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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.11.2020

PRONOUNCED ON : 24.11.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.1089 of 2009
and
CMP.No.1 of 2009
and
C.R.P (NPD) .No.927 of 2012

SA.No.1089 of 2009

1. Deenan
2. Devika
3. Varalakshmi
4. Deepa (minor)
rep.by her next friend
and mother Devika
5. Sivakami

.... Appellants/Plaintiff

Vs

1. Janakiraman
2. Kanchanamala
3. Karpagam
4. Deepak

.... Respondents/Respondents

CRP (NPD) No.927 of 2012

1. Deenan
2. Devika
3. Varalakshmi
4. Deepa (minor)
rep.by her next friend
and mother Devika
5. Sivakami

.... Petitioners/Appellants

Vs

1. Janakiraman
2. Kanchanamala
3. Karpagam
4. Deepak

.... Respondents



Prayer in S.A.No.1089 of 2009: This Second Appeal has been filed under Section 100 of CPC against the Judgment and decree dated 30.01.2009 made in A.S.No.22 of 2008 on the file of the Subordinate Judge, Poonamallee confirming the judgment and decree dated 28.01.2008 made in O.S.No.765 of 2004 on the file of the District Munsif Court, Poonamallee.

Prayer in CRP(NPD).No.927 of 2012: This Civil Revision Petition has been filed under Section 115 of CPC against the dismissal of delay excuse petition in I.A.No.254 of 2009 in unnumbered A.S.(SR) No.11711 of 2009 on the file of the Sub Judge, Poonamallee dated 18.07.2011.

For Appellants/ Petitioners : Mr.G.Sugumaran
(in both SA and CRP)

For Respondents : Mr.Bharath Kumar for R1
(in both SA and CRP)
R2 and R4 in CRP given up in CRP
R3 dismissed in CRP
R2 to R4 Dispensed with (NDW) in
SA.No.1089 of 2009

COMMON JUDGMENT

The Second Appeal in S.A.No.1089 of 2009 has been filed by the plaintiffs against the Judgment and decree passed by the Sub-Judge, Poonamallee, in A.S.No.22 of 2008 dated 30.01.2009 confirming the Judgment and decree passed by the District Munsif, Poonamallee, in O.S.No.765 of 2004 dated 28.01.2008.

The Civil Revision Petition in CRP (NPD) 927 of 2012 has been filed by the petitioners/appellants/plaintiffs against the dismissal of their application in I.A.No.254 of 2009 in unnumbered AS (SR)No.11711 of 2009 on the file of the Sub Judge, Poonamallee dated 18.07.2011.

2. As per the order passed by My Lord The Hon'ble The Chief Justice dated 04.09.2020, the Second Appeal and the Civil Revision Petition have been posted before me for disposal. Accordingly, both the matters have been taken up for hearing together and disposed of by this common Judgment.

3. The appellants in Second Appeal and the petitioners in Civil Revision Petition had filed a suit in O.S.No.765 of 2004 on the file of the District Munsif, Poonamallee to declare that they are entitled to occupancy rights as heirs of late Ragavalu Naidu in the schedule site; for recovery of vacant possession of "B" schedule site after removing the defendants 1 and 2, their men, servants and agents and their



super structure there from; for a permanent injunction restraining the defendants, their men, etc, from interfering with their peaceful possession and enjoyment of the "C" schedule property till they are evicted by due to process of law and for damages of Rs.10/- per day from the date of plaint till the date of recovery of "B" schedule site from the defendants 1 and 2.

4. The learned District Munsif by the Judgment dated 28.01.2008 had dismissed the said suit with costs. Feeling aggrieved, the plaintiffs had filed an appeal in A.S.No.22 of 2008 on the file of the Sub-Judge, Poonamallee in respect of the prayer - "C" in the plaint namely permanent injunction in respect of "C" schedule property till they are evicted by due process of law alone. The learned Sub-Judge, Poonamallee by the Judgment dated 30.01.2009 had dismissed the said appeal confirming the Judgment and decree passed by the learned Principal District Munsif, Poonamalle in O.S.No.765 of 2004 dated 28.01.2008.

