



S.A.No.1279 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED 19.09.2022

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.1279 of 2007

1.M.Selvam

2.M.Kanaga

...Appellants

Vs.

P.M.Balasubramanian

...Respondent

PRAYER : Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 22.12.2006 made in A.S.No.159 of 2006 on the file of the Principal Sub Court, Salem reversing the Judgment and Decree dated 20.06.2006 made in O.S.No.9 of 2003 on the file of the Principal District Munsif Court, Salem.

For Appellants	:	Mr.R.Nalliyappan
For Respondent	:	No Appearance

JUDGEMENT

This Second Appeal has been preferred as against the Judgment and Decree dated 22.12.2006 made in A.S.No.159 of 2006 on the file of the



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Principal Sub Court, Salem reversing the Judgment and Decree dated 20.06.2006 made in O.S.No.9 of 2003 on the file of the Principal District Munsif Court, Salem.

2.This matter was heard on 14.09.2022 and since none appeared on behalf of the respondent on that day, the matter was adjourned to 19.09.2022 for the arguments of the respondent. Accordingly, the matter is listed today i.e 19.09.2022. Today also none appeared on behalf of the respondent. Hence, this Court proceeds to pass the following judgment on merits.

3.The appellants herein are the defendants and the respondent herein is the plaintiff in the suit.

4.For the sake of convenience, the parties are referred to as per their ranking before the trial Court.



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5.The above mentioned suit was filed by the plaintiff before the District Munsif Court, Salem for delivery of possession and to direct the defendants to pay damages for the use and occupation.

6.The case of the plaintiff is that while he was doing business in textiles under the name and style of M/s.Shanmuga and Co., the 1st defendant worked as a Clerk under him and since he had committed misappropriation of funds, the plaintiff gave a police complaint and the concerned police were taking efforts to search the 1st defendant. In the meantime, the 1st defendant along with 2nd defendant, approached the plaintiff and agreed to repay the mis-appropriated fund and therefore according to the plaintiff, the defendants executed a sale deed on 24.11.1984 to and in favour of the plaintiff in lieu of the mis-appropriated amount.

7.It is the further case of the plaintiff that immediately after the execution of the sale deed, the defendants handed over the possession of the suit property to the plaintiff and he was in the possession of the same till



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the year 1995 and later, he shifted his residence to Chennai due to his avocation. Taking advantage of this situation, the defendants trespassed and occupied the suit property. This fact has come to the knowledge of the plaintiff only in the year 2003 and immediately, thereafter, he filed the suit for recovery of possession and damages.

8.On the other hand, the case of the defendants is that the sale deed dated 24.11.1984 was executed not on a free will but by way of coercion and threat which prompted the defendants to file a suit in O.S.No.1249 of 1985 against the plaintiff and unfortunately the said suit came to be dismissed for default on 16.04.1993. Even the defendants had mentioned their address as 111-C, East West Lane, Vasuka Salai Street, Ponnammappettai, Salem -1, Salem Taluk and District which is the same address mentioned in the present suit and all the correspondence made by third party was to this address where, the suit property is also situated. Therefore, according to the defendants, while they have been residing continuously in the above mentioned address where the suit property is situated till date and it is not true as alleged by the plaintiff that the



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possession was not handed over immediately after the execution of sale deed and thereafter the defendants trespassed into the suit property when the plaintiff shifted his residence to Chennai for his avocation in the year 1995.

9.In order to substantiate their contention, the defendants submitted that they got marked number of documents during the trial of the suit. Hence, according to the defendants, there is no truth in the averments made in the plaint by the plaintiff and the same is liable to be dismissed.

10.It is further contended on behalf of the defendants that the suit is barred by limitation since the plaintiff has come forward with the suit after 12 years from the date of execution of sale deed seeking for recovery of possession from the defendants and the plaintiff ought to have taken steps under Article 65 of the Limitation Act, 1963 and as such, the possession has to be taken within a period of 12 years from the date of execution of the sale deed. Since he has not made any steps to take possession, the relief sought for in the suit is barred under Article 65 of the Limitation Act, 1963. Hence, the defendants prayed for dismissal of the suit.



