

T.Devaraj Naicker, and ors. Vs. V.Subramanian, and Ors,

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Court : Chennai

Decided On : Aug-16-2010

Judge : M.Jaichandren, J.

Appeal No. : S.A.No.440 of 2008 and M.P.No.1 of 2008

Appellant : T.Devaraj Naicker, and ors.

Respondent : V.Subramanian, and Ors,

Advocate for Pet/Ap. : Mr.N.Kannan, Adv.

Judgement :

1. This second appeal has been filed against the judgment and decree, dated 21.10.2005, made in A.S.No.29 of 2003, on the file of the Principal District Court, Chengalpattu, confirming the judgment and decree, dated 30.12.2002, made in O.S.No.124 of 1999, on the file of the Additional Subordinate Court, Chengalpattu.
2. The plaintiffs in the suit, in O.S.No.124 of 1999, are the appellants in the present second appeal. The defendants in the said suit are the respondents herein.
3. The suit, in O.S.No.124 of 1999, had been filed by the plaintiffs praying for a judgment and decree declaring the plaintiffs title over the suit properties and for permanent injunction restraining the defendants their men, agents and servants from, in any way, interfering with the plaintiffs peaceful possession and enjoyment of the suit properties, and for costs.

4. The plaintiffs had stated that they are the sons of late Thiruvengada Naicker. The first defendant is the son of Thulukkana Naicker. Thiruvengada Naicker and Thulukkana Naicker were brothers. It had been further stated that there was a partition between Thiruvengada Naicker and Thulukkana Naicker, in the year, 1945. Thereafter, they were enjoying the properties allotted to them, separately. The second defendant had been claiming certain rights, in respect of the suit properties, which are in the exclusive possession and enjoyment of the plaintiffs, stating that he had purchased some of the schedule mentioned properties, by way of a sale deed, from the first defendants father. Since, the plaintiffs father had been allotted the suit properties, by way of a partition between himself and the first defendants father, any sale deed in favour of the second defendant, by the first defendant, cannot be a valid document. As such, it would not bind the plaintiffs.

5. It has been further stated that the plaintiffs are in possession and enjoyment of the suit properties and that the defendants were never in possession and enjoyment of the same, as claimed by them. Since, the defendants were attempting to interfere with the peaceful possession and enjoyment of the suit properties by the plaintiffs, they had filed the suit, in O.S.No.124 of 1999, praying for a decree of declaration of title and for permanent injunction.

6. In the written statement filed on behalf of the second defendant it has been stated that the plaintiffs are not the owners of the suit properties. The father of Thiruvengada Naicker and Thulukkana Naicker was Munusami Naicker. All the joint family properties owned by Munusami Naicker had been divided between himself and his two sons, in the year 1935, even before the birth of the plaintiffs. Thereafter, the family was not a joint family. Late Munusami Naicker had settled all his properties obtained after the said partition, in favour of the first defendant and his younger brother, Thirunavukarasu, under a registered settlement deed, dated 19.6.1961. Thereafter, litigations had started between the plaintiffs' father and Munusami Naicker. There was no joint family status amongst Munusamy Naicker, Thiruvengada Naicker and Thulukkana Naicker.

7. It had also been stated that the second defendant had purchased the second and the third items of the suit properties, by way of a sale deed, dated 5.11.1969.

The second defendant had also purchased some lands, thereafter, from the first defendant, under a registered sale deed, dated 9.3.1972, which are suit items 1 and 6. The rest of the suit items belong to the first defendant and his family. It has also been stated that the second defendant has been in possession and enjoyment of the properties purchased by him, under the said sale deeds. While so, the plaintiffs had filed the suit, without any basis and with the deliberate intention of illegally interfering with the plaintiffs peaceful possession and enjoyment of the properties concerned. Since, the suit filed by the plaintiffs is devoid of merits, it is liable to be dismissed.

8. In view of the averments made on behalf of the plaintiffs, as well as the second defendant, the trial Court had framed the following issues for consideration:

- "1. Whether the suit properties are in possession and enjoyment of the plaintiffs?
2. Whether the partition deed, dated 20.2.1990, is true and valid?
3. Whether the oral partition in the year, 1945, between Thiruvengada Naicker and Thulukkana Naicker as pleaded by plaintiffs is true?
4. Whether the suit properties are joint family properties and their father Thiruvengada Naicker?
5. Whether the sale deed, dated 5.11.1969, and 9.3.1992, are true, valid and binding on the plaintiff?
6. Whether the suit is barred by the principles of res judicata?
7. Whether the plaintiffs are entitled to the reliefs prayed for?
8. To what relief?"
9. While considering the issues 1 to 5, the trial Court had found that the suit filed by the plaintiffs, in O.S.No.124 of 1999, was barred by res judicata, since, in the earlier suits and in the appeals it had been held that both Munusami Naicker and Thulukkana Naicker had absolute title, in respect of the suit properties, barring the claims of Thiruvengada Naicker. Similarly, it had been held that the settlement

deed, executed by Munusami Naicker, in favour of Subramani and Thirunavukarasu, under Ex.B-15, dated 17.6.1961, is true and valid and binding on the plaintiffs. Further, the sale deeds, marked as Exs.B-27 and B-28, in favour of the second defendant, were also held to be valid and binding on the plaintiffs.

