

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.08.2019

PRONOUNCED ON : 26.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.23 of 2011

L.Venkatraman ... Appellant/Respondent/Plaintiff

Vs.

Narasus Coffee Company
represented by its Managing Partner,
S.Sivanandham,
S/o R.P.Sarathy,
Court Road, Hasthampatty,
Salem 7 ... Respondent/Petitioner/Defendant

Prayer: Appeal Suit filed under Section 96 of Civil Procedure Code and order 41 Rule 1 and 2 of CPC as against the fair and final order of the Additional District Judge (Fast Track Court No.1), Salem in I.A. No.1278 of 2008, in O.S. No.143 of 2006, dated 26.03.2009.

For Appellant : Mr.A.K.Kumarasamy, Senior Counsel
for M/s.S.Kaithamalai kumaran

For Respondent : Mr. S. Prabhakaran, Senior Counsel
for M/s. I.Arokiasamy

JUDGMENT

Aggrieved over the fair and decreetal order dated 26.03.2009, passed in I.A. No.1278 of 2008, in O.S. No.143 of 2006, on the file of the Additional District Judge (Fast Track Court No.1), Salem, the plaintiff has come forward with the First Appeal.

2. Petition filed under Order 7 Rule 11 and Section 151 Civil Procedure Code.

3. The case of the petitioner/defendant in brief is that the petitioner is the defendant in the suit and the respondent/plaintiff has laid the suit for declaration and permanent injunction claiming that he has perfected title to the suit property by adverse possession as though it was entrusted to him for putting up a superstructure and the claim of the respondent/plaintiff cannot be entertained because huge fraud has been played on the Court by suppressing the real fact that the suit property was taken on lease from the petitioner's firm by the respondent/plaintiff and the lease deed was registered on the file of the office of the Sub Registrar, Salem and the respondent/plaintiff is paying the lease amount and there is a clause in the lease agreement for renewal after the particular period and therefore, the respondent/plaintiff as lessee can never claim ownership and once he is a tenant, he is always a tenant and the claim of the respondent/plaintiff is also barred under the provisions of Section 116 of the Evidence Act and he is estopped from claiming title and the petitioner firm wrote a letter to the respondent/plaintiff asking for certain documents, vide reply dated 07.09.2007, the respondent/plaintiff sent two documents including two lease agreements dated 07.02.2005 and 06.09.2005 and the abovesaid lease agreement would indicate that the respondent/plaintiff is in the possession of the suit property under the lease agreement and at no point of time had denied the title of the petitioner. However, the property is now worth more crores of rupees and the respondent/plaintiff is adopting fraudulent methods to get the property belonging to the petitioner's firm and hence, the claim of the respondent/plaintiff that he is entitled to the suit property by adverse possession is false and on the abovesaid score alone, the respondent/plaintiff's suit is not maintainable and hence, the plaint has to be rejected at the threshold and hence the petition.

4. The respondent/plaintiff resisted the abovesaid petition contending that the petition is false and unsustainable both in law and on facts and the case of the respondent/plaintiff is that he is entitled to the suit property by adverse possession and accordingly, his right should be declared and therefore, when the respondent/plaintiff has pleaded that he has perfected title by adverse possession, the question of agreement and arrangement said to be made in the alleged memorandum of understanding is of no use. The respondent/plaintiff has already filed an application to implead R.P.Sarathy as a party to the suit and the same is pending and at that point of time, the petitioner is not entitled to gather evidence for the purpose of the present petition and the documents projected by the petitioner are not at all relevant to decide the present suit and hence, the application for rejection preferred in the present suit is not maintainable and liable to be dismissed.

5. The Court below, on an appreciation of the rival contentions put forth by the respective parties and the submissions made, was pleased to entertain the petition preferred by the petitioner for the rejection of the plaint and consequently, rejected the suit laid by the respondent/plaintiff. Impugning the order of the Court below, the present First Appeal has been preferred.

6. The following points arises for determination in the First Appeal:

1. Whether the petition laid by the petitioner/defendant for rejection of plaint is legally sustainable?

2. To what relief the plaintiff/appellant is entitled to ?

3. To what relief the defendant/respondent is entitled to ?

Point No.1:

7. For adjudicating the issues involved in the mater, it would be necessary to assess the pleas set out in the plaint for seeking the reliefs claimed in the plaint. The respondent/plaintiff has laid the suit against the defendant seeking for the relief of declaration of his title to the suit property and for the relief of permanent injunction restraining the defendant from interfering with his possession and enjoyment of the suit property.

