

Chenraya Goundan and ors. Vs. Athappa Goundan and ors.

Chenraya Goundan and ors. Vs. Athappa Goundan and ors.

SooperKanoon Citation : sooperkanoon.com/817407

Court : Chennai

Decided On : Mar-22-1923

Reported in : AIR1924Mad88

Appellant : Chenraya Goundan and ors.

Respondent : Athappa Goundan and ors.

Judgement :

Odgers, J.

1. This suit was brought by the four plaintiffs for the recovery of certain land alleged to belong to the Manamman Temple of Chettipatti under Order 1, Rule 8, of the Code of the Civil Procedure and for a declaration that the decree in O.S. No. 934 of 1911 is not binding on the plaintiffs. The District Munsiff found that the plaint property belonged to the Temple, that the Temple had possession of the plaint property within twelve years of the suit, and that there was no res judicata by reason of O.S. No. 934 of 1911, and gave the plaintiffs a decree.

2. On appeal the Subordinate Judge found that there was res judicata and that a certain compromise (to be referred to later) was not fraudulent or ultra vires and reversed the Munsif's decree. The question in second appeal is whether the Subordinate Judge was right on both these points.

3. In the previous suit, which was brought by the present defendants 1 to 3 and two others, they sued as the Periadhanakars of the Chettipatti village to recover the same land as in the present case. The former suit was compromised by two of the plaintiffs and the suit was dismissed as against two others.

4. The former suit was not brought under Order 1, Rule 8, but the plaintiffs there (1 to 4) were Periadhanakars of the Padayachies of the Chettipatti village. In their plaint paragraph 4 (page 14 of the papers in Second Appeal No. 786 of 1914) they stated:

The suit inam land has been in possession of the Periadhanakars, plaintiffs 1 to 4, since the time of their forefathers. Since the time of the plaintiff's forefathers, the puja, festival etc, affairs of the Mariamman Temple in the said Chettipatti village have, for many a year, been conducted with the funds made up of the income derived from the suit inam land and of the collection of tax, Vattam etc. from among the Padayachi ryots alone, who are of the same caste as the plaintiffs. The plaintiffs therein contended that the suit land belonged to the Mariamman Temple at Chettipatti, while the defendants therein contended that it belonged to a similar Temple at Uppupalayam--another hamlet in the same village. In my opinion, it must be taken that the plaintiffs in their former suit were suing as trustees on behalf of themselves and the whole body of persons, worshipping or interested in the temple at Chettipatti.

6. The first point taken for the appellants is that if the prior suit was to recover a right held in common with others, it was incompetent as it was not brought under Order 1, Rule 8. Expl. 6, to Section 11 of the Code of the Civil Procedure says that where persons litigate bona fide in respect of a public right or of a private right claimed in common or themselves and others, all persons interested in such a right shall, for the purpose of the section, be deemed to claim under the person so litigating. In *Gopalacharyulu v. Subbamma* [1920] 43 Mad. 487, it was held that this explanation is not confined only to cases where leave of the Court has been granted under Order 1, Rule 8. In that case a suit by some of the Agraharamdars of a Tillage against the Zamindar and the other Agraharamdars was held res judicata against the representative of one of the latter, who was a defendant who

died pending the appeal and whose legal representative had not been brought on the record. Wallis, C.J., held in that case that though:

'he would hesitate to hold that any litigation had been bona fide, within the meaning of that explanation, in which there had been a substantial departure from the accepted rules as to the joinder of parties, as for instance by suing without the leave of the Court in a case properly falling under Order 1, Rule 8,...', there was a case of *res judicata* established.⁷ The decision follows that in *Rangamma v. Narasimhacharyulu* [1913] 31 M.L.R. 26, where the contention for the appellants was that Expl. 6 of Section 11 makes the decision in the first suit *res judicata*, only if the first suit was a representative one under Order 1, Rule 8. It was held that the explanation does not become inapplicable, because the suit was for the establishment of the plaintiffs' individual rights in addition to the right claimed by him in common to himself and others, in so far as his claim in respect of the latter right was concerned. It appears to me that the prior suit, though not brought under Order 1, Rule 8, was brought in respect of a right claimed by the plaintiffs as trustees of the Temple in common with themselves and others. If this is correct, it would, on the authority of the two cases quoted above appear to make no difference whether it was in fact brought under Order 1, Rule 8 and that the observation of Wallis, C.J., referred to above would be inapplicable to a case where, as here, the trustees represented the whole body of the worshippers of this particular Temple in the suit. It was further argued that a decree by way of compromise can never constitute a *res judicata* by reason of the fact that the mind of the Court had not been brought to bear upon it, and reliance was placed on *Jenkins v. Robertson* L.R. Sc. App. 117. This case is however explained by Vaughan Williams, J., in *In re South American and Mexican Co. Ex parte Bank of England* [1895] 1 Ch. 37 where he holds that *Jenkins v. Robertson* [1916] 258, is no decision on the general law:

All that the House of Lords decided was that such a result (i.e.,) binding the public at large under the Scotch law would not bind the public at large, unless it was a result arrived at, after judicial consideration, and that it would not bind the public, if it was a result arrived at, by consent and a fortiori if such consent was a purchased consent.⁸ Again:

It has always been the law that a judgment by consent, or by default raises an estoppel, just in the same way as a judgment after the Court has exercised a judicial discretion in the matter.⁹ This decision was approved by the Court of Appeal where Lord Herschall, L.C. said:

the truth is a judgment by consent is intended to put a stop to litigation between the parties, just as much as is a judgment, which results from the decision of the Court, after the matter has been fought out to the end.¹⁰ In *Kumara Venkata Perumal v. Thatha Ramasamy Chetty* [1912] 35 Mad. 75, it was held that the test for *res judicata* arising from a compromise is to be found in the construction of the decree in each case and that whatever is necessarily involved in the decree cannot be reopened by either party.

11. *Mathavan v. Keshavan* [1888] 11 Mad. 191, was a suit by one trustee out of five to recover property alleged to have been illegally alienated by three of the others to a stranger. This suit was dismissed and was held to be a bar to a suit by the fifth trustee, as he must be held to have claimed under the plaintiff in the former suit.

12. I am therefore of opinion, on the authority of the above cases, that the compromise decree, as to two of the defendants, in the former suit, and the dismissal of the suit as against two of the others (the fifth was only a tenant) constitute a *res judicata* under Section 11, Expl. 6 and I therefore agree with the Subordinate Judge that the present suit cannot be maintained, unless the compromise can be attacked in some effective manner. The only point urged before Jus, on this part of the case is that the compromise was effected by only two of the trustees and it is said that there was no evidence of authority to bind the others. The latter, however, allowed the suit to be dismissed against them and in fact did not appear when judgment was pronounced. The Subordinate Judge sent the case down to the District Munsif for a finding, as to the bona fides of this compromise, whether defendants 1 to 3 in the former suit acted within the ambit of their powers as trustees of the Temple, or whether they acted fraudulently with the other defendants. The Munsif found that the trustees acted bona fide, in the interests of the institution and within the ambit of their powers and that there was

no fraud or collusion with the other defendants. This appears to me to be a question of fact on which both the Munsif and the Subordinate Judge (see paragraph 9 of the latter's judgment) are agreed. I see no reason to interfere with these findings. In my opinion the Second Appeal therefore fails on both the grounds urged by the appellants and must be dismissed with costs.

Ayling, J.

13. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com