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11.On behalf of the plaintiff, P.W.1 was examined and Exs.A1 and A2 were marked and on behalf of the defendants, D.W.1 to D.W.3 were examined and Exs.B1 to B56 were marked.

12.The Trial Court after hearing both the parties has held that the defendants established that they are in continuous possession over the suit property from the date of execution of sale deed dated 24.11.1984 till the date of filing the suit i.e in the year 2003 for about 20 years. Further, the trial Court has come to the conclusion that the plaintiff has not marked a single document to establish the possession over the suit property from 1984 to 1995. Hence, the Court below came to the conclusion that the suit was barred in terms of Article 65 of Limitation Act, 1963 and accordingly, dismissed the suit.

13.Aggrieved by the judgment and decree passed by the Trial Court, the plaintiff preferred an appeal in A.S.No.159 of 2006 before the Principal Sub-Judge, Salem. The said appeal was allowed by judgment dated 22.12.2006 reversing the judgment and decree passed by the Trial Court in



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O.S.No. 9 of 2003 on the ground that the Exs.B38 and B47 are not pertaining to the year 1984 to 1995 and there is no document to show that the defendants were in possession over the suit property from 1984 to 1995. Hence, the lower appellate Court has come to the conclusion that the defendants were not in a possession from 1984 to 1995 in the suit property. Accordingly, the Court below has come to the conclusion the suit was filed in the year 2003 which is well within the period of 12 years and hence, while setting aside the findings of the trial Court, the lower appellate Court decreed the suit and allowed the appeal.

14.Aggrieved over the said judgment and decree passed by the First Appellate Court in A.S.No.159 of 2006 reversing the judgment and decree made in O.S.No.9 of 2003 by the trial Court, the defendants preferred the present Second Appeal.

15.This Court, by order dated 28.11.2007 while admitting the appeal, framed the following substantial question of law for consideration:

“Whether the relief sought for by the plaintiff is barred



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by limitation as he could not prove his dispossession in the year 1995?”

16.The learned counsel appearing for the appellants/defendants would submit that the First Appellate Court, in a mechanical manner, without perusing the relevant documents filed by the defendants, but solely on consideration of Exs.B38 and B47, has come to the conclusion that no other document has been filed by the defendants to prove their possession over the suit property from the year 1985 to 1995.

17.The learned counsel would further submit that the defendants filed number of documents pertaining to the years from 1984 to 1995 and all these documents were not taken into consideration by the First Appellate Court, but unfortunately, only Exs.B38 and B47, which pertains to the years 1995 and 2000 were taken into consideration. Further, the Court below has also not considered the deposition of the D.W.3, who is the adjacent house owner of the defendants, where suit property situates. D.W.3 has categorically stated that the defendants have been residing from 1984 to 1995 in the same premises and these aspects have been completely ignored



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by the First Appellate Court. The defendants are in continuous possession in the suit property and hence, the suit filed by the plaintiff is barred under Article 65 of the Limitation Act, 1963.

18.Heard the leaned counsel appearing for the appellants and perused the materials available on record.

19.The main issue to be decided in the present case is whether the present suit has been filed within a period of limitation i.e 12 year as prescribed under Article 65 of the Limitation Act, 1963 as he could not prove his dispossession in the year 1995?

20.In the present case, the plaintiff filed the suit for recovery of possession. The plaintiff's contention is that on 24.11.1984, the property was purchased by the virtue of the sale deed through Ex.A1. This fact was also admitted by the defendants. However, the defendants' contention is that the sale deed was not executed in a free Will but by way of coercion and threat. Therefore, they filed suit in O.S.No.1249 of 1985 but unfortunately



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the same was dismissed for default on 16.04.1993.

