

IN THE COURT OF THE DISTRICT MUNSIF : PATTUKOTTAI.

Present :- Thiru. G. Sathiakumar, B.Sc., B.L.,
Judicial Magistrate, Fast Track Court, Pattukkottai.
District Munsif, Pattukkottai. (Full Additional Charge)
Saturday the 4th day of January 2020
OS 1/2016

T. Rajasekaran

. . . Plaintiff

-Vs-

1. S.Thiruchitrambalam, (Died)
 2. The Sub Registrar, Adirampattinam
 3. The District Registrar, Pattukkottai
 4. The Tahsildar, Pattukkottai
 5. The State of Tamil Nadu rep by
The District Collector, Thanjavur
 6. Kalpana
 7. Bhuvaneshwari
 8. Indrakshi
 9. Dhanalakshmi
- (The 6th to 9th defendants are the legal heirs
of 1st deceased defendant as per order in
IA-421/2017 Dated: 03.10.2017)

. . . Defendants

This suit came before me for final hearing on 13.12.2019 in the presence of Thiru. V. Prakash, advocate for the plaintiff and Government Pleader, advocate for the D2 to D5, Thiru. M.Selvaraj, advocate for the D8 and Thiru. R.Govindaraju, advocate for the D9 and D6, D7 are remained *exparte* and D1 died and on perusal of case records, this court hereby delivered the following...

JUDGMENT

1. The suit is filed by the plaintiff for the relief of (i) Permanent Injunction against the 1st defendant and his men in any way making alienation or any encumbrance over the suit property and register the same in the office of the 2nd and 3rd defendant till the disposal of appeals from OS.241/2000 of this court and claim petition filed in EA 2/2015 in EP 6/2011 in OS 153/2007 of the Honourable III Additional District Judge, Pattukkottai, (ii) and restraining the 1st defendant and his men in any way interfering with the peaceful possession and enjoyment of the suit property till the final disposal of the appeals from OS.241/2000 of this court and claim petition filed in EA2/2015 in EP 6/2011 in OS 153/2007 of the Honourable III Additional District Judge, Pattukkottai.

2. The Averments in the plaint as follows:

The plaintiff is the absolute owner of the suit properties. The plaintiff and the 1st defendant had vast extent of ancestral properties. The 1st defendant mother Gnana Poonkothai Ammal also had properties in her name in and around Sengapaduthankadu ,

Pattukkottai and other villages. The 1st defendant involved in political movements and he is a spend thrift and he sold the family properties for his illegal and immoral purposes. Hence the 1st defendant's mother Gnana Poonkothai Ammal maintained the family. In order to save her property during her life time, She executed the registered will dated 13.01.1996. Through the above will she given some properties to the 1st defendant also. She was died on 17.03.1997. After her death the will came into force. The plaintiff and the 1st defendant became owner of their respective properties. Patta also transferred in their name. The 1st defendant sold his properties and wasted the money for his illegal purposes. He sold some properties acquired from his mother through the above will. Not satisfying by selling his properties and ancestral properties the 1st defendant claimed absolute right over the properties in R.S. No. 483,484,485 of Thamarankkottai Village. Hence the plaintiff filed the suit in OS. No. 241/2000 before this court for the relief of declaration as against the 1st defendant and 3 others. The suit was dismissed on 31.01.2007.

After dismissal of the suit, the plaintiff took steps to file an appeal against the decree and judgment of this court. The 1st defendant approached the plaintiff through his close relatives and requested the plaintiff not to file any appeal against the decree. Hence the plaintiff has not preferred the appeal. The plaintiff is in possession and enjoyment of the suit properties. The plaintiff's wife availed loan from the Dhanalakshmi Bank, Athirampattinam in which the plaintiff mortgaged the suit property as security. Due to unexpected financial crisis the plaintiff's wife defaulted in payment of loan. Hence the bank filed a suit for recovery of money in OS.153/2007 on the file of the District Court, Thanjavur. The suit was transferred to the file of the III Additional District Court, Pattukkottai. The exparte decree also passed in the suit. The bank filed execution petition based upon the exparte decree. The 1st defendant filed claim petition before the III Additional District Court, Pattukkottai, and the same was dismissed. Again the 1st defendant filed application U/S 47 of CPC before the III Additional District Court, Pattukkottai in EA 2/2015 in EP 6/2011 in OS 153/2007. In the above petition the 1st defendant relied upon the decree passed in OS 241/2000 and claiming right over the suit properties. The claim petition notice served on the plaintiff in the month of September 2014. The plaintiff filed the appeal against the decree passed in OS 241/2000 with delay and the same is pending before the Sub Court, Pattukkottai in IA 52/2014 in U/F. A.S. /2014. During pendency of this suit the 1st defendant died on 22.04.2007 leaving behind the plaintiff and the 6th to 9th defendants as his legal heirs. The 6th defendant is the wife of the 1st defendant. The 7th to 9th defendants are the daughters of the 1st defendant. Without considering the pendency of the appeal the 1st defendant trying to alienating the suit properties. Hence the plaintiff filed the injunction petition before the III Additional District Court, Pattukkottai and the court directed the plaintiff to workout his remedy by separate suit. On 27.12.2015 when the plaintiff doing maramath work in the suit properties at the time the 1st defendant and some other 3rd party purchasers came to the suit properties in order to sale the suit properties. The plaintiff thwarted their attempt with the help of his men. The threat of the 1st defendant continues till date. The suit properties is in danger of being trespassed. Hence the suit 1st defendant trying to encumber the suit properties and register the same before the 2nd and 3rd defendants. The plaintiff requested the 2nd and 3rd defendants not to register any documents in respect of the

