

Natesan Vs. Rajendran

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Court : Chennai

Decided On : Jan-08-2013

Judge : T.Mathivanan

Appellant : Natesan

Respondent : Rajendran

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:08.01.2013
CORAM: THE HON'BLE MR.JUSTICE T.MATHIVANAN CRP.PD.No.494 o

1. Natesan 2.Kamalayee 3.Vasanthi Petitioners Vs. 1.Rajendran
2.V.Arumugham 3.P.Thanappan Respondents Prayer : This civil revision
petition is filed under Article 227 of the Constitution of India against the fair and
decretal order dated 08.08.2005 and made in the Memorandum filed in
O.S.No.327 of 2002, on the file of the learned Principal District Munsif Court,
Cuddalore. For Petitioners : Mr.R.Gururaj For Respondents : No appearance O R
D E R This memorandum of civil revision is directed against the fair and decretal
order dated 08.08.2005 and made in the Memorandum filed in O.S.No.327 of
2002, on the file of the learned Principal District Munsif Court, Cuddalore.

2. The revision petitioners have filed the suit in O.S.No.327 of 2002, on the file of
the learned Principal District Munsif, Cuddalore, against the respondents herein
seeking the following reliefs: i. directing the second defendant/respondent to pay a
sum of Rs.1,600/- to the revision petitioner/3rd plaintiff towards arrears of rent

together with interest at the rate of 12% per annum from the date of suit till the date of realization; ii. directing the third defendant/respondent to pay a sum of Rs.10,800/- towards arrears of rent together with interest at the rate of 12% per annum from the date of suit till the date of realisation; iii. directing the defendants 1 to 3/respondents to hand over vacant possession of B, C and D-Schedule properties to the third plaintiff within a time stipulated by the Court and on their failure to do so possession may be delivered through Court; iv. directing an enquiry into future mesne profits against the defendants 1 to 3/respondents in respect of the properties in their possession by separate proceedings under Order XX Rule 12 of the Code of Civil Procedure; and v. directing the defendants 1 to 3/respondents to pay the costs to the third plaintiff/revision petitioner.

3. The first defendant has contested the suit by filing his written statement. Trial was commenced. After the completion of the plaintiffs' side evidence, two witnesses were examined on the side of the respondents/defendants. For the purpose of examination of D.W.3, his proof affidavit was filed and along with his proof affidavit a Memorandum dated 27.04.2005 and a Panchayat Resolution dated 27.02.2005 were also produced to be exhibited through D.W.3.

4. For this Memorandum dated 27.04.2005, the revision petitioners being the plaintiffs 1 to 3 have filed a counter, wherein they have objected strongly to receive the document viz., the Panchayat Resolution dated 27.02.2005 on the ground of inadmissibility as it being a Photostat copy. They have also objected to mark this document through a witness, who is not even a resident of the concerned Village.

5. It is manifested from the records that this memorandum dated 27.04.2005 was rejected. Thereafter, another memorandum dated 23.06.2005 was filed on behalf of the first defendant/first respondent herein to receive the very same document viz., Panchayat Resolution dated 27.02.2005 through Singarapettai Village Panchayat President. It is revealed from the face of this Memorandum dated 23.06.2005 that while taking notice, an endorsement was made on behalf of the revision petitioners/plaintiffs saying that the reception of the document (dated 27.02.2005) is objected since the very same document has already been rejected.

6. It is also revealed that the revision petitioners have also filed a detailed counter statement, wherein they have stated that the document dated 27.02.2005 recording Panchayat verdict is not receivable in evidence. The Xerox copy of the same was already filed along with a Memorandum through D.W.3's proof affidavit. But, he was not examined. Therefore, the evidence of D.W.3 was eschewed and the Memorandum was also dismissed on the request of the learned counsel. Now, the very same document is being produced to be marked through D.W.5 along with a memorandum and therefore it could not be received as it was already rejected. They have also stated that the rejection of earlier Memorandum constituted as res judicata. In support of their contention, they have also relied upon the decisions in Y.B.Patil vs. Y.L.Patil, reported in AIR 197.SC 392.Sukhrani vs. Hari Shanker, reported in AIR 197.SC 143.and Satyadhyan vs. Smt.Deorajin Debi, reported in AIR 196.SC 941.

7. After hearing both sides, the learned Principal District Munsif, Cuddalore has recorded the memorandum on 08.08.2005 and directed the document, which was sought to be received, to be received subject to proof and relevancy. The contention with regard to the doctrine of res judicata raised by the revision petitioners/plaintiffs was turned down.