10. The trial Court had also found that the defendants had filed Exs.B-16 to B-24, which are kist receipts standing in the name of Subramani and Dhanapal, to show their possession and enjoyment of the properties in question. The kist receipts were from the year, 1968 and therefore, the trial Court had taken note of the same to come to the conclusion that the defendants were in possession and enjoyment of the properties in question.

11. It had also been found that the trial Court had accepted the reasons stated on behalf of the defendants for not obtaining the patta, with regard to the said properties. It had been stated that the defendants could not obtain the patta on account of the fact that the plaintiffs had been filing a number of suits, continuously, in respect of the properties in question. It had also been found that the plaintiffs' father had not produced any document to show that there was a partition of the properties between himself and Thulukkana Naicker. On the other hand, it had been noted that the defendant, Dhanapal, had purchased the properties, on 5.11.1969, and 9.3.1972.

12. It had also been noted that Munusami Naicker had no right to execute the settlement deed in favour of his grand son. Further, Thiruvengada Naicker had lost all the cases filed by him on a number of occasions. It had also been noted that the plaintiffs and their father had agitated their rights, by filing a number of suits against Thulukkana Naicker and the second defendant, Dhanapal, between the years, 1966 to 1990. In such circumstances, the trial Court had dismissed the suit filed by the plaintiffs, by its judgment and decree, dated 30.12.2002.

13. Aggrieved by the judgment and decree of the trial Court, dated 30.12.2002, the plaintiffs in the suit, in O.S.No.124 of 1999, had filed an appeal, in A.S.No.29 of 2003, on the file of the Principal District Court, Chengalpattu.

14. Based on the averments made on behalf of the appellants, as well as the respondents, the First Appellate Court had framed the following points for consideration:-

"1) whether the suit in O.S.No.124 of 1999 is barred by res judicata?

2) Whether the plaintiffs in the suit in O.S.No.124 of 1999 are entitled for a decree of declaration and injunction?

3) Whether the plaintiff in O.S.No.42 of 1997 is entitled to damages as prayed for?

4) To what relief the parties are entitled?"

15. The First Appellate Court had found that the claim of the plaintiffs that there was a partition between Thiruvengada Naicker and Thulukkana Naicker in the year, 1945, had been rejected by way of a judgment and decree made in O.S.No.49 of 1966, marked as Exs.B-1 and B-2, respectively, dated 30.11.1968. It had also noted that Thiruvengada Naicker, had filed several suits through his sons against his own father Munusami Naicker and his brother Thulukkana Naicker and that all the suits had been rejected. The trial Court had noted that the first suit had been filed in the year, 1956, in O.S.No.21 of 1956. The said suit for partition had been filed by the second plaintiff in the present suit. The judgment, in A.S.No.679 of 1959, dated 29.12.1960, had been marked as Ex.B-11. The second appeal filed in the year, 1961, in S.A.No.1585 of 1961, had also been dismissed and the judgment made in the said second appeal, on 23.9.1964, had been marked as Ex.B-13 and the decree made therein had been marked as Ex.B-14.

16. The First Appellate Court had also noted that, in the suit filed by the second plaintiff, in O.S.No.49 of 1966, and in the suit filed by Thiruvengada Naicker and Kannammal, in O.S.No.103 of 1972, and in the suit filed by Thiruvengada Naicker, in O.S.No.771 of 1981, the properties in question were the same properties, which are the subject matter of the present suit filed by the plaintiffs, in O.S.No.124 of 1999. It had also been noted that the second defendant had purchased the suit properties, under the sale deeds, marked as Ex.B-27 and B-28 and only thereafter, Thiruvengada Naicker had filed the suit in the year, 1981, in

O.S.No.771 of 1981. In the said suit Thiruvengada Naicker had failed to prove his interest and title in the suit properties therein. The decision of the trial Court, in O.S.No.771 of 1981, had become final. In such circumstances, the First Appellate Court had confirmed the judgment and decree of the trial Court, dated 30.12.2002, made in O.S.No.124 of 1999, by its judgment and decree, dated 21.10.2005, made in A.S.No.29 of 2003.