suit properties presented by the 1st defendant. But they declined for the same and directed the plaintiff to workout his remedy through court of law. Hence they are impleaded as the parties to the suit. The 1st defendant trying to transfer the Patta through the 4th defendant. Hence he was added as the party to the suit. The 5th defendant is the superior officer of the 2nd to 4th defendants. Hence he was added as the party to the suit. Hence the suit is filed.

3. The Averments in the written statement filed by the 1st defendant as follows:

The suit is devoid of merits and liable to be dismissed in limine. The averments and allegations made against the 1st defendant in the plaint is absolutely false. It is not true that the mother of the 1st defendant executed the will dated 13.01.1996. The will never came into force as alleged with plaint. It is true that the plaintiff filed the suit in OS 241/2000 before this court as against the 1st defendant and others. The suit was dismissed on 31.01.2007. The 1st defendant never approached the plaintiff and he never requested the plaintiff not to prefer an appeal as alleged in the plaint. It is true that the 1st defendant filed the claim petition in EP 6/2011 in OS 151/2007. There is no cause of action for the suit. This defendant never attempted to trespass in the suit properties on 27/12/2015 as alleged in the plaint. The 1st defendant is the only legal heir of the deceased Gnana Poonkothai Ammal. The 1st defendant is in possession and enjoyment of the properties of Gnana Poonkothai Ammal as her legal heir. Already issue was decided in the suit in OS 241/2000 and held that the will dated 13.01.1996 and 16.12.1983 are not proved. This suit is barred by the principle of res judicata. The decree passed in OS 241/2000 is binding upon the plaintiff. The plaintiff is not entitled for any other reliefs in the suit. Since he has not approached the court with clean hands. The suit is liable to be dismissed with costs.

4. The Averments in the written statement filed by the 2nd to 5th defendants as follows:

The suit is devoid of merits and liable to be dismissed in limine. The defendants have no knowledge about the previous suit between the plaintiff and the 1st defendant. The burden of proof is on the plaintiff to prove the plaint averments. No documents were registered before the 2nd and 3rd defendants office. Joint patta stands in the name of the plaintiff, Muruganantham, Ilayarasi and Rajendran in respect of the properties in survey no. 703/1. The 2nd to 5th defendants are not necessary parties to this suit. The suit is not maintainable due to non service of statutory notice U/S 80 of CPC. There is no cause of action against the defendants. Hence the suit is liable to be dismissed with costs.

5. The 6th and 7th defendants failed to appear before this court. Hence they are set exparte. The 8th defendant appeared through her counsel. But she failed to file her written statement. The 9th defendant appeared through her counsel and filed a memo stating that she adopting the written statement already filed by the 1st defendant.

6. After careful perusal of pleadings and available materials this court framed the following issues on 13.12.2019.

Issues:-

- i) Whether the suit is maintainable, since the right and title of the plaintiff and the 1st defendant was decided by this court in OS 241/2000 ?**
- ii) Whether the will dated 13.01.1996 executed by the Gnana poongothai ammal in favour of the plaintiff is true and valid?**
- iii) Whether the plaintiff is entitled for the relief of permanent injunction restraining the 1st defendant in any manner alienating the suit properties till the final disposal of the appeal preferred by the plaintiff against the decree passed by this court in OS 241/2000 and till the disposal of the claim petition pending before the Honourable III Additional District Court, Pattukkottai in EA 2/2015 in EP 6/2011 in OS 153/2007?**
- iv) Whether the plaintiff is entitled for the relief of permanent injunction restraining the 1st defendant and his men any way interfering with the peaceful possession and enjoyment of the suit property till the final disposal of the appeal preferred by the plaintiff against the decree passed by this court in OS 241/2000 and till the disposal of the claim petition pending before the Honourable III Additional District Court, Pattukkottai in EA 2/2015 in EP 6/2011 in OS 153/2007?**
- v) Whether the court fee paid by the plaintiff is correct?**
- vi) Whether the suit is property valued?**
- vii) Whether the suit is barred by resjudicatta as per the decree passed by this court in OS 241/2000?**
- viii) What other relief the plaintiff is entitled for ?**

7. Heard both side. Records perused. No oral and documentary evidence on either side. This court on perusal of plaint averments found that the suit is not maintainable and the suit is barred by the principle of res judicata. Hence this court is inclined to decide the preliminary issues in respect of maintainability of the suit. Both side agreed to decide the preliminary issues without letting evidence. Therefore this court inclined to decide the preliminary issue of maintainability.

