



S.A.No.76 of 2016

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 11.03.2022**

**CORAM :**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**Second Appeal No.76 of 2016**

1.Vijaya  
2.Usharani  
3.Srinivasan

... Appellants

-Vs-

1.Rajendran  
2.Ganapathy  
3.Vijaya  
4.Rani @ Kalyani  
5.Maheswari  
6.Janaki

... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 21.04.2015 made in A.S.No.18 of 2012 on the file of III Additional Sub Court, Cuddalore confirming the judgment and decree dated 04.01.2012 made in O.S.No.. of 2011 on the file of Principal District Munsif Court, Cuddalore.

For Appellants : Mrs.Jayanthi Venkatesh

For Respondents : Mr.R.Gururaj – for RR 4 to 6  
RR and 2 – Served, No appearance  
R3 – Not ready in Notice – No appearance



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## **J U D G M E N T**

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The plaintiff is the appellant in this Second Appeal.

2. The case of the plaintiff is that the suit property originally belonged to one Kalimuthu Nadar and it was purchased by the father of the plaintiff through a registered sale deed dated 14.12.1981. The suit property is a vacant site measuring about 1487 Sq.ft. According to the plaintiff, it was in the possession and enjoyment of his father and thereafter he is in possession and enjoyment of the same and he has also put up a hut and a service connection has also been given.

3. The grievance of the plaintiff is that the defendants were attempting to interfere with the possession and enjoyment of the property and hence a suit came to be filed in O.S.No.487 of 2007 seeking for the relief of permanent injunction against the defendants. The suit was dismissed on merits and it was further confirmed in appeal.

4. The further case of the plaintiff is that the defendants had illegally taken possession of the property in the guise of conducting 'Theemidhi' festival and in the earlier suit, the title of the plaintiff has not been gone into. Therefore, the present suit was filed by the plaintiff seeking for relief of declaration of title and for delivery of possession.



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5. The suit was rejected by the trial Court through a judgment and decree dated 04.01.2012 on the ground that the present suit amounts to a re-litigation and the present suit is a bar by virtue of the earlier suit that was filed on the same cause of action, which was dismissed and confirmed in the appeal. This was confirmed by the appellate Court in A.S.No.18 of 2012 through a judgment and decree dated 21.04.2015. Aggrieved by the same, the present second appeal has been filed by the plaintiff.

6. Heard Mrs.Jayanthi Venkatesh, learned counsel of the appellant and Mr.R.Guru Raj, learned counsel for the respondents 4 to 6. This Court also carefully perused the materials available on record and the findings of both the Courts below.

7. This Court, while entertaining the second appeal, framed the following substantial question of law.

“Whether the rejection of the plaint by the Courts below *suo motu* on the reason that the dismissal of the earlier suit for injunction filed by the plaintiff is a bar for filing the present suit which is one for declaration and recovery of possession and thus, whether the present suit is barred by Order 2 Rule 2 C.P.C.”



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8. It is an admitted case that for the very same cause of action the plaintiff had filed the earlier suit in O.S.No.487 of 2007, wherein the plaintiff had sought for the relief of permanent injunction. The suit property is admittedly a vacant site. Hence, possession for such a property will run with the title. During the earlier proceedings, both the Courts found that the plaintiff was not in possession of the property and obviously while deciding the same, the question of title became a very relevant factor. While so, the present suit has been filed seeking for the relief of declaration of title and possession. This suit has been rejected by the Trial Court and confirmed in the appeal.

9. This Court does not find any illegality in the decision arrived at by both the Courts below. If really the plaintiff wanted to agitate his right on the same cause of action, the plaintiff ought to have withdrawn the suit under Order 23 of C.P.C., with a leave to file a fresh suit on the same cause of action. This is in view of the fact that the property is a vacant site and the possession cannot be decided without getting into the title. Therefore, if really the plaintiff wanted to establish the title, that effort should have been put in even during the previous proceedings or at least at a later point of time by amending the plaint or withdrawing the suit by seeking leave to file a fresh suit on the same cause of action. Having missed the bus, the same cannot be rectified by filing a fresh suit since it is barred in law.



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10. In view of the above discussion, this Court finds that the reasons assigned by both the Courts are unassailable and cannot be interfered with in the present second appeal. Accordingly, the substantial question of law is answered against the appellant.

11. In the result, the Second Appeal stands dismissed. However, considering the facts and circumstances of the case, there shall be no order as to costs.

**11.03.2022**

Index : Yes/No  
Internet : Yes/No  
KST

To

1. The III Additional Subordinate Judge, Cuddalore.
2. The Principal District Munsif, Cuddalore.



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**N.ANAND VENKATESH, J.**

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