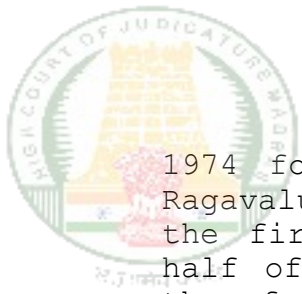
5. Feeling aggrieved, the plaintiffs have filed the Second Appeal in S.A.No.1089 of 2009.

6. In respect of the dismissal of other prayers made in the plaint, the plaintiffs had filed a separate appeal along with an application in I.A.No.254 of 2009 on the file of the Sub-Judge, Poonamallee under Section 5 of the Limitation Act to condone the delay of 615 days in filing appeal. The learned Sub-Judge, Poonamallee by the order dated 11.07.2011 had dismissed the said application. Feeling aggrieved, the petitioners/appellants/plaintiffs have filed the Civil Revision Petition in CRP (NPD).No.927 of 2012.

7. For the sake of convenience, the parties are referred to as described before the trial court.

8. The averments made in the plaint are in brief as follows:

(a) The Suit " A" Schedule house site originally belonged to one Sundarambal who had leased out the same to one Ragavalu Naidu orally in the year 1963. The said Ragavalu Naidu had constructed a house in the suit "A" Schedule Site. Thereafter, the lease deed dated 11.07.1965 was executed for a period of 99 years. The said Ragavalu Naidu in pursuance of the said lease continued to be in possession of the suit "A" schedule property by paying rent to the said Sundarambal. The said Ragavalu Naidu mortgaged the suit property to one Radha Krishnan for a sum of Rs.800/- under a mortgage deed dated 19.02.1968. Subsequently, in the year 1971 the said Ragavalu Naidu had orally mortgaged southern portion of "A" schedule property to one Chinnikrishna Naidu and subsequently he redeemed back the same. The said Ragavalu Naidu orally granted leave and granted licence in southern house portion of "A" schedule property to the second defendant, in the year



1974 for putting up a temporary thatched house. The said Ragavalu Naidu granted leave and licence in the year 1975 to the first defendant in respect of western half of northern half of "A" schedule property to put up a thatched house in the front portion in the northern portion of the plot and he was living in the said portion. The portions were permitted to be occupied by the defendants 1 and 2 is described as suit "B" schedule property and the portion retained by Ragavalu Naidu is described as suit "C" schedule property.

(b) The said Ragavalu Naidu died in the year 1975 survived by the plaintiffs who became entitled to the lease hold rights in the suit "A" Schedule property and also superstructure described in the "C" schedule property. The plaintiffs came to know that the defendants colluded together and fraudulently trying to secure some documents. Hence, the plaintiffs had issued notice dated 08.12.1989 determining the lease and licence of the defendants 1 and 2 in respect of suit "B" schedule property and calling upon them to surrender vacant possession. The defendants 1 and 2 denied the rights of the plaintiffs over the suit "A" schedule property and set up a title for themselves through the reply notice dated 27.12.1989. Hence, the plaintiffs were constrained to file the above suit for the above said reliefs.

9. The averments made in the written statement filed by the first defendant are in brief as follows:

(a). The allegations that the suit "A" schedule property originally belonged to Sundarambal is admitted. However, the allegation that the "A" schedule property was leased out to Ragavalu Naidu is denied. The further allegation that the said Ragavalu Naidu constructed a house in the "A" schedule property also denied. The first defendant viz., Ramasamy Naidu and Ragavalu Naidu took possession of the A schedule property in the year 1963. The said Ragavalu Naidu is the sister's son of the said Ramasamy Naidu. Further, the said Ragavalu Naidu married the first defendant's sister Chinnammal. Therefore, both the families jointly entered possession of the suit "A" schedule property during the year 1963. Entire property was occupied by Ramasamy Naidu and Ragavalu Naidu measuring north-south 45 feet on both sides and east-west 55 feet on both sides. Both the families jointly lived in the suit property. The alleged lease dated 11.07.1965 is denied. The alleged mortgages also denied. The first defendant is in possession and enjoyment of a portion measuring two cents on the north western side of "A" schedule property and the second defendant is in possession enjoyment of the southern portion of the "A" schedule property. There is a 1½ feet land between the properties which are in possession of the defendants 1 and 2. The first defendant is in no way related to the second defendant. The second defendant separately occupied her property. Therefore, the allegations that the suit "B" schedule property is in enjoyment of the defendants 1 and 2 is



denied.