17. Aggrieved by the judgment and decree of the First Appellate Court, dated 21.10.2005, made in A.S.No.29 of 2003, the plaintiffs in the suit, in O.S.No.124 of 1999, who were the appellants in the first appeal, in A.S.No.29 of 2003, had filed the present second appeal before this Court, raising the following questions, as substantial questions of law: "(1) Section 100 of C.P.C. 1908 -(i) Concurrent findings of Courts below cannot normally be interfered. But, could be interfered when important documents have not been duly considered by lower Courts?

(2) When the appellants have established their possession of the suit properties vide Ex.A-2 to A-12, whether the lower Courts are correct in holding that the appellants/plaintiffs are not entitled for the reliefs as claimed for?

(3) Whether a non-owner can transfer a valid title to another party ignoring the principle of NEMO-DOD QUOD NON HABET, a very vital point of the Transfer of Property Act?

(4) When evidences of independent witnesses namely P.W.2 and P.w.3 would decisively establish the possession of the properties by the appellants/plaintiffs, whether the Courts below are correct in law in discarding the above material evidences and not considering the fact that non suing the appellants/plaintiffs by the respondents/defendants to establish their title and possession? (5) Whether the Courts below are correct in law in not considering the contradictory evidences of D.W.1 to D.W.3 which did not corroborate the pleadings and evidences of the respondents/defendants?

(6) Whether the lower Appellate Courts being the final court of fact is correct in law in not considering the evidences available on records in entirety?

(7) Whether the lower Court being the final Court of fact can be approached for retrial for determining the possession and title over the suit properties of the appellants/plaintiffs where the suit properties are not covered in the 1961 settlement but the possession is established through patta, chitta adangal and kist receipts of the appellants/plaintiffs?"

18. The learned counsel appearing on behalf of the appellants had submitted that the judgment and decree of the Courts below are erroneous and invalid in the eye of law. The Courts below had failed to consider the pleadings and the evidence on record from a proper perspective before arriving at their conclusions. The lower Appellate Court had erred in confirming the judgment and decree of the trial Court without, specifically, advertng to the findings of the trial Court, as required by law. The Courts below had erred in holding that the settlement deed executed by Munusami Naicker in the year, 1961, in favour of Subramani and Thirunavukarasu, the sons of late Thulukanna Naicker, under Ex.B-15, to be true and binding on the appellants.

19. In fact, the subject matter of the properties in the settlement deed executed in the year, 1961, does not cover the suit properties. It had also been submitted that the Court below had failed to take note of Exs.A-2 to A-12, which are pattas, chittas and kist receipts, filed on behalf of the appellants, to show that they are in possession of the lands in question. The Courts below had failed to take note of the partition deed, dated 20.2.1990, marked as Ex.A-1. Further, the Courts below had erred in holding that Exs.B-27 and B-28 sale deeds executed in favour of the second respondent, are valid, as the suit filed by the appellants is barred by res judicata. The said sale deeds are bogus documents, which had been created by the respondents for the purpose of making false claims against the appellants. Further, the Courts below had failed to take note of the oral evidence adduced by P.W.2 and P.W.3, which were in favour of the claims made on behalf of the appellants. Further, the Courts below had failed to observe that the evidence of D.W.1, D.W.2 and D.W.3 were contradictory in nature and they did not corroborate the pleadings made on behalf of the respondents.

20. The learned counsel appearing on behalf of the appellants had submitted that one of the main grounds on which the Courts below had dismissed the suit is on the basis of res judicata. For resjudicata to apply to the suit filed by the appellants, in O.S.No.124 of 1999, the issues that arose for consideration in the present suit ought to have been raised and finally decided between the same parties. The issues that had arisen in the earlier suits must have been substantially and directly involved in the present suit, as well. If the earlier suit was for a permanent injunction it would not adversely affect the present suit, which is for a declaration of title. In the earlier suit filed for permanent injunction the only issue that was under consideration by the Court concerned was the issue of `possession. The issue regarding title had not been framed in the earlier suit.

21. It had also been stated that the Courts below had erred in coming to the conclusion that the properties in question were the same, both in the suit, in O.S.771 of 1981, filed by the father of the appellants and in the present suit, in O.S.No.124 of 1999. In fact, the properties which were the subject matter of the two suits were different. It had also been stated that the judgment and decree of the Courts below were not based on the facts and figures which were available before them. It had also been stated that the defendant has not traced his title to the suit property. If patta had been granted in favour of the appellants, the Courts below ought to have presumed that the possession of the suit property is with the appellants, especially, when nothing has been shown by the respondents, who were the defendants in the suit, contrary to the claim made by the appellants.

22. Further, no proceedings had been initiated by the respondents to cancel the patta granted in favour of the appellants. Only a vague explanation had been given on behalf of the respondents as to why such an action had not been initiated by them. It has also been stated that the principle of res judicata would be applicable only if the issues were substantially and directly the same and if such issues had been decided between the same parties. However, in the present case, both the issues, as well as the parties were different. In fact, the Courts below had not given a detailed and considered legal finding, with regard to the principle of res judicata. As such, the judgment and decree of the Courts below ought to be set aside and the matter may is to remitted back to the trial Court, to be tried on

merits.