8. Answer for issues no. (i),(ii)&(vii):-

The plaintiff claiming right over the suit properties through the will dated 13.01.1996. the main objection of the 1st defendant is that the suit is barred by the principle of res judicata. Since already the validity of the will dated 13.01.1996 was decided as against the plaintiff in OS 241/2000. The issue of validity of will dated 13.01.1996 was already decided and held that the will not proved. The decree and judgment passed by this court on 31.01.2007 in OS 241/2000 is binding on the plaintiff. Without prefer an appeal against the decree the suit is filed. Considering the above defense, After careful perusal of plaint averments this court found that the plaintiff admitted that the suit filed by him before

this court against the 1st defendant in OS 241/2000 was dismissed on 31.01.2007. But the plaintiff has not filed the decree and judgment along with the plaint. Hence this court was constrained to direct the plaintiff to produce the copy of the judgment and decree passed in OS 241/2000. But the plaintiff failed to produce the same. However the 9th defendant side produced the copy of the judgment passed by this court on 31.01.2007 in OS 241/2000. On perusal of the above judgment this court found that the rights and title of the plaintiff and the 1st defendant was elaborately discussed by this court. The issues were framed in respect of the validity of the will dated 13.01.1996 and 16.12.1983. After full trial this court held that the will dated 13.01.1996 and 16.12.1983 is not proved. The issues were answered as against the plaintiff. So it is very clear that the plaintiff claiming right over the suit properties through the will dated 13.01.1996. But judgment was rendered against him as the will dated 13.01.1996 is not proved. Hence the plaintiff have no right to agitate the same issue by way of this suit. The judgment passed by this court in OS 241/2000 is having jurisdiction to determine the suit. The 1st defendant and the plaintiff are the parties to the earlier suit. The judgment passed by this court in OS 241/2000 is binding upon the plaintiff, 1st defendant and the 6th to 9th defendants. The essential ingredients for the application of principle of res judicata is squarely applicable to the facts and circumstances of this case. The decree passed in OS 241/2000 by this court is operate as res judicata as against the plaintiff. The only remedy available to the plaintiff is to prefer an appeal against the decree. But the plaintiff has not produced the materials in respect of the appeal. Without preferring an appeal the plaintiff filed the suit. It cannot be permitted. The principle of res judicata creates bar to this court to try the issue already decided in the previous suit. Therefore there is no necessity to proceed the trial of this case in further.

In addition the relief claimed as against the 2nd and 3rd defendants is bared U/S 86 of the Registration Act 1908. Moreover the plaintiff claiming injunction against the 1st defendant. Subsequently the 1st defendant was died. His LRs were impleaded as the 6th to 9th defendants. This court is of the view that the cause of action against the 1st defendant is not survive on the 6th to 9th defendants. The plaintiff without preferring an appeal seeking injunction restraining the 1st defendant in any manner alienating the suit properties and register the same before the 2nd and 3rd defendants till the disposal of the appeal from OS 241/2000 of this court and claim petition pending before the Honourable III Additional District Court, Pattukkottai in EA 2/2015 in EP 6/2011 in OS 153/2007. And also seeking injunction against the 1st defendant from in any manner interfere with the possession of the plaintiff till the final disposal of the appeal from OS 241/2000 of this court and claim petition pending before the Honourable III Additional District Court, Pattukkottai in EA 2/2015 in EP 6/2011 in OS 153/2007. The above relief claimed by the plaintiff is not sustainable in law. This court is inferior court and have no jurisdiction to pass an order in respect of the subject matters pending before the higher forum ie. Sub Court, Pattukkottai, III Additional District Court, Pattukkottai. The relief of injunction is a discretionary relief it cannot be granted in a mechanical manner. On perusal of records this court found that the plaintiff suppressed many material facts and filed this suit. Hence this court comes to the conclusion that the plaintiff has not come to the court with clean hands. Hence he is not entitled for any relief as claimed in the suit.

In view of the discussions made above this court comes to the conclusion that the suit

is not maintainable before this court and the suit is barred by the principle of res judicata. Hence the preliminary issues were answered as against the plaintiff.

In the result the suit is dismissed with costs.

The Judgment is dictated to the Typist directly, transcribed by her and corrected and pronounced by me in open court, on this the 4th day of January 2020.

District Munsif,
Pattukkottai (FAC)

1. Plaintiff side documents and witnesses :- Nil

2. Defendants side documents and witnesses :- Nil

Court document:

Ex.C1 - The copy of the judgment passed by this court on 31.01.2007 in OS 241/2000.

District Munsif,
Pattukkottai (FAC)