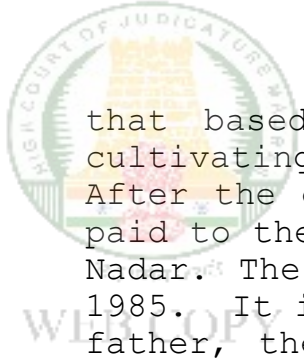




that based on the said lease, the said Dharmasakayam had been cultivating the suit schedule property by paying the lease rent. After the death of Neelakutti Nadar in the year 1982, the rent was paid to the defendant, who is the legal representative of Neelakutti Nadar. The plaintiffs' father Dharmasakayam also died in the year 1985. It is claimed by the plaintiffs that after the death of their father, the lease hold right over the suit properties devolved on them, their brother Yona and their mother Kamalam. It is stated that subsequently, there was an oral arrangement in the family and the said lease hold right was given exclusively to the plaintiffs. The plaintiffs also claimed to have paid rent upto December, 1988. In the meanwhile, the plaintiffs also have planted rubber trees and have been taking the usufructs from the same. The plaintiffs' mother and his brother Yona had filed a suit in O.S.No.24 of 1992 for specific performance. The suit was dismissed and on appeal, it was confirmed. As the plaintiffs are not the parties in the said suit, the same did not bind on them. The defendant was attempting to interfere with the peaceful possession of the plaintiffs. Hence, the suit was filed.

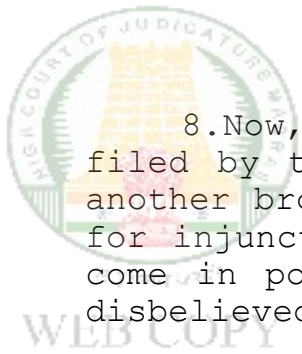
3. The suit was resisted by the defendant contending that the plaintiffs have no right over the suit properties and the present suit is barred by *res judicata*, in view of the the judgment and decree passed in O.S.No.164 of 1992 in favour of the defendant. Thus, he prayed for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiffs, the sixth plaintiff was examined as PW1 and the other witnesses were examined as PW2 and PW3 and Ex.A1 was marked. On the side of the defendant, the defendant herself was examined as DW1 and Exs.D1 to D6 were marked. Both the Courts below have concurrently non suited the plaintiffs. Aggrieved by the same, the plaintiffs have come up with the above second appeal.

5. At the time of admission, only notice was ordered.

6. Heard the learned counsel for the appellants and the learned counsel for the respondent.

7. It is now pointed out by the learned counsel for the respondent that even in the earlier suit, the allegation of the plaintiffs that they became the tenant under Neelakutti Nadar, after the death of their father, was found to be incorrect. The father of the defendant died in the year 1982. Whereas, the plaintiffs' father died only in the year 1985. As the defendant's father died prior to the death of the plaintiffs' father, the case of the plaintiffs that they had been paying the rent only to the defendant's father, cannot be true. In the very same suit, it has been held that neither the plaintiffs nor their father was in possession of the suit property, against which there was no appeal filed and the said decree was allowed to become final.



8. Now, it is claimed by the plaintiffs that since in the suit filed by the defendant for permanent injunction, their mother and another brother alone were parties, they had filed the present suit for injunction. However, they have not stated as to how they have come in possession of the suit properties. Hence, their claim was disbelieved by the Courts below.

9. The plaintiffs also claimed adverse title against the defendant. It is pointed out that there was a suit in O.S.No.164 of 1992 by the defendant against the plaintiff's mother and another brother, and the said suit was also decreed. Even as early as in the year 1992, it has been decided that neither the plaintiffs nor their members of the family had no right or possession over the suit properties and granted a decree in favour of the defendant, the plaintiffs are not entitled to the suit relief. The plaintiffs are also claiming the title by adverse possession against the defendant. Once adverse possession is pleaded, the ownership of the defendant is admitted. If the ownership is admitted, then, he cannot ask for injunction against the true owner. In the light of the above facts, the plaintiffs are not entitled to the relief sought for and the concurrent findings of the Courts below need not be interfered with, in the absence of any question of law arising for consideration.

10. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Nagercoil (Camp Court Judge, Padmanabhapuram).
 2. The Principal District Munsif, Padmanabhapuram.
 3. The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.
- + 1 CC TO Mr.R.MANIMARAN, ADVOCATE IN SR No. 78073
+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 78105

GCG

TE/MR-KKR/SAR-IV : 09/10/2017 : 3P/6C

S.A.(MD) No.410 of 2015 &
M.P(MD) .No.1 of 2015
11.09.2017