8. Briefly stated, according to the respondent/plaintiff, the suit property and other properties originally belonged to the plaintiff's father V.Lakshmi Narasu and for the debts incurred by Lakshmi Narasu, all his properties were brought to sale in the Court auction and Thiru.R.P.Sarathy, son of K.V.Radhakrishna Chettiar purchased all the properties in Court auction and he purchased the same on behalf of the defendant's firm. V.Lakshmi Narasu was doing business under the name of Narasu's coffee and after the purchase of the properties, the defendant continued the business in the name of the Narasu's coffee company and started the business in or about 1967 and at the time of starting the business by the defendant, there was an agreement or arrangement between the plaintiff, who is the only son of V.Lakshmi Narasu and the defendant represented by R.P.Sarathy and by way of the same, R.P.Sarathy had agreed on behalf of the defendant that the suit property should be given to the plaintiff absolutely and there is a bungalow in the suit property, in which, the plaintiff's family are residing and the rest of the suit property are vacant land and the defendant did

not take the possession of the suit property at any point and the same had continued to be in possession of the plaintiff despite Court auction and the plaintiff has been in the possession and enjoyment of the suit property and been asserting his title over the same to the knowledge of the defendant and in fact the defendant did not claim any title to the suit property and therefore, the plaintiff by his long possession for over 38 years by asserting title against the defendant had acquired title to the suit property by adverse possession and the plaintiff has also put some further construction in the suit property and running a school by name Silver Bells Nursery School and due to some difference of opinion between the partners of the defendant's firm, the defendant started to claim that the suit property also belongs to it and as there is no further document executed in favour of the plaintiff recognising his title over the suit property as per the oral arrangement and agreement entered into between the plaintiff and R.P.Sarathy, as above stated, according to the plaintiff, he has been advised to get his title declared through Court of law. Hence, according to the plaintiff, the need for the suit for appropriate reliefs.

9. Thus, on the whole, it is found that the plaintiff has based his possession for claiming title to the suit property only on the plea of adverse possession. It is found that the defendant has also filed a written statement opposing the case of the plaintiff, particularly, his claim of adverse title to the suit property and also his claim of title to the suit property on the basis of the arrangement said to have been entered into between the plaintiff and R.P.Sarathy, the partner of the defendant's firm.

10. Pending suit, it is found that the defendant has moved an application to reject the plaint under Order 7 Rule 11 Civil Procedure Code. In the said application, the defendant has put forth the plea that the plaintiff has been inducted into the suit property only on the lease arrangement entered into with the defendant's firm and in this connection, the defendant's firm would rely upon the lease agreements dated 07.02.2005 and 06.09.2005 and thereby, according to the defendant, inasmuch as the plaintiff had been inducted into the suit property only as a lessee under the defendant by way of the abovesaid lease arrangements, quite inconsistent to the lease arrangement, the plaintiff cannot claim title by way of adverse possession and therefore, according to the defendant, the plea of adverse title for claiming title to the suit property is unsustainable in law and therefore, contended that the suit laid by the plaintiff is legally unsustainable and accordingly, the suit laid by the plaintiff deserves rejection at the threshold. Hence, according to the petitioner/defendant, it has been necessitated to lay the application for the rejection of the plaint.

11. The respondent/plaintiff resisted the petitioner/defendant's said application for the rejection of the plaint contending that the lease arrangement projected by the defendant is not true and unacceptable and the plaintiff has laid the suit against the defendant based on adverse title and therefore, the defendant cannot be allowed to project new pleas for claiming the rejection of the plaint and accordingly contended that the petition laid by the defendant for rejection is legally unsustainable and liable to be dismissed.

12. As rightly contended by the plaintiff's counsel, while considering the application to reject the plaint, we have to mainly take into consideration only the averments put forth in the plaint to conclude whether the cause of action is available for laying the suit or not. i.e., whether the averments contained in the plaint are sufficient for accepting the plaintiff's case and for considering the rejection of the plaint, it is immaterial whether the case as projected by the plaintiff would inevitably result in success or not at the conclusion of the trial. It is rightly put forth that the suit laid by the plaintiff cannot be rejected based on the pleas set out by the defendant.

