



A.S.(MD)No.69 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.10.2022

PRONOUNCED ON:02.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.69 of 2016

1.Raman(died)
2.Lakshmanan(died) : Appellants / Defendants 1 and 2

3.L.Kamala
4.L.Ashok
5.L.Ananth
6.L.Kasthuri
7.L.Kasthuri :Appellants

(Appellants 3 to 7 are brought on record
as L.Rs of the deceased 2nd appellant vide
order dated 10.02.2022, made in C.M.P.
(MD)Nos.3145 to 3147 of 2021)

8.R.Jeyakodi
9.R.Venkatesan
10.R.Vijayan

(Appellants 8 to 10 and R.5 are brought
on record as L.Rs of the deceased first
appellant vide order dated 20.04.2022
made in C.M.P.(MD)No.3638 of 2022)

Vs.



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Kandappa Chettiar Private
Family trust Kumbakonam
by its Trustees
Kuppusamy Chettiar(Deceased).

- 1.Kandavel
- 2.Kandakumar : Respondents/Plaintiffs
- 3.Murugan
- 4.Mohan : Respondents/ Defendants 3 and 4
- 5.R.Srinivasan : Respondent

PRAYER:- Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree passed dated 29.01.2015 made in O.S.No.14 of 2006, on the file of I Additional District Judge (PCR), Thanjavur.

For Appellants : Mr.Mr.B.Janarth Kumar
Legal Aid Counsel
for A.3 to A.10
(A.1 and A.2 died)

For Respondents :Mr.V.Meenakshi Sundaram
for Mr.G.Mohan Kumar
for R.1 and R.2
: Notice dispensed with for
R.3 and R.4 vide Court order
dated 28.02.2022
: No Appearance for R.5



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JUDGMENT

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The Appeal Suit is directed against the judgment and decree passed in O.S.No.14 of 2006, dated 29.01.2015, on the file of I Additional District Court (PCR), Thanjavur.

2. The gist of the plaint is as follows:

(a) The suit property belongs to Kandappa Chettiar Private Family Trust. The plaintiffs 1 and 2 are the hereditary Trustees of the said Trust. Pending suit, since the first plaintiff Muthu Chettiar had died, his son Kandavel has been impleaded as the plaintiff.

(b) The suit property was occupied by one Govindasamy Padayachi as a tenant. There was a litigation in O.S.NO.18 of 1962, on the file of the Subordinate Court, Kumbakonam between the said Govindasamy Padayachi and the then Trustees of the Trust. During the pendency of the said suit, the parties entered into compromise on 08.11.1963 and in pursuance of the said compromise memo, the parties have entered into a registered sale agreement dated 16.12.1964 between the then Trustees of the Trust and the said Govindasamy Padayachi. As



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per the lease agreement, the lessee Govindasamy Padayachi was entitled to put up a structure in the suit property for his granite stone business. But at the same time, he is not entitled to use the suit property for residential purposes. The said Govindasamy Padayachi subsequently had died intestate in the year 1984, leaving behind his wife Amsam Ammal and without any issues. Amsam Ammal had also died in the year 1992

(c) One Chinnaiyan, S/o Sadayappa Padayachi, who is the brother of the said Govindasami Padayachi and his son Venkatesan along with the defendants 1 and 2 were in possession of the suit property from 1992. Since they attempted to put up residential building in the said property, the then Trustees were constrained to file a suit in O.S.No.370 of 1999, on the file of the District Munsif Court, Kumbakonam for permanent injunction restraining them from constructing a residential building in the suit property. During the pendency of the suit in O.S.No.370 of 1999, the said Chinnaiyan and Venkatesan gave an undertaking that they would not make any construction in the suit property and hence, they were exonerated from the suit. After contest by the defendants 1 and 2, the suit was decreed in favour of the plaintiff Trust on 22.10.2002 and the



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appeal preferred by the defendants 1 and 2 herein in A.S.NO.73 of 2003, on the file of the Subordinate Court, Kumbakonam was dismissed on 13.08.2003. Since the said Chinnaiyan and Venkatesan have abandoned their possession of the suit property, the defendants 1 and 2 have been in possession of the entire suit property. Since the defendants have started to put up new structures, the plaintiffs have preferred a complaint to the police on 13.10.2004 and also sent a telegram to the Electricity Board on 26.10.2004, calling upon them not to give any electric supply. The authorities have not taken any action. Thereafter, the defendants 1 and 2 have leased out the said structures to the defendants 3 and 4 and have been collecting Rs.1,000/- per month from each of the defendants 3 and 4.

