

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.2325 of 2018 and
CMP.No.14443 of 2018

- 1.P.Vittobah(died)
- 2.R.Premakumari
- 3.Sindhana
- 4.Priyadharshini
- 5.Sridevi

(petitioners 2 to 5 brought on record as LR's
of the deceased sole petitioner viz.,
P.Vittobah vide court order dated 17.04.2021
made in CMP.No.3255 of 2021 in
CRP.No.2325 of 2018

... Petitioners

Vs

- 1.A.LourduRayan
- 2.Secretary,
Tamilnadu Public Service Commission,
Frazer Bridge Road,
Chennai 600 003
- 3.District Collector,
ChhinthanaaiChhirpiSingaravelarMalligai,
Chennai 600 001
- 4.District Collector,
Tiruvallur 602 001
- 5.The Special Officer,
Assistant Director of Town Panchayat,
Thirunindravur, Thiruvallur District
- 6.Assistant Engineer,
Tamizh Nadu Electricity Board,
Thirunindravur, Thiruvallur District 602 024

7. Assistant Engineer,
ThamizhNaadu Water and Drainage Board,
Thirunindravur, Thiruvallur District
8. Village Administrative Officer,
Thirunindravur, Thiruvallur District

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair order and decretal order dated 27.06.2018 in IA.No.1063 of 2016 in OS.No.59 of 2016 on the file of the Additional District Judge No.II at Poonamallee and to allow the application with costs.

For Petitioners : Mr.M.V.Seshachari

For Respondents

R1 : Mr.A.E.Chellaiah,
Senior Counsel
for Mr.K.Ramanujam

R2 to 8 : Mr.Edwin Prabakar,
Government Advocate(CS)

ORDER

This Civil Revision Petition is filed against the fair order and decretal order dated 27.06.2018 passed in IA.No.1063 of 2016 in OS.No.59 of 2016 on the file of the Additional District Judge No.II at Poonamallee, thereby dismissing the petition for rejection of plaint.

2. The petitioners are the defendants and the first respondent is the plaintiff. The first respondent filed suit for declaration and mandatory

injunction in respect of the suit property. While pending suit, the first petitioner filed petition for rejection of plaint and the same was dismissed. Aggrieved by the same, the present civil revision petition has been filed.

3. Mr.M.V.Seshachari, the learned counsel for the petitioners submitted that the suit is barred by limitation. The first respondent filed suit for declaration of title in respect of the suit property for recovery of possession in the year 2016 on the basis of the cause of action arose in the month of January 1990. Even according to the first respondent, he came to know the fact that the name board put up in plot No.62 was removed during January 1990 itself and also came to understand that the first petitioner had constructed a house in plot No.62 rather than plot No.61. Immediately, the first respondent herein had spoken to the first petitioner about the exchange of plots. Thereafter, the first respondent herein caused legal notice on 16.04.1990, thereby called upon the first petitioner for demolition of the house constructed in plot No.62 and delivery of vacant possession of plot No.62. The first respondent also will initiate appropriate criminal action as against the first petitioner for trespass and other offences committed by the first petitioner. Therefore, on the cause of action arose in the year 1990, the

present impugned suit has been filed only in the year 2016. The first respondent ought to have filed the suit for recovery of possession on the basis of the title within a period of twelve years from the date on which the possession of the first petitioner become adverse to that of the first respondent as per Article 64 of Limitation Act. Therefore, the essential ingredient of adverse possession has been made out as per the plaint averments, i.e. open, uninterrupted and continuous possession of the suit property by the first petitioner with the knowledge of the first respondent and acknowledging the title of true owner.

3.1 He further submitted that as per Section 9 of Limitation Act, once the time period starts to run, then no subsequent disability or inability to institute a suit or make an application, stops it. Therefore, the cause of action arose for the impugned suit in the month of January 1990 itself and the suit itself is barred by law of limitation. In fact, by order dated 15.09.2015, Sub Collector, Tiruvallur had set aside the report of Tahsildar, Poonamallee Taluk and ordered for resurvey of the suit property. Therefore, the said order is nothing to do with the cause of action to file the present

impugned suit. The specific case of the petitioners is that the first petitioner constructed house in the plot No.61 and not in Plot No.62. Therefore, entire claim of the first respondent is false and frivolous. Only in respect of adverse possession, is made as per the averments of the plaint alone, since for the purpose of deciding the application for rejection of plaint, the plaint averments are alone to be considered. In support of his contention, he relied upon the following judgments:

- (i) ***V.Meenakshysundaram Vs.P.Shanmugam***
reported in **2015 (6) MLJ 520**
- (ii) ***Hardesh Ordes Private Limited Vs. Hede and Company*** reported in **2007 (5) SCC 614**
- (iii) ***K.Murali Vs. M.Mohamed Shaffir***
reported in **2020 (1) CTC 38**

4. Per contra, Mr.A.E.Chellaiah, Senior Counsel appearing for the first respondent submitted that the first respondent filed suit for declaration and mandatory injunction as against the first petitioner herein. Admittedly, the first petitioner and the first respondent purchased the plot Nos.61 and 62 respectively. In fact, the first petitioner pledged the documents in respect of the plot No.61 and obtained loan to construct house. There has been continuous communication between the first petitioner and the first

respondent including the issuance of notice of the year 1990 and promise was given by the first petitioner to the first respondent about amicable settlement as both were working in the Tamil Nadu Public Service Commission, Chennai. Whenever the first respondent approached the first petitioner, he requested to wait till his retirement and thereafter he will settle the matter, since it would affect his retirement. Even then, the first petitioner did not come forward for amicable settlement.