8. Being aggrieved by the impugned Order dated 08.08.2005, the present revision petition is filed by the plaintiffs.

9. When the revision petition came up for hearing, the respondents 1 to 3 were not present and there was also no representation on their behalf. It was also represented that the second respondent remained ex parte in the suit and therefore notice in respect of R2 was dispensed in view of the endorsement made by the learned counsel for the revision petitioners.

10. Keeping in view of the above circumstance, there is no other option for this Court to dispose the revision petition on merits in the absence of the respondents after hearing the learned counsel appearing for the revision petitioners.

11. From the Order of the learned Principal District Munsif, it is revealed that the suit in O.S.No.327 of 2002 stood posted for the examination of D.W.4 on

27.04.2005. On that date, his proof affidavit (in chief examination) was also filed and along with his proof affidavit a memorandum was also filed to receive the document produced along with it.

12. An objection was also filed on behalf of the revision petitioners/plaintiffs on 03.06.2005 and after hearing both sides, it was ordered that the document, which was sought to be produced might be received subject to proof and relevancy and accordingly the memorandum was recorded.

13. It is also revealed that on 09.06.2005, D.W.4 was not present. Even after crossing of several hearings viz., 15.06.2005, 16.06.2005, 20.06.2005 and 23.06.2005, D.W.4 was not present. Therefore, another memorandum was filed on behalf of the first revision petitioner/D1 to receive the very same document. Since, D.W.4 was not able to appear and not examined, the earlier Order dated 09.06.2005 saying that the document produced along with the memorandum could be received subject to proof and relevancy, was set aside and the memorandum was also rejected.

14. In this connection, Mr.R.Gururaj, learned counsel appearing for the revision petitioners has argued that the previous Order dated 09.06.2005 rejecting the memorandum to receive the document operates as res judicata to the subsequent memorandum through which the same document was sought to be produced and the doctrine of res judicata applies at two stages of the same proceedings.

15. In support of his contention, he has placed reliance upon the following decisions: i. Narayana Prabhu Venkateswara Prabhu vs. Narayana Prabhu Krishna Prabhu (dead) by L.Rs., reported in AIR 197.SC 1268.ii. Y.B.Patil and others vs. Y.L.Patil, reported in AIR 197.SC 392.and iii. Satyadhan Ghosal and others vs. Smt.Deorjin Debi and another, reported in AIR 196.SC 941(1).

16. In the given circumstance, it is incumbent on this Court to extract the proviso to Section 11 of the Code of Civil Procedure. "11.Res Judicata.- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same

title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court." 17. The issue involved in this revision petition comes under Explanation-VIII to Section 11 C.P.C., It reads as follows: "Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised." 18. As rightly argued by Mr.R.Gururaj, learned counsel appearing for the revision petitioners, the doctrine of res judicata applies as between two stages of the same litigation. The Court whether the trial Court or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceeding. This proposition is laid down in Satyadhan v. Deorajin, sup; Arjun vs. Mohindra, reported in 1964 SC 993.The same principle has also been laid down by the Apex Court in C.V.Rejendran vs. N.M.Muhammed Kunhi, reported in AIR 200.SC 64.(650).

19. In Rekha vs. Additional Chief Judicial Magistrate, Deoria, reported in 2003 AIHC 75 (756) (All), it is held that general principles of res judicata are broad enough to apply to miscellaneous proceedings and orders passed at different stages of the same litigation.

20. On coming to the instant case on hand, the learned Principal District Munsif, Cuddalore has observed in his Order that since the earlier Order was not passed finally after hearing both sides, the doctrine of res judicata would not be made applicable and therefore the decisions cited on behalf of the revision petitioners in AIR 197.SC 392.AIR 197.SC 143.and AIR 196.SC 94.were rejected. But, the findings of the learned Trial Judge is absolutely wrong and liable to be set aside.

21. Since the earlier memorandum was rejected and the document, which was sought to be produced was also rejected, for the very same purpose, the subsequent memorandum through another witness cannot be filed as the earlier Order of rejection operates as res judicata as contemplated under Section 11 of the Code of Civil Procedure.

22. In the result, this civil revision petition is allowed and the impugned order dated 08.08.2005 and made in the Memorandum filed in O.S.No.327 of 2002, on the file of the learned Principal District Munsif Court, Cuddalore is set aside and the memorandum dated 23.06.2005 is rejected. Consequently, connected miscellaneous petition is closed. No costs. 08.01.2013 Index : Yes/No Internet : Yes/No krk To: The Principal District Munsif Principal District Munsif Court, Cuddalore T.MATHIVANAN, J.

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