(b) It is true that the Ragavalu Naidu is no more. It is also true that the plaintiffs are the legal heirs of the Ragavalu Naidu. The allegation that the plaintiffs became lease hold right in respect of suit property is denied. The first defendant had purchased northern part of the suit "A" schedule which is measuring 67 feet east-west on both sides and north-south 28½ feet on the western side and 24½ feet on the eastern side, from one Subramaniam who is the son of original owner namely Sundarambal under a registered sale deed dated 20.08.1981. Therefore, the first defendant alone is entitled to the aforesaid property. On the eastern side of the aforesaid property, the plaintiffs are occupying about 2 cents. Since the plaintiffs are close relatives, they were permitted to occupy. Hence, they are not having any right in any portion of the suit property. Since the plaintiffs caused a notice and attempted to claim right over the property, the first defendant demanded them to vacate the property. Subsequently, the plaintiffs have caused a notice and filed the above suit with false claim and therefore, the first defendant prayed to dismiss the suit.

10. The averments made in the written statement filed by the fourth defendant are in brief as follows:

The fourth defendant admits that the said Sundarambal was the owner of land in the year 1966, but, denies the alleged lease in favour of Ragavalu Naidu. The father of the first defendant namely Ramasamy Naidu originally occupied the suit "A" schedule land under oral lease given by the said Sundarambal. The first plaintiff who is the sister of the fourth defendant and the plaintiffs 2 to 4 are the sons and daughter respectively. The first plaintiff married one Ragavalu Naidu who is not a resident of the suit village at that time and settled with Ramasamy Naidu under one family. The said Ragavalu Naidu is the sister's son of Ramasamy Naidu who is the father of the fourth defendant. When there was a talk between Sundarambal and Ramasamy Naidu to have a lease agreement in writing, the said Ramasamy asked Sundarambal to execute the lease deed in the name of Ragavalu Naidu. Accordingly, the said lease deed was executed in the name of Ragavalu Naidu. However, the first defendant and the plaintiffs along with Ragavalu Naidu and Ramasamy Naidu resided in the very same suit land as one joint family. The said lease was not acted upon. After the death of Sundarambal, the defendants 3 and 4 were away from the suit village, they gave power of attorney to their own brother-in-law namely O.V.Gopalakrishnan and he was dealing with the tenants. The said Gopala Krishnan enquired the plaintiffs 1 to 4 since they were also occupying the suit land along with the first defendant. The plaintiffs 1 to 4 stated that they have no objection for executing the sale deed in favour of the first defendant. Accordingly, the sale deed was executed in favour of the first defendant on 20.08.1991 through power agent viz.,



Gopalakrishnan. Therefore, the fourth defendant is in no way connected with the dispute with the plaintiffs and the first defendant. Therefore, the fourth defendant prayed to dismiss the suit.

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11. Based on the aforesaid pleadings, the learned District Munsif, Poonamallee had framed necessary issues and tried the suit. During trial, on the side of the plaintiffs, the fifth plaintiff was examined as P.W.1 and 17 documents were marked as exhibits Exs.A1 to A17. On the side of the defendants, the first defendant examined himself as D.W.1 and one more witness was examined as D.W.2 and they had marked Exs.B.1 to B24 on their side. The report and the plan filed by the Advocate Commissioner were marked as Exs.C1 and C2 respectively.

12. The learned District Munsif, after considering the materials placed before him, dismissed the said suit with costs. Feeling aggrieved, the plaintiffs had filed an appeal in A.S.No.22 of 2008 on the file of the Sub-Judge, Poonamallee in respect of rejection of the prayer [C] alone namely for permanent injunction restraining the defendants from interfering with their plaintiffs peaceful possession and enjoyment of the "C" schedule property till they are evicted by due process of law.

13. The learned Sub-Judge by the Judgment dated 30.01.2009 had dismissed the said appeal and thereby confirmed the Judgment and decree passed by the trial court. Feeling further aggrieved, the plaintiffs have filed the present second appeal.

14. On 06.11.2020, this Court after hearing both sides and perusing the records, has admitted the Second Appeal and formulated the following Substantial Questions of Law.