(d) The possession of the suit property by the defendants is unlawful. The defendants 1 to 4 are not the tenants of the suit property and there existed no lease agreement between the plaintiff Trust and the defendants. The defendants 1 and 2 are not the legal heirs of the said Govindasami Padayachi. Therefore, the plaintiff Trust has issued a legal notice dated 08.04.2005 calling upon them to deliver the possession of the suit property. Since the defendants have evaded to receive the same,



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the plaintiff Trust is constrained to file the above suit for recovery of possession and claiming Rs.20,000/- towards damages for use and occupation or the past profits and for future mesne profits.

3. The defence of the defendants 1 and 2 is as follows:

(a) The site of the suit property belongs to the plaintiff Trust. The lessee Govindasamy is the grandfather of the defendants 1 and 2 and he had alone brought up them from their childhood and gave his right to the suit property to the defendants 1 and 2 by last Will dated 29.12.1983 and the same came into effect on the death of Govindasamy. The defendants 1 and 2 are enjoying the suit site as lessee under the Trust and as owners of the suit superstructures. The defendants 3 and 4 are the workers under the defendants 1 and 2 and they have got no right in the suit property and as such, they are unnecessary parties to the suit. The defendants 1 and 2 have not raised any new construction in the suit property.

(b) The description of the property is wrong and that the extent and the boundaries are also wrong. The suit on the basis of the lease deed dated 16.12.2004 is legally not maintainable, as the said document never came into force and it was not acted upon. Govindasamy had stopped his



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granite work many years prior to his death and he has constructed a thatched house in the suit property as lessee of the suit property and was paying paguthi to the plaintiff Trust. He was assessed to pay house tax and water tap tax to the Kumbakonam Municipality. The said Govindasamy and the defendants 1 and 2 are only the lessees of the suit site and they are not trespassers.

(c) The plaintiff Trust is not properly represented and that therefore, another Trustee Kamatchi had not joined in filing the suit. The defendants 1 and 2 are always ready and willing to pay paguthi for the suit site as they are the lessees of the suit site as the legal heirs of the deceased Govindasami. Since the defendants 1 and 2 are not trespassers, they are not liable to pay damages. The suit is barred by limitation. Hence, the suit is liable to be dismissed.

(d) The defendants 1 and 2 have filed additional written statement stating that the plaintiffs 3 and 4 being females are not entitled to act as Trustees and they are unnecessary parties and that the suit as framed is not maintainable.



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4. On the basis of the pleadings, the trial Court has framed the following issues:

(1) Whether the defendants are liable to hand over the vacant possession of the suit property, after removing the superstructures therein?

(2) Whether the defendants 1 and 2 are the lessees under the Plaintiff Trust in respect of the suit site?

(3) Whether the description of the suit property is correct?

(4) Whether the suit is bad for non-impleading of the other Trustee – Kamatchi? and

(5) What other relief, the plaintiff is entitled?

5. During trial, the plaintiffs have examined the second plaintiff Thiru.M.Kandavel as P.W.1 and exhibited 10 documents as Exs.A.1 to A.10. The defendants have examined Thiru.Raman and Thiru.Mani as D.W.1 and D.W.2 and exhibited 6 documents as Exs.B.1 to B.6. The trial Judge, upon consideration of the oral and documentary evidence and on hearing the arguments of both sides, has passed the impugned judgment dated 29.01.2015 decreeing the suit as prayed for. Aggrieved by the



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judgment and decree, the defendants 1 and 2 have preferred the present Appeal Suit.

6. In the Appeal Suit, the appellants/defendants 1 and 2 have raised the following grounds:

(1) The Judgment passed by the learned I Additional District Judge is against law, weight of evidence and all probabilities of the case.

(2) The trial Court has failed to see that the defendants 1 and 2 have encroached the suit property and were in possession for which, the plaintiffs have not taken any steps to evict them from the suit property even after passing of 14 years.

(3) The appellants/defendants 1 and 2 have been in possession and enjoyment of the suit property for more than 14 years and as such, they have perfected their title by adverse possession.

(4) All the trustees were not parties to the suit and the suit, without impleading other trustees of the Trust is legally not maintainable.

(5) The learned trial Judge has failed to consider that the appellants constructed a house in the year 1992 and there was no prayer for mandatory injunction to remove the buildings which is not sustainable and it was barred by limitation.



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7. The points that arise for consideration are;

(1) Whether the trial Court erred in not considering that the appellants/defendants have clearly proved the title to the suit property by adverse possession, despite showing that the defendants have been in possession and enjoyment of the suit property for more than 14 years, that the appellants have changed the house tax and water tax in their name and that the plaintiff Trust has miserably failed to take any steps to evict the defendants from the suit property?

