appellant's attaching the house in execution of this decree, respondent again put in a claim to the house under Section 378, which was dismissed, and she thereupon brought the present suit under Section 283.

4. The District Munsif dismissed the suit, but, on appeal by the present respondent, the District Judge, without going into the merits, set aside the District Munsif's decree and passed a decree in the respondent's favour, on the simple ground that the defendant (now appellant) is estopped from setting up Subbayyan's right, because it is *res judicata* by the order (F).

5. He explains, it was then decided that Subbayyan had no claim to the property and the suit brought by the then claimant against that order was dismissed. Subbayyan himself did not contest the order, and it is now too late for him to do so, more than a year having elapsed since it was made, and that being the case, the defendant can have no right to attach the property as Subbayyan's, while Subbayyan himself has lost his right to it.

6. Even assuming that the fact of Subbayyan having had notice of his daughter-in-law's claim in 1884 is sufficient to make him a party, against whom that order was passed, and to debar him or his legal representatives from now denying the respondent's right to the house, I am unable to agree with the District Judge in holding that the appellant is equally bound by that order, to which she was no party; and the mere fact of her being the creditor of Subbayyan is not sufficient to constitute her his legal representative. Her suit is, therefore, not affected by Section 283 of the Code of Civil Procedure or by the limitation of one year prescribed for such suits.

7. Without considering, therefore, whether Subbayyan or his son would or would not be barred by the order (F) from disputing the respondent's right to the house in question, I am clearly of opinion that the appellant is not barred by that order.

8. I would therefore allow this appeal, and, setting aside the lower Court's decree, remand the case to the lower Appellate Court for replacement on the file of appeals and disposal according to law.

9. I would further direct respondent to pay appellant's costs of this second appeal.

Muttusami Ayyar, J.

10. I am also of opinion that the claim is not res judicata either by reason of the order (F) or of decree in Suit No. 331 of 1885. To neither the present defendant Gnanambal was a party, and, though the plaintiff was a party, that circumstance is not sufficient to create the identity of parties necessary to sustain the plea of res judicata, as there is no mutuality, and, as without mutuality, there can be no estoppel. Assuming that both Subbayyan and his son were parties to the order (F) and that neither could now sue to set it aside, the present defendant is not under the same disability. Though she attached it as the property of Subbayyan or his son, she did so, not as their privy or representative, but by virtue of a right inherent in her to attach what was really their property at the date of attachment. It would be open to her to show that Subbayyan and his son were in collusion with the plaintiff. There is nothing on the record to indicate that the notice of claim was served on Subbayyan's son. However this may be, the defendant is not their representative. This circumstance distinguishes this case from the cases cited by the District Judge

11. I therefore concur in the order proposed by my learned colleague.

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