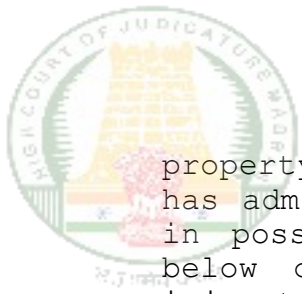
"(i) Whether the First Appellate Court is right in holding that there is no cause of action for the suit filed by the appellants?.

(ii) Whether the Appellants are entitled to permanent injunction in respect of Suit "C" Schedule Property restraining the respondents from evicting them except under due process of law?"

15. Heard Mr.M.Sugumaran, the learned counsel for the appellants and Mr.R.Bharath Kumar, the learned counsel for the first respondent.

16. Substantial Questions of Law 1 and 2:

The learned counsel for the appellants/plaintiffs has submitted that both the courts below failed to consider the admission made by the first defendant in his written statement that the plaintiffs are in possession of the suit "C" schedule



property. He further submitted that since the first defendant has admitted in his written statement that the plaintiffs are in possession of the suit C schedule property, the courts below ought to have granted decree at least for permanent injunction restraining the defendants from disturbing the plaintiffs from the suit property until they are evicted by due process of law. He further submitted that it is well settled that even a tress passer who is in settled possession of a property can be evicted only by due process of law and therefore, he prayed to allow the second appeal and set aside the judgments and decrees passed by the courts below and decree the suit in respect of the prayer C made in the plaint.

17. Per contra, the learned counsel for the first respondent/first defendant has submitted that since the plaintiffs are close relatives to the first defendant, they were permitted to reside in the suit "C" schedule property and they are not having any occupancy right. He further submitted that the first respondent/first defendant has not taken any steps to evict the plaintiffs and as such there is no cause of action for seeking injunction against the first defendant and taking into consideration the aforesaid facts, the trial court had rightly dismissed the suit and the same has been confirmed by the first appellate court and in the said concurrent factual findings, this Court need not interfere. Therefore, he prayed to dismiss the second appeal.

18. The plaintiffs averred in their plaint that one Ragavalu Naidu had been in possession of the Suit "C" schedule property since 1963 as lessee under the original owner Sundarambal and after his death, they are in possession of the said property as his legal heirs and hence, they prayed to grant permanent injunction restraining the defendants, their men, etc from evicting them from the suit property except by due process of law.

19. In the written statement, the first defendant has categorically admitted that the plaintiffs are occupying two cents of land in the eastern part. Further, he has stated that since the plaintiffs attempted to claim right over the property, he demanded them to vacate the property.

20. For proper appreciation, the relevant portion of the written statement of the first defendant is extracted here under :-

" It is true that the plaintiffs caused a notice and the same has been suitably replied by the defendant. Since the plaintiffs attempted to claim right over the property, this defendant demanded them to vacate the property. Subsequently, the plaintiffs have caused a notice and they have filed the suit".



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21. From the aforesaid averments, it is clear that the first defendant had admitted the possession of the plaintiffs over the suit "C" schedule property. However, he took a stand that the plaintiffs are not entitled for any occupancy right over the suit property.

22. At this juncture, it would be relevant to refer to the decision in Rame Gowda (Dead) by LRs /Vs/ M.Varadappa Naidu (Dead) by LRs and another (2004) 1 SCC 769 wherein a Three Judge Bench of the Hon'ble Supreme Court in Paragraph No.8 has held as follows:

" 8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongly dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner".

23. From the aforesaid decision it is clear that even if a trespasser is in settled possession of the property, the original owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. In this case, admittedly, the plaintiffs have been in possession of the suit "C" schedule property since 1963 and in such a case, they can be evicted only by due process of law. As already pointed out that in the written Statement, the first defendant had categorically



admitted that he demanded the plaintiffs to vacate the property. So, there is a cause of action for filing suit against the defendants. Therefore, the plaintiffs are entitled for the relief of permanent injunction till they are evicted by due process of law, but without considering the said facts, the trial court had dismissed the suit in toto and the first appellate court also had mechanically confirmed the same and hence this Second Appeal has to be allowed. Accordingly, the substantial questions of law are answered in favour of the appellants/plaintiffs.

24. In so far as the Civil Revision Petition is concerned, the said petition has been filed by the plaintiffs against the dismissal of their application filed in I.A.No.254 of 2011 in A.S.R.No.11711 of 2009 on the file of the Sub-Judge, Poonamallee. The said I.A.No.254 of 2011 has been filed under Section 5 of the Limitation Act to condone the delay of 615 days in filing the appeal.