(2) Whether the learned trial Judge erred in not deciding that the suit as framed is legally not maintainable, despite showing that all the Trustees of the plaintiff Trust had not joined as plaintiffs?

(3) Whether the trial Court erred in not considering that the suit itself is bared by limitation, despite showing that the plaintiffs have themselves admitted that the defendants were trespassers and are in possession of the suit property for the past 15 years and that the plaintiffs have miserably failed to file the suit within 12 years?

(4) Whether the Appeal Suit is to be allowed?

(5) What other relief, the parties are entitled to?



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8. For the sake of convenience and brevity, the parties will be referred as per their status and ranking in the trial Court.

Points 1 to 5:

9. The factual aspects not in dispute are:

The suit property belongs to the plaintiff Trust. The plaintiff Trust has leased out the suit property previously to Govindasamy Padayachi. During the pendency of the suit in O.S.No.18 of 1962, on the file of the Subordinate Court, Kumbakonam between the said Govindasamy Padayachi and the then Trustees of the Trust, the parties entered into a compromise on 08.11.1963 and in pursuance of the said compromise agreement, both parties have entered into a registered lease agreement dated 16.12.1964. As per the lease agreement, the lessee was entitled to put up superstructure for the granite stone business and that he is not entitled to use the said property for residential purposes and he is also not entitled to sub-lease the suit property or any portion thereof. Govindasamy Padayachi had died intestate in 1984, behind his wife Amsam Ammal and without any issues. Amsam Ammal had also died in 1992.



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10. It is also not in dispute that one Chinnaiyan – Govindasamy Padayachi's brother's son and his son Venkatesan who were in possession of a portion of the suit property, had already gone out of the suit property and they are not in picture as of now. Since the defendants 1 and 2 have been in possession of the suit property by raising some superstructures, the plaintiff Trust has filed the present suit for recovery of possession and for damages. The main defence of the defendants 1 and 2 is that the lessee Govindasamy is their grandfather, that Govindasamy alone had brought up the defendants 1 and 2 with him and gave his rights in the suit property through his last Will dated 29.12.1983 and that the said Will came into force on the death of Govindasamy and that they have been in possession and enjoyment of the suit site as lessee under the plaintiff Trust and as owners of the suit superstructure. Though they have alleged that Govindasamy is their grandfather, they have not elaborated anything further. The defendants have themselves admitted that the said Govindasamy and his wife Amsam Ammal were not having any issues. Though they have alleged that they have obtained leasehold rights in the suit property through the last Will of Govindasamy dated 29.12.1983, they have not even chosen to produce the Will nor any attempt to prove the same.



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11. It is not the specific case of the defendants 1 and 2 that after the death of Govindasamy, they neither attorned to the plaintiff's Trust nor did they pay any rent to the plaintiff Trust. It is also not their case that they have entered into a lease agreement with the plaintiff Trust, or that the plaintiff's Trust has accepted and acknowledged them as the lessees in respect of the suit property. No doubt, generally the plaintiff, who has laid the suit and claimed the relief is duty bound to prove his case and cannot expect the defendant to prove the defence at first. But in the case on hand, since the defendants 1 and 2 have taken a specific stand that they are the lessees in possession and enjoyment of the suit property, the burden is only on the defendants 1 and 2 to prove their right claimed by them. Admittedly, there is absolutely no evidence to show that the defendants 1 and 2 are the lessees/tenants in respect of the suit property.

12. In the present appeal, the defendants 1 and 2 have taken a shocking and surprising defence that since they have been in possession of the suit property for the past 15 years, they have perfected their title by adverse possession. It is pertinent to note that the defendants 1 and 2 have nowhere whispered about the said plea in the written statement or during the trial. It is fundamental that a person claiming adverse



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possession must admit the right and title of the original owner and claim that he has been in possession and enjoyment of the property in dispute, hostile to that of the original owner. In the case on hand, the defendants 1 and 2 in their written statement and in the evidence, have specifically admitted the title of the plaintiff Trust suit property and claimed leasehold right in the suit property. It is necessary to refer the following passages in the written statement for better appreciation:

“2. It is true that the site of the suit property belongs to the plaintiff Trust Now the defendants 1 and 2 are enjoying the suit site as lessee under the Trust and as owners of the suit superstructures.