4.1 He further submitted that the first respondent lodged complaint. Both were summoned to attend the enquiry before the Revenue Divisional Officer, Tiruvallur. On receipt of the report, the Sub Collector, Tiruvallur instructed Tahsildar, Poonamallee to remeasure the plots and file a report. Thereafter the first respondent caused legal notice on 07.03.2016, thereby the second respondent herein advised the first respondent to approach the Land Grabbing Cell for legal remedy. Therefore, the first respondent approached by way of the present suit for declaration and mandatory injunction. That apart, the cause of action in the present suit has bundle of facts and issues. It has to be gone into by fulfledged trial by let in

evidence. It cannot be rejected in its limine. He also vehemently contended that there is no continuous, uninterrupted possession of the suit property by the petitioners. The first respondent filed documents from the year 1981 till filing of the suit i.e. 30.03.2016. Therefore, the petitioners cannot claim adverse possession on the plaint averments i.e. after issuance of notice in the year 1990, the present suit has been filed in the year 2016. In support of his contention, he relied upon the following judgments:

- (i) ***State of Haryana Vs. Mukesh Kumar and others*** reported in ***(2011) 10 SCC 404***
- (ii) ***Dagadabai (dead) by LR's Vs. Abbas @ Gulab Rustum Pinjari*** reported in ***2017 (6) CTC 195***

5. Heard, Mr.M.V.Seshachari, the learned counsel for the petitioners, Mr.A.E.Chellaiah, Senior Counsel appearing for the first respondent, and Mr.Edwin Prabakar, Government Advocate(CS) appearing for the respondents 2 to 8.

6. The first petitioner is the first defendant and the first respondent is the plaintiff. While pending the civil revision petition, the first petitioner died and his legal heirs impleaded as petitioners 2 to 5 herein. The case of the plaintiffs is that the deceased first defendant and the first respondent

herein were working in the Tamil Nadu Public Service Commission as Junior Assistants and they purchased plot Nos.61 and 62 respectively. Plot No.61 was purchased by the deceased first defendant and Plot No.62 was purchased by the first respondent herein. The deceased first defendant availed loan to construct a house. He obtained approved plan and mortgaged title deed in respect of plot No.61 for availing loan. Thereafter, he constructed a house in the plot No.62 instead of plot No.61 in the month of January 1990. When the first respondent visited the suit property and questioned about the same. Immediately, the deceased first defendant undertook to settle the issue by exchanging plots by execution of exchange deed. Even after several years, he did not come forward to exchange the plots as undertaken by him. Therefore, the first respondent issued notice on 16.04.1990 thereby called upon the deceased first defendant for sorting out the matter, failing which legal action will be initiated as follows:

(a) By issue of a notice under Section 80 CPC, to the employer viz., the Government of Tamil Nadu rep. by the Secretary to the Government of Tamil Nadu, Personnel and Administrative Reforms (Per.M) Department, Fort. St.George, Madras 600 009 as you had mortgaged the plot

No.61 in favour of Government of Tamil Nadu, to the Collector of Madras who had sanctioned the loan for the construction, and to the Chairman / Secretary, Tamil Nadu Public Service Commission, Government Estate, Madras – 2 to bring to their notice your illegal acts and the misconducts and for necessary actions against you in these regards.

(b) File a suit against you and the aforesaid persons who are necessary parties to the suit for appropriate reliefs and remedies viz. for demolition of the house constructed by you on my client's plot No.62, and for delivery of vacant possession of the said plot No.62, of which my client is the absolute owner, by a mandatory injunction to you to demolish your house constructed on my client's plot and for recovery of all the damages caused to my client; and

(c) Without prejudice to the foregoing, (i.e. (a) & (b) my client will also initiate appropriate criminal action against you for criminal trespass, and for causing illegal loss to my client and thereby making illegal gains for yourself and for cheating my client and the Government of Tamil Nadu and hold you liable for all the costs and consequences incidental thereto.

7. The first defendant paid property tax in respect of the suit property from the year 1982 to 1994. Thereafter, Village Administrative

Officer informed that there is construction of house and assessed to the house tax by the first defendant herein. After obtaining encumbrance certificate, the first respondent on 29.10.2010 had send representations to the second defendant and other officials. Thereafter, by the representation dated 01.11.2010 requested the fourth respondent to conduct enquiry. On receipt of the same, by order dated 15.11.2010, the second respondent issued letter to the deceased first defendant calling for explanation. Thereafter enquiry was conducted by the second respondent and informed the first respondent herein that the fourth defendant directed the Revenue Department to conduct enquiry and survey the disputed site. Thereafter, the first respondent also issued letter dated 22.10.2012 to the third respondent herein. The Tahsildar, Poonamallee inspected the property and surveyed the same. By the report dated 12.12.2012, the Tahsildar categorically stated that the deceased first defendant constructed a house in plot No.62 which is belong to the first respondent herein. Therefore, enquiry was conducted from the year 2010 till the filing of the suit. Finally, by the order dated 15.09.2015, Sub Collector, Tiruvallur set aside the report of the Tahsildar, Poonamallee and ordered for resurvey of the property.

8. Thereafter, the first respondent caused notice to the deceased first defendant on 07.03.2016 and filed the present suit. Therefore, the cause of action for filing the present suit till 07.03.2016 arose and the first respondent herein though issued notice on 16.04.1990, thereafter continuously taking appropriate action as against the deceased first defendant. The cause of action in the present suit has bundle of facts and circumstances. Therefore, the plaint cannot be rejected on the points raised by the deceased first defendant and have to be gone into in fulfilled trial by let in evidence. Therefore, the court below rightly dismissed the petition.

9. In view of the above discussion, the judgments relied upon by the learned counsel for the petitioners are not helpful to the case on hand. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

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C.R.P.(P.D).No.2325 of 2018

G.K.ILANTHIRAIYAN,J.

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To

The Additional District Judge No.II
at Poonamallee



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