25. According to the petitioners/plaintiffs, they had filed a suit in O.S.No.765 of 2004 on the file of the District Munsif, Poonamallee for the relief of declaration of their occupancy right as legal heirs of original tenant viz., Ragavalu Naidu in the suit property ; for recovery of vacant possession of B schedule property after removing the defendants 1 and 2 from the suit property and their superstructure there from and for permanent injunction restraining the defendants from evicting them from the "C" schedule property except under due process of law and also for damages , but, the trial court had dismissed the entire suit and they filed an appeal in A.S.No.22 of 2008 on the file of the Sub Judge, Poonamallee in respect of dismissal of their suit with regard to the prayer "C" alone namely restraining the defendants by means of permanent injunction from disturbing their peaceful possession except under due to process of law. Their further case is that the said appeal also dismissed and only thereafter, they came to know that the said appeal was not filed in respect of the dismissal of the suit pertaining to other reliefs and hence they filed fresh copy application and after getting fresh copies of judgment and decree from the trial court, they filed fresh appeal with a delay execution petition to condone the delay of 615 days, but the appellant court had erroneously dismissed the said application.

26. At this juncture it would be relevant to refer to sub-rule (3) of Rule 2 of Order 2 of CPC which reads thus:-

(3) Omission to sue for one of Several reliefs-- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue any relief so omitted.



27. From the aforesaid provision of law, it is clear that if a person entitled to more than one relief in respect of the same cause of action he may sue for all or any such reliefs, but, if he omits to sue for all such reliefs, except with the leave of the court, afterwards he shall not sue for any relief so omitted. Since, the appeal is continuation of the suit, this court is of the view that the aforesaid provision will apply to the appeal also.

28. In this case, though, the trial court had dismissed the plaintiffs' suit in toto, the plaintiffs had filed an appeal in A.S.No.22 of 2008 only in respect of the prayer to restrain the defendants from disturbing their possession from the suit "C" Schedule property except under due process of law and after dismissal of the said appeal, they filed another appeal along with delay excuse petition, in respect of other reliefs which was omitted in the previous appeal. The said appeal is barred in view of Order 2 Rule 2(3) of CPC another appeal in respect of the relief which were omitted in the previous appeal is not maintainable. Appeal cannot be filed in piece meal. If a person is allowed to file successive appeals in piece meal and that would cause prejudice to the opposite party. Therefore, the procedure adopted by the petitioners cannot be encouraged. When appeal itself not maintainable, the petition to condone the delay in filing the said appeal also not maintainable. The learned Sub Judge, Poonamallee, taking into consideration of the aforesaid facts, had rightly dismissed the said application and this Court does not find any irregularity or illegality in the said order. Therefore, the aforesaid Civil Revision Petition is liable to be dismissed.

29. In the result, the Civil Revision Petition CRP(NPD) No.927 of 2011 is dismissed confirming the order passed by the learned Sub Judge, Poonamallee in I.A.No.254 of 2009 in unnumbered A.S.(SR) No.11711 of 2009. No costs.

The Second Appeal in S.A.No.1089 of 2009 is allowed. No costs. Consequently connected miscellaneous petition is closed. The Judgments and decrees passed by the courts below are set aside. The suit in O.S.No.765 of 2004 on the file of the District Munsif, Poonamallee is partly decreed as follows:-

(i) that the defendants are restrained by means of permanent injunction from evicting the plaintiffs from Suit "C" schedule property except under due process of law;

(ii) that in respect of other reliefs, the judgment and decree passed by the trial court are confirmed; and



(iii) that the parties are directed to bear their respective costs.

Sd/-

Assistant Registrar

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//True copy//

Sub Assistant Registrar

vv

To

1. The Subordinate Judge,
Poonamallee.
2. The District Munsif Court,
Poonamallee.
3. The Section Officer, VR Section,
High Court, Madras.

+2ccs to Mr.G.Sugumaran, Advocate SR.No.37841, 37842

+1cc to Mr.R.Bharath Kumar, Advocate SR.No.38033

S.A.No.1089 of 2009

and

CMP.No.1 of 2009

and

C.R.P (NPD) .No.927 of 2012

VG II (CO)
GMY (03/09/2021)