5. Thus the said Govindasami and the defendants 1 and 2 are only lessees of the suit site and they are not trespassers.

8. The defendants 1 and 2 are always ready and willing to pay paguthi for the suit site as they are lessees of the suit site as the legal heirs of the deceased tenant Govindasami. It is false to state that the defendants 1 and 2 have not attorned to the plaintiff Trust after the demise of Govindasami. In fact the plaintiff's trustees have accepted the defendants 1 and 2 as lessees of the suit site, but since the Trust wrongly supported the about said Chinnayyan and Venkatesan due to their inducement, the plaintiff's Trustees have not given new lease deed to the defendants 1 and 2 eventhough initially they had promised to give the same to the defendants 1 & 2.”



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13. It is not in dispute that since the defendants 1 and 2 along with Chinnayyan and Venkatesan have been attempting to raise residential constructions, the plaintiff Trust was constrained to file the suit in O.S.No.370 of 1999 for permanent injunction restraining the defendants and their men from any manner constructing residential building in the suit property, that since the said Chinnayyan and Venkatesan have given an undertaking not to make any such constructions, they were exonerated and that after full trial, the suit was decreed in favour of the plaintiff Trust and against the defendants 1 and 2. It is also not in dispute that the appeal filed by the defendants 1 and 2 in A.S.No.73 of 2003 was also dismissed. As rightly pointed out by the learned Counsel for the respondents/plaintiffs, the appellate Court has given a categorical finding that the defendants 1 and 2 can be considered as the persons who had trespassed into the suit property, after the death of Govindasamy and that they are not entitled to claim any leasehold right either directly or through Govindasamy. Admittedly, the defendants 1 and 2 have not preferred any Second Appeal and as such, the judgment passed in A.S.No.73 of 2003 has attained finality. Considering the above, the finding of the trial Court that the defendants 1 and 2 are not in suit properties as lessees cannot be found fault with.



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14. In the written statement, the defendants 1 and 2 have taken a stand that another Trustee Kamatchi has not joined in filing of the suit and as such, the suit is liable to be dismissed.

15. It is evident from the records that originally Kuppusami Chettiar and his brother Mahalingam Chettiar's son – Kandavel representing the Trust have laid the suit and during the pendency of the suit, since Kuppusami Chettiar had died, his son Kandakumar was impleaded. The second plaintiff Kandavel, in his evidence would say that at the time of filing of the suit, himself and his paternal uncle Kuppusamy Chettiar were the only Trustees and that his father Mahalingam Chettiar and paternal uncle Kuppusamy Chettiar were the Trustees at the time of filing of the earlier suit and the appeal.

16. As already pointed out, in the additional written statement, the first defendant has taken a stand that the plaintiffs 3 and 4, being females, are not entitled to act as Trustees and hence, they are unnecessary parties to the suit. It is very much surprising to notice that no such females are made parties in the suit. As rightly observed by the learned trial Judge,



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when the defendants have taken a stand that females cannot act as trustees, this Court is at loss to understand as to how the plea of non-impleadment of Kamatchi was taken and as per the version of the defendants, the said Kamatchi has also to be treated as unnecessary parties. Considering the above, the defendants by taking contradictory version, are not clear in their stand.

17. The learned Counsel for the appellants has raised a legal plea that the present suit for recovery of possession is not maintainable without prayer for declaration and relied on the decision of this Court in ***R.Segar (died) and others Vs. Thiagarajan and others*** reported in ***2020(1) MadWN(Civil) 397***, wherein both the plaintiffs as well as the defendants have alleged that they have purchased the suit schedule properties by different sale deed and both are claiming title over the same. The plaintiffs have themselves stated that the defendants trespassed into their property in the year 1955. The learned Judge of this Court, by taking note of the above factual aspects, has held that the suit for recovery of possession alone cannot be sustained without the prayer for declaration. In the case on hand, the plaintiff Trust has nowhere admitted the rights of the defendants 1 and 2 and moreover, the



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defendants 1 and 2 have taken a stand that they are the lessees in possession of the suit property. Hence, the above decision has no application to the case on hand.

18. The appellants have not canvassed any other reason or ground to impugn the judgment. Hence this Court concludes that the Appeal Suit is devoid of merits and the same is liable to be dismissed.

19. In the result, the Appeal Suit is dismissed and the Judgment and Decree dated 29.01.2015, passed by I Additional District Judge (PCR), Thanjavur, in O.S.No.14 of 2006, is confirmed. The parties are directed to bear their own costs.

02.12.2022

Index : Yes : No
Internet : Yes : No

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1.I Additional District Court (PCR), Thanjavur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)No.69 of 2016

02.12.2022