13. Order 7 Rule 11 Civil Procedure Code projects various grounds under which the plaint can be rejected.

14. The Apex Court as well as our High Court in the various decisions has held that for the purpose of determining whether the suit is liable to be rejected under Order 7 Rule 11 Civil Procedure Code, the Court has to read the plaint on the whole to find out whether the averments contained therein disclose the cause of action and if it does not, the plaint can be rejected by the Court by exercising its powers conferred under Order 7 Rule 11 Civil Procedure Code. The cause of action is a bundle of facts and whether the plaint discloses the cause of action is a question of fact which has to be discovered based on the averments made in the plaint in its entirety. In the light of the abovesaid position, when the plaintiff discloses some cause of action which requires determination by the Court, the mere factors that the plaintiff may not succeed eventually would not be a ground for the rejection of the plaint. Equally, it is found that the stand of the defendant in the written statement or in the application for the rejection of the plaint is wholly immaterial for determining the point whether the plaint is liable to be rejected or not and other than the averments set out in the plaint, no other material should be taken into consideration for arriving at a conclusion whether the same discloses the cause of action or not and in such view of the matter, it is found that the pleas put forth by the defendant

either in the written statement or in the application for rejection of the plaint would be wholly irrelevant and accordingly, it has to be considered whether the suit laid by the plaintiff is liable to be rejected for the reasons set out by the defendants in the application.

15. In the application for the rejection of the plaint, the defendant has set out some lease arrangement entered into between it and the plaintiff qua the suit property. Thereby, according to the defendant, the plaintiff having been inducted into the suit property on the basis of the lease arrangement and in such view of the matter, the plaintiff cannot be allowed to take the plea of adverse title quite inconsistent to the abovesaid arrangement. Therefore, according to the defendant, the suit laid by the plaintiff based only on the plea of adverse possession is not maintainable and on that score alone, the plaint is liable to be rejected. However, the abovesaid lease arrangement projected by the defendant is not admitted by the plaintiff. The plaintiff has strongly refuted the abovesaid case of the defendant and on the other hand, the plaintiff, as could be seen from the averments set out in the plaint, would plead some arrangement with R.P.Sarathy, one of the partners of the defendant's firm for claiming title to the suit property based on adverse title, according to the averments in the plaint, following the agreement and arrangement between the plaintiff and the defendant represented by R.P.Sarathy, the suit property was allowed to be retained in the possession and enjoyment of the plaintiff and since then, it is only the plaintiff who has been exercising his ownership over the suit property and also would put forth that the plaintiff has also put up some further construction in the suit property and running the school therein and thereby, the plaintiff would claim title to the suit property by way of adverse possession on account of his long, continuous possession and enjoyment of the same for several years and when the plaintiff has not pleaded his claim of possession and enjoyment of the suit property based on the so called lease arrangement stated by the defendant in the application for the rejection of the plaint and as above noted, the plaintiff having repudiated the abovesaid case of the defendant in toto and furthermore, when the written statement of the defendant also does not project any such lease arrangement between the plaintiff and the defendant as now sought to be projected and on the other hand, the written statement would only put forth the plea that the defendant's firm had permitted the plaintiff to occupy the suit property and the bungalow lying therein out of good gesture at the instance of Mrs.Mahalakshmi Ammal and the defendant having not taken the plea of any lease arrangement as such for the retention of the suit property on the part of the plaintiff, in such view of the matter, the trial Court seems to have fallen into error in accepting the case of

the rejection of the plaint put forth by the defendant purely based on the pleas set out by the defendant in the application for the rejection of the plaint.

16. As rightly put forth by the plaintiff's counsel, the trial Court has failed to consider the pleas set out by the plaintiff in the plaint for deciding the question of maintainability of the suit and on the other hand, erred in basing its conclusion mainly on the pleas set out by the defendant in the application for the rejection of plaint, particularly, forgetting for a moment, the abovesaid pleas had been stoutly repudiated by the plaintiff and when as above pointed out, the plaintiff has based his case on the plea of adverse title for sustaining his claim of title to the suit property and whether such a plea is maintainable or not, the same could be determined only based on the evidence to be adduced by the respective parties during the course of trial. In such view of the matter, the Court below is found to have fallen into error in accepting the application for the rejection of the plaint purely based on the pleas set out in the application without adverting to the pleas set out by the plaintiff in the plaint in any manner. On the abovesaid reasonings, it is found that the impugned order of the Court below is liable to be set aside.

