

## **P.R. Hemachandra Babu Vs Rangaraj and Others <BR>Rangaraj and Others Vs P.R. Hemachandra Babu**

**Court:** Madras High Court

**Date of Decision:** March 5, 2007

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 11, 12

**Hon'ble Judges:** S. Rajeswaran, J

**Bench:** Single Bench

**Advocate:** A. Anbarasu, in A. No. 2828/06 and N.D. Baahety, Nos. 1, 3, 4, 9 to 13 in A. No. 3932/06, for the Appellant; A. Anbarasu in A. No. 3932/06 and N.D. Baahety For Respondent Nos. 1, 3, 4, 9 to 13 in A. No. 2828/06, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

S. Rajeswaran, J.

Application No. 2828/2006 has been filed by the plaintiff to stay the operations of all further proceedings by virtue of

the preliminary decree passed in O.S. No. 5031/1996 on the file of the 12th Assistant City Civil Court, Chennai, pending disposal of the above

suit.

2. Application No. 3932/2006 has been filed by defendants 1, 3, 4 and 9 to 13 to dismiss the entirety of the proceedings in C.S. No. 586/2006 as

being barred by both res judicata u/s 11 C.P.C., read with Section 12 C.P.C., and also barred by limitation.

3. The parties are referred to as per their rankings in the suit for the sake of convenience.

4. The plaintiff filed the above suit for the following reliefs, viz.-

a) pass a decree and judgment declaring the Will dated 8.12.1957 and executed by plaintiff's father P.V. Ramasamy Naidu, which was probated

on 9.3.1967 in TOS No. 3/1965 by the High Court is valid and genuine one;

b) declaring that the; plaintiff/executor is the owner of the property after complying with the conditions stipulated on the Will by the testator

c) declaring that defendants 9 to 13 are not entitled to the benefits under the terms and conditions as contained in the Will dated 8.12.1957.

5. It is the case of the plaintiff that the suit schedule property, (i.e.) terraced and storied house and ground of an extent of one ground and 876

sq.ft., situated in eastern side of Veerasami Pillai Street, Peedunaickenpet, Chennai belonged to him as the same was bequeathed to him by his

father by Will dated 8.12.1957. Plaintiff filed O.P. No. 162/1964 for grant of probate and as some of the legal heirs of the testator objected, O.P.

No. 162/1964 was converted as TOS No. 3/1965 and after enquiry, the probate was granted by this Court on 9.3.1967. According to the

plaintiff as per the terms and conditions contained in the Will to act as the executor of the Will, he carried out as per the wishes of the testator. In

suite of that, the defendants filed a partition suit in O.S. No. 5031/1996 on the file of the 12th Assistant City Civil Court and a preliminary decree

was passed erroneously and hence he filed the above suit for the above said reliefs.

6. The plaintiff filed Application No. 2828/2006 praying to stay the operation of all further proceedings by virtue of the preliminary decree passed

in O.S. No. 5031/1996 on the file of the 12th Assistant City Civil Court, pending disposal of the suit.

7. Defendants 1, 3, 4 and 9 to 13 entered appearance through counsel and filed Application No. 3932/2006 under Sections 11 and 12 C.P.C., to

dismiss the entire proceedings in C.S. No. 586/2006 as being barred by Res Judicata and also barred by limitation.

8. Heard the learned Counsel for the plaintiff and the learned Counsel for defendants 1, 3, 4 and 9 to 13. I have also perused the documents filed

and the judgments referred to by them in support of their submissions.

9. Learned Counsel for the defendants submitted that the plaintiff filed O.S. No. 9540/1987 for possession of a portion of the suit schedule

property from his brother late Mr. P.R. Janardhanam, whose heirs are defendants 9 to 13. The trial court dismissed the suit on 30.12.1989 holding

that the Plaintiff is not the owner of the property. The appeal filed in A.S. No. 307/1990 was also dismissed on 22.9.1992 and S.A. No.

1538/1993 was also dismissed on 11.4.2003 and so was the SLP at the admission stage itself. The suit filed by late P.R. Janardhanam for partition

in O.S. No. 5031/1996 was also decreed on 20.1.2004 and no appeal was filed against the preliminary decree. As the right, title, interest and the

claim of the plaintiff were already decided in the above proceedings the present suit is barred by res judicata and also by limitation. The learned

Counsel for the defendants relied on the following decisions in support of his contentions:

1) AIR 1979 S.C.551 (Ishwardas v. State of M.P.)

2) Jai Kishan Dass and Others Vs. Smt Nirmala Devi and Others,

3) Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI) and Another,

4) Junior Telecom Officers Forum and others Vs. Union of India and others,

5) Maghraj Calla Vs. Kajodi Mal,

6) Sulochana Amma Vs. Narayanan Nair, .

10. Per contra, the learned Counsel for the plaintiff contended that in view of the order of this Court in TOS No. 3/1965, the plaintiff is entitled to

reliefs as craved for and the suit is to be decided on merits. He relied on the decisions of the Supreme Court in Shankar Sitaram Sontakke and

Another Vs. Balkrishna Sitaram Sontakke and Others, and Raja Sri Sailendra Narayan Bhanja Deo Vs. The State of Orissa, .

11. I have considered the rival submissions carefully.

12. First of all, all the decisions relied on by the learned Counsel for the parties deal with what is res judicata, its meaning, application and the

principle behind it and there is no quarrel over the same.

13. The point for consideration in the above applications is whether the suit itself is to be dismissed at this stage itself on the ground of res judicata

and limitation.

14. The crux of the argument of the learned Counsel for the defendants is that in view of the decision rendered in O.S. No. 9540/1987, which was

upheld by the Supreme Court and in view of the preliminary decree passed in O.S. No. 5031/1996, the present suit is barred by res judicata.

15. I am unable to accept this submission of the learned Counsel for the defendants. Whether the principle of res judicata and its applications as

decided by the Apex Court and other court in the decisions relied on by him, would apply or not is to be gone into by this Court and only

thereafter a decision can be taken in this regard. The judgments of the suits and appeals and preliminary decree passed are all to be marked and

are to be gone into to find out whether the previous proceedings will act as res judicata. For this purpose, necessary issues are to be framed and

evidence is to be let in. Until that stage comes into play, it is not possible for this Court to dismiss the suit at the threshold itself as prayed for by the

defendants and the application filed by the defendants is premature and the same is to be dismissed.

16. I am not able to comprehend the application in A. No. 2828/2006 filed by the plaintiff to stay the operation of all further proceedings by virtue

of the preliminary decree passed in O.S. No. 5031/1996 on the file of the 12th Assistant City Civil court, Chennai.

17. If at all the plaintiff is aggrieved by the preliminary decree, he has to challenge the same in a manner known to law and he cannot convert eh

present Original Suit proceedings into appellate court proceedings as if this Court was sitting in appeal over the preliminary decree passed by the

City Civil Court. Thus this application filed by the plaintiff is devoid of any merits and the same is dismissed.

18. In the result, both the applications are dismissed. No costs.