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21.The defendants denied the contention raised by the plaintiff that the defendants were not in possession of the suit property from 1984 to 1995. When such stand was taken by the defendants, it is for the plaintiff to prove his case that he has been in possession of the property from the year 1984 to 1995. However, the plaintiff has not proved his possession. The Hon'ble Apex Court and this Court have held in several judgments on this aspect that no relief could be granted in favour of the person, who fails to prove his possession over the property.

22.In fact, in order to prove that the defendants are in possession of the suit property from 1984 to 1995, they have filed number of documents, viz., i.e Exs.B2, B4, B28, B29, B30, B31 to B37 and B39. However, the First Appellate Court simply stated that the defendants have filed and marked Exs.B38 and B47 and those two documents are pertaining to years 1995 and 2000 and the same will not prove the possession of the defendants



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up to the year of 1995. It appears the First appellate Court, without application of mind and without considering the voluminous documents filed on behalf of the defendants, has erroneously come to the conclusion that the defendants have not proved their possession over the suit property from 1984 to 1995. While evaluating the evidence more particularly, documentary evidence, the lower appellate Court has only relied upon two documents, viz., Exs.B38 and B47 while brushing aside the other documentary evidence and came to the conclusion that the findings rendered by the trial Court are not sustainable, which in the opinion of this Court is liable to be interfered with.

23.Even as regards oral evidence, in order to prove their possession, from 1984 to 1995, the defendants have examined DW.1, who is none other than their adjacent house owner, who has categorically deposed that the defendants are in possession of the property from 1984 to 1995 and no contra evidence rebutting the version of DW.3 has been adduced by the plaintiffs. The First Appellate Court has not considered the deposition of D.W.3/ and no finding was given in this regard.



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24. Therefore, upon consideration of both oral and documentary evidence available on record as well as the submissions made by the learned counsel appearing for the appellants/defendants, this Court is of the view that the defendants have proved their case that they have been in possession of the property from 1984 to 1995 while in order to prove his case, the plaintiff has merely marked two documents, viz., Exs.A1 and A2 sale deeds, no other documents have been marked to establish that he was dispossessed from the suit property in the year 1995 and the defendants trespassed and occupied the suit property and thereby, the suit filed by the plaintiff in the year 2003 for recovery of possession is well within the time and it is not barred by limitation. On the other hand the defendants have proved their continuous possession from 1984 till the date of filing the suit. D.W.3 has also categorically deposed that defendants are in possession from the year 1984 till date of filing the suit. Therefore, it is clear that the suit has been filed after the period of 20 years subsequent to the execution of the sale deed Ex.A1 which would ultimately prove that the suit is barred by limitation under Article 65 to Schedule I of the Limitation Act, 1963. In



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this regard, it is relevant to extract Article 65, which reads as under:

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<i>Description of suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
65. For possession of immovable property or any interest therein based on title. Explanation.—For the purposes of this article— (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.



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<i>Description of suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession		

25.A perusal of Section 65 to Schedule I of the Limitation Act, 1963 would show that the suit has to be filed within a period of 12 years when the possession of the defendant becomes adverse to the plaintiff. In the present case, the suit for recovery of possession has been filed beyond the period of 12 years. Since the plaintiff has not established his case that after execution of the sale deed Ex.A1, he was in possession of the suit property till 1995 and thereafter, he was dispossessed. The deposition of D.W.1 would ultimately prove that the defendants are in possession from the year 1984 to 1995. Therefore, on limitation aspect, since the plaintiff has filed the suit after a period of 20 years, the trial Court has rightly dismissed the suit, but the lower appellate Court, as observed above, without considering both oral and documentary evidence adduced by the defendants, has reversed the well



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considered judgment and decree rendered by the trial Court. Accordingly, the substantial question of law is answered in favour of the appellants/defendants.

26.In the result, the Second Appeal is allowed. Consequently, the judgment and decree passed by the First Appellate Court are set aside and the judgment and decree passed by the trial Court are confirmed. The parties shall bear their own costs.

19.09.2022

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order

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To

1. The Principal Sub Court, Salem
2. The Principal District Munsif Court, Salem.



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KRISHNAN RAMASAMY, J.

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