23. Per contra, the learned counsel appearing on behalf of the second respondent had submitted that the averments and allegations made on behalf of the appellants are erroneous and unsustainable in the eye of law. Both the Courts below had arrived at the rights conclusions, based on the evidence available on record. From the sale deed, dated 5.11.1969, marked as Ex.B-27, and the sale deed, dated 9.3.1972, marked as Ex.B-28, it is clearly seen that the second respondent had purchased the properties in question from Subramania Naicker and after the purchase of the lands the respondents had been in possession and enjoyment of the said lands. The appellants cannot claim that the Courts below had erred in taking into consideration the judgments and decrees made in the earlier suits, while coming to the conclusion that the present suit filed by the appellants, in O.S.No.124 of 1999, is barred by res judicata.

24. It had also been submitted that the relief of partition, sought for by the appellants, earlier, had also been negatived. Further, the appellants in the present second appeal, who were the plaintiffs in the suit, in O.S.No.124 of 1999, had not described the suit properties, properly, by showing the boundaries and by furnishing the dimensions of the said properties. It had also been stated that Item Nos.2, 5 and 6 of the suit schedule properties were part of the earlier suit filed by the plaintiffs. The present suit has been filed by including the said properties, as well as certain other properties. It had also been stated that the Courts below had found that in all the suits and appeals it had been held that Munusami Naicker had absolute title and that the settlement deed executed by Munusami Naicker, in favour of Subramani and Thirunavukarasu, under Ex.B-15, is true, valid and binding on the appellants.

25. It had also been held that the sale deeds, marked as Exs.B-27 and B-28, in favour of Dhanapal, Son of Murugesu Naicker, the second defendant in the suit, in O.S.No.124 of 1999, had been held to be valid. It has also been stated that the reason for not changing the patta in the name of the respondents is due to the fact that the appellants had been filing a number of suits, continuously. The Courts below had also noted that even the earlier suit, in O.S.No.771 of 1981, had been

dismissed, based on the issue of res judicata. The appeals filed against the judgment and decree made in the said suit had also been dismissed. The learned counsel had also submitted that no substantial question of law arises for the consideration of this Court in the present second appeal. In such circumstances, the second appeal filed by the appellants is devoid of merits and therefore, it is liable to be dismissed.

26. In reply, the learned counsel appearing on behalf of the appellants had submitted that the issue of title had not been decided in the earlier suits and only certain other issues had been decided between the plaintiff and the second defendant. Therefore, the Courts below had been called upon to decide the issue of title in respect of the suit properties, between the plaintiff and the second defendant. As such, the Courts below had erred in coming to the conclusion that the suit filed by the appellants, in O.S.No.124 of 1999, is barred by res judicata. In such circumstances, since, the Courts below had not given a legal finding this Court may be pleased to set aside the judgment and decree of the Courts below and remit the matter back to the trial Court, for framing fresh issues and to decide the matter on merits, as per law.

27. In view of the submissions made by the learned counsels appearing on behalf of the appellants, as well as the respondents and in view of the records available, this Court is of the considered view that the appellants have not shown sufficient cause or reason to set aside the concurrent findings of the Courts below. Both the Courts below had rightly rejected the claims made on behalf of the appellants. The trial Court, as well as the First Appellate Court, had arrived at their conclusions, based on the evidence available on record. The Courts below had clearly found that the suit filed by the appellants, in O.S.No.124 of 1999, is barred by the principle of res judicata.

28. Further, it is clear that the appellants had not been in a position to show, by sufficient evidence, that the claims made by them are sustainable in the eye of law. There was nothing shown on behalf of the appellants that the properties, which were the subject matter of the earlier suits, are different from the properties in question in the present suit, in O.S.No.124 of 1999. It cannot be said that the

judgment and decree of the Courts below are not based on the facts and figures available before the said Courts, as claimed by the learned counsel for the appellants. Proper reasons had been shown for the non transfer of the patta in the name of the respondents. It was for the plaintiffs in the suit, in O.S.No.124 of 1999, who are the appellants in the present second appeal, to show that they are the rightful owners of the suit properties and that they are in possession of the same, by way of sufficient evidence. However, it is seen from the records available that the appellants had failed to substantiate their claims by adducing acceptable evidence, both oral as well as documentary. It is also clear that the Courts below had analysed various issues which had arisen for their consideration. As such, it cannot be said that the trial Court, as well as the First Appellate Court, had committed an error in dismissing the suit filed by the appellants, in O.S.No.124 of 1999. Further, no substantial question of law arises for the consideration of this Court. Hence, the second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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