17. The defendant's counsel, in support of his contentions, placed reliance upon the decisions reported in CDJ 2017 MHC 4358 (P.Srikanth Vs R.Venkatesan & others), CDJ 1998 SC 1015 (K.K.Modi Vs. K.N.Modi & others), CDJ 2010 SC 044 (Abdul Razak (D) Through L.R.s & Others Vs. Mangesh Rajaram Wagle & others) and CDJ 2019 MHC 2833 (A.Kaleur Rahman & others Vs. P.Kannan & others). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

18. For the reasons aforesaid, the petition laid by the defendant for the rejection of the plaint is not entitled for acceptance and accordingly the Point No.1 is answered in favour of the respondent/plaintiff and against the petitioner/defendant.

Point Nos.2 & 3:

19. In the light of the abovesaid discussions, the fair and decreetal order dated 26.03.2009, passed in I.A. No.1278 of 2008, in O.S. No.143 of 2006, on the file of the Additional District Court, (Fast Track Court No.1), Salem are set aside and consequently I.A. No.1278 of 2008 is dismissed. Accordingly, the First Appeal is allowed. Considering the facts and circumstances of the case, there is no order as to costs.

Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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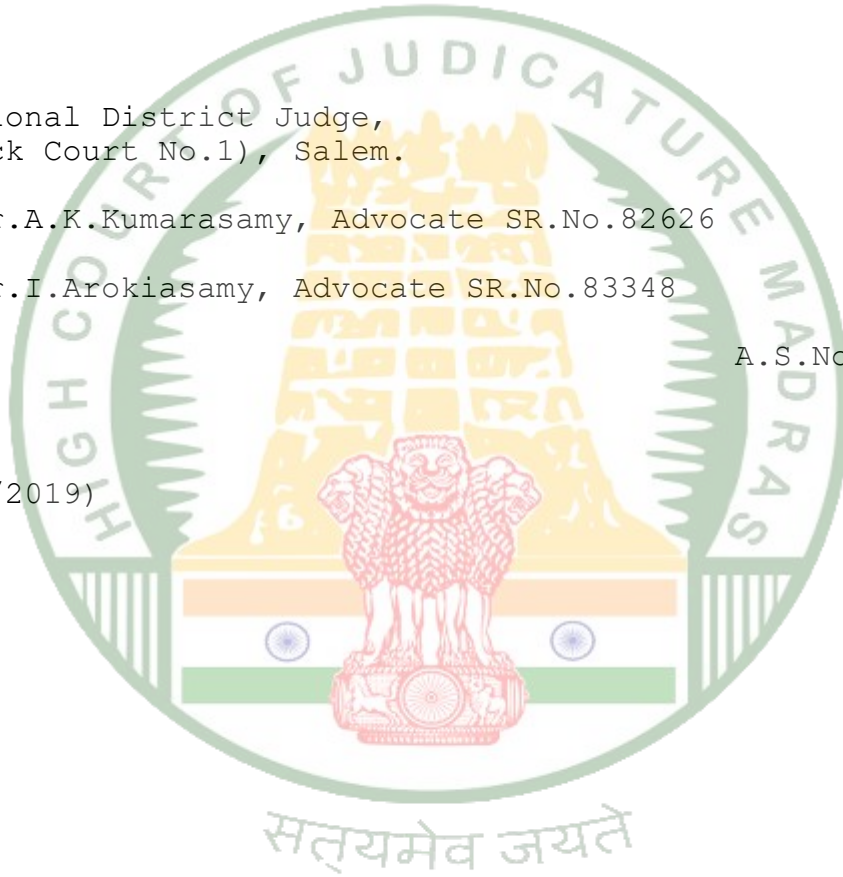
The Additional District Judge,
(Fast Track Court No.1), Salem.

+1cc to Mr.A.K.Kumarasamy, Advocate SR.No.82626

+1cc to Mr.I.Arokiasamy, Advocate SR.No.83348

A.S.No.23 of 2011

VD (CO)
GMY (18/10/2019)



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