

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

S.C. SUIT NO. 827 OF 1978

Shri Mahila Griha Udyog Lijjat Papad
& Anr. ...Plaintiffs
vs.
Pushpa Berryof Jabalpur & Ors. ...Defendants

Mr.Bharat Joshi for the Plaintiffs.
Mr.Sanghi, Sr.Counsel i/b. Mr.Munir Merchant for
Defendant No.1.

CORAM : V.M. KANADE, J.

DATED : SEPTEMBER 14, 2009

P.C. :-

1 Heard Counsel for the plaintiffs and
Counsel for the Defendants.

2 Counsel for the defendants has raised
preliminary objection in respect of the
maintainability of the present suit. It is submitted
that the defendants herein had filed the suit in the
Civil Court Jabalpur vide Case No.2-A/2003. He

submitted that the issue involved in the said suit was substantially the same issue which is involved in the present suit. He further submitted that the parties in this suit as also the suit which was filed in the Jabalpur Court are the same. He further submitted that a decree was passed in favour of the defendants by the Jabalpur Court. He submitted therefore, that the present suit is barred by the principles of res judicata.

3 Shri Bharat Joshi, learned Counsel for the plaintiffs, on the other hand, submitted that this suit is not barred by principles of res judicata since the plaintiffs had filed an appeal against the judgment and decree passed by the Civil Court, Jabalpur, in Case No.2-A/2003 and the said appeal was pending and in view of the catena of judgments of this Court and the Apex Court and in view of the pendency of the appeal, the issue involved is not barred by the principles of res judicata. He relied on various judgments of the Apex Court viz. :-

1) K. Muthuswami Gounder vs. N. Palaniappa Gounder
reported in (1998) 7 SCC Page 327,

2) Narayana Prabhu Venkateswara Prabhu, Appellant
vs. Narayana Prabhu Krishna Prabhu (dead) by
L.Rs., Respondent, reported in AIR 1977 SC 1268.

He also relied on the judgment reported in AIR 1931
Privy Council 263 in the case of S.P.A. Annamalay
Chetty vs. B.A. Thornhill.

4 Counsel for the defendants, on the other
and, relied on the judgments of the Apex Court in
the case of 1) Ram Gobinda Daw and others vs. Smt.H.
Bhakta Bala Dassi etc., reported in AIR 1971 SC 664,
2) Sheodan Singh, Appellant v. Daryao Kunwar,
Respondent, reported in 1966 SC 1332 and 3) Saroja
v. Chinnusamy (Dead) By L.Rs. And Another, reported
in AIR 2007 SC 3067.

5 A short controversy involved, according to
the plaintiffs, in this suit is that the defendants

are the members of their Jabalpur branch and by a resolution, they have cancelled the membership of the said branch and as such, it is alleged that they are not entitled to use their trade mark Lijjat or their name Shri Mahila Griha Udtog Lijjat Papad . The defendants, on the other hand, in the suit which was filed at Jabalpur had contended that the resolution which was passed by the plaintiffs herein were illegal and contrary to the Articles of Association and as such, prayed for an order of restraining them from preventing the defendants herein from carrying on business under the said branch name or using the trade mark.

6 In my view, taking into consideration the issues which are framed in the present suit and the suit which was filed in Jabalpur Court as also the written statement filed by the plaintiffs herein in the Jabalpur Court and the plaint which is filed in the present case, in my view, the issue involved in both the suit is substantially the same. However,

since the suit has been decreed by the Jabalpur Court and the appeal has been filed by the plaintiffs herein before the District Court, Jabalpur, the said finding given by the trial court, Jabalpur, has not attained finality as such it cannot be said that the said issue is barred by principles of res judicata. The ratio of the judgment on which reliance is placed by the Counsel for the plaintiffs, in my view, squarely applies to the facts of the present case right from Privy Council in the case of **S.P.A. Annamalay Chetty vs. B.A. Thornhill** (AIR 1931 Privy Council 263 to **K. Muthuswami Gounder vs. N. Palaniappa Gounder** reported in (1998) 7 SCC Page 327 have consistently taken a view that during the pendency of the appeal, suit cannot be dismissed on the ground of res judicata since the finding has not attained finality. The submission made by the defendants, therefore, that the suit is barred by the principles of res judicata should be dismissed on that ground cannot be accepted at this stage.

7 There is some substance, however, in the submission made by the defendants that if the suit cannot be dismissed on the ground of res judicata, this suit being the second suit filed by the plaintiffs herein will have to be stayed and till the appeal which is filed by the plaintiffs herein in the Jabalpur Court is decided. In my view, there is much substance in the said submission since the appeal is already pending in the Jabalpur Court. I am informed that the said appeal is ripe for the final hearing. Hence, this suit will have to be stayed under the provisions of Section 10 of CPC.

8 Suit, accordingly, is adjourned sine die. Liberty is granted to the parties to apply for hearing of the suit if the appeal is heard and disposed of.

(V.M. KANADE, J.)