

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 26th DAY OF JUNE 2019

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.NO.2777 OF 2019

IN

C.S. No.2 of 2019

P.Sethumadhavan,
No.7/W-363, North Main Road,
Anna Nagar West Extn,
Chennai 600 101Plaintiff

-vs-

Mr.K.A.Liyagath Ali,
Presently running shop at
Old No.15, New No.95,
Santhome High Road,
Ground Floor,
Santhome, Chennai 600 028 ...Defendant

A.No.2777 OF 2019:

Mr.K.A.Liyagath Ali,
Presently running shop at
Old No.15, New No.95,
Santhome High Road,
Ground Floor,
Santhome, Chennai 600 028 ...Applicant/Defendant

-vs-

P.Sethumadhavan,
S/o.Palani Rajkumar,
No.7/W-363, North Main Road,
Anna Nagar West Extn,
Chennai 600 101 ...Respondent/Plaintiff

Application praying that this Honble Court be pleased to reject the Plaint in C.S.No.2/2019 with exemplary costs.

This Application coming on this day before this court for hearing the court made the following order:

This application has been filed seeking rejection of the plaint on the ground that the suit has been filed 12

years from the date on which, according to the plaintiff, the defendant trespassed into the property.

2. The suit is one for recovery of possession. Mr.S.Thanga Sivan, learned counsel for the defendant would rely upon the averments made in the plaint in O.S.No.3624 of 2001, which are to the effect that the defendant had trespassed into the property in the year 2001 itself. The suit, which was for injunction came to be dismissed in the year 2006. The defence of the defendant, who is the applicant herein, in that suit was that he was put in possession pursuant to the agreement of sale and he has paid a sum of Rs.12,60,000/- as advance therefore, he is entitled to protection under Section 53-A of the Transfer of Property Act. Subsequent there to, the plaintiff himself as the power agent of his brother P.Ramu @ Ramamoorthy filed a suit in C.S.No.873 of 2006 seeking recovery of possession. The said suit was dismissed by this Court on 05.11.2014 and an appeal was filed against the said dismissal by the plaintiff in O.S.A.No. 56 of 2015. The said original side appeal was dismissed by the Hon'ble Division Bench of this Court by order dated 02.07.2018 concluding that the plaintiff in C.S.No.873 of 2006 namely, P.Ramu @ Ramamoorthy had no right to maintain the suit having released his rights over the property in favour of the present plaintiff. The Hon'ble Division Bench of this Court had also vacated the findings of the learned Single Judge of this Court and dismissed the appeal

on the sole question of *locustandi*.

3. After disposal of the appeal, the plaintiff had come forward with the present suit seeking recovery of possession. It is in the above backdrop, the defendant has come forward with this application seeking rejection of the plaint on the sole ground that the suit has been filed 12 years after the date on which, the defendant has trespassed into the property, according to the plaintiff. I do not think that the suit can be said to be barred by limitation on the face of it. Of course, a Hon'ble Division Bench of this Court in **Dr.L.Ramachandran and another Vs. K.Ramesh and Others reported in 2015(5) CTC 629** has held that the plaint can be rejected, if it is ex-facie barred by limitation.

4. On the facts narrated above, I find that the suit cannot be said to be ex-facie barred by limitation particularly, in view of the plea of the defendant in all the earlier proceedings that he is in possession pursuant to an agreement of sale and he is entitled to protection under Section 53-A of the Transfer of Property Act. A person, who seeks to protection under Section 53-A of the Transfer of Property Act has to establish the essential requirements regarding readiness and willingness.

Therefore, I am unable to accept the contention of the learned counsel for the applicant that the plaint has to be

rejected since it is *ex facie* barred by limitation. Hence, this application for rejection of plaint is dismissed. No costs.

Sd/.R.S.M.J
26.06.2019

//Certified to be a true copy//
Dated this the day of 2019.

R.s/03.07.2019 COURT OFFICER
From 25.09.2008 the Registry is issuing certified copies of
the Order/Judgment Decree in this format.



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