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SA.Nos.848, 850 to 852 & 863 of 1997

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.02.2023**

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

SA.Nos.848, 850 to 852 & 863 of 1997

[S.A.No.848 of 1997]

- 1.Venkatachalam (died)
- 2.Muniammal (died)
- 3.Mrs.Jayalakshmi

[3rd appellant brought on record as LR of the deceased 2nd appellant vide order of the Court dated 20.11.2007 made in C.M.P.No.907/2007 in S.A.No.848 of 1997]

[2nd appellant brought on record as Legal Representatives of the deceased sole appellant vide order of Court dated 26.07.2006 made in C.M.P.No.2095,2097/2006.]

... Appellants

Vs.

- 1.Jayachandran and Brothers
Nagapattinam, rep. by its
Managing Partner S.Rajagopal
through his Power Agent G.S.Pillai
alias G.Subramaniya Pillai,
47, Perumal Sannathi Street,
Nagapattinam.

... Respondent



SA.Nos.848, 850 to 852 & 863 of 1997

[S.A.No.850 of 1997]

Bagavathy

... Appellant

Vs.

1.Jayachandran and Brothers
Nagapattinam, rep. by its
Managing Partner S.Rajagopal
through his Power Agent G.S.Pillai
alias G.Subramaniya Pillai,
47, Perumal Sannathi Street,
Nagapattinam.

... Respondent

[S.A.No.851 of 1997]

1.Mookan (died)

2.Boominathan

[Sole appellant died, A.2 brought on record as legal heir of the deceased sole appellant vide Court order dated 03.11.2022 made in C.M.P.No.4958 of 2022]

... Appellant

Vs.

1.Jayachandran and Brothers
Nagapattinam, rep. by its
Managing Partner S.Rajagopal
through his Power Agent G.S.Pillai
alias G.Subramaniya Pillai,
47, Perumal Sannathi Street,
Nagapattinam.

... Respondent



SA.Nos.848, 850 to 852 & 863 of 1997

[S.A.No.852 of 1997]

Ramadoss

... Appellant

Vs.

1.Jayachandran and Brothers
Nagapattinam, rep. by its
Managing Partner S.Rajagopal
through his Power Agent G.S.Pillai
alias G.Subramaniya Pillai,
47, Perumal Sannathi Street,
Nagapattinam.

... Respondent

[S.A.No.863 of 1997]

1.Nanammal
2.Pondiammal (minor)
Rep. by mother and guardian
Nanammal, the 1st appellant

... Appellants

Vs.

1.Jayachandran and Brothers
Nagapattinam, rep. by its
Managing Partner S.Rajagopal
through his Power Agent G.S.Pillai
alias G.Subramaniya Pillai,
47, Perumal Sannathi Street,
Nagapattinam.

... Respondent



SA.Nos.848, 850 to 852 & 863 of 1997

PRAYER in S.A.No.848 of 1997: Second Appeal filed under Section 100 of the CPC, against the judgement and decree dated 14.03.1997 in A.S.No.2 of 1997 on the file of the Court of the Additional District Judge, Nagapattinam reversing the judgement and decree dated 27.02.1996 in O.S.No.93 of 1993 on the file of District Munsif, Nagapattinam.

For Appellant : M/s.R.T.Shyamala

For Respondent : Mr.S.M.Loganathan for sole respondent.

PRAYER in S.A.No.850 of 1997: Second Appeal filed under Section 100 of the CPC, against the judgement and decree dated 14.03.1997 in A.S.No.6 of 1997 on the file of the Court of the Additional District Judge, Nagapattinam reversing the judgement and decree dated 27.02.1996 in O.S.No.97 of 1993 on the file of District Munsif, Nagapattinam.

For Appellants : M/s.R.T.Shyamala

For Respondent : Mr.S.M.Loganathan for sole respondent.

PRAYER in S.A.No.851 of 1997: Second Appeal filed under Section 100 of the CPC, against the judgement and decree dated 14.03.1997 in A.S.No.5 of 1997 on the file of the Court of the Additional District Judge, Nagapattinam reversing the judgement and decree dated 27.02.1996 in



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O.S.No.96 of 1993 on the file of District Munsif, Nagapattinam.

For Appellants : M/s.R.T.Shyamala

For Respondent : Mr.S.M.Loganathan for sole respondent.

PRAYER in S.A.No.852 of 1997: Second Appeal filed under Section 100 of the CPC, against the judgement and decree dated 14.03.1997 in A.S.No.3 of 1997 on the file of the Court of the Additional District Judge, Nagapattinam reversing the judgement and decree dated 27.02.1996 in O.S.No.94 of 1993 on the file of District Munsif, Nagapattinam.

For Appellants : M/s.R.T.Shyamala

For Respondent : No Appearance

PRAYER in S.A.No.863 of 1997: Second Appeal filed under Section 100 of the CPC, against the judgement and decree dated 14.03.1997 in A.S.No.4 of 1997 on the file of the Court of the Additional District Judge, Nagapattinam reversing the judgement and decree dated 27.02.1996 in O.S.No.95 of 1993 on the file of District Munsif, Nagapattinam.

For Appellants : M/s.R.T.Shyamala

For Respondent : Mr.S.M.Loganathan



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COMMON JUDGEMENT

The facts in all these Second Appeals are similar and the plaints are identical in all the 5 cases except for the names of the defendants and the description of the properties.

2. Before setting out the facts of the case, the following are the details of the Second Appeals, the Suit Numbers. and the First Appeals against which the same has been filed.

S.No.	Name of the defendant	S.A.No.	A.S.No.	Suit.No.
1.	Venkatachalam	848/1997	2/1997, ADC, Nagapattinam	93/1993, DMC, Nagapattinam
2.	Bagavathy	850/1997	6/1997 ADC, Nagapattinam	97/1993 DMC, Nagapattinam
3.	Mookan	851/1997	5/1997 ADC, Nagapattinam	96/1993 DMC, Nagapattinam
4.	Ramadoss	852/1997	3/1997 ADC, Nagapattinam	94/1993 DMC, Nagapattinam
5.	Nanammal	863/1997	4/1997 ADC, Nagapattinam	95/1993 DMC, Nagapattinam

Since the plaintiff is same in all the 5 suits the parties are referred to in the same ranking in the respective suits.



Plaintiff's case:-

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3. The plaintiff in all the 5 suits has set out the following contentions:-

The 5 suits are filed for declaration of the plaintiff's title and for recovery of possession of the properties subject matter of the respective suits. The plaintiff would contend that on 16.02.1991 he had purchased a larger extent measuring 11213 Sq.Ft. situate at Bharathiar Market Street from one K.Vijayakumar. The sale deed came to be registered on 22.02.1992 and possession was taken in respect of the property subject matter of the sale deed except for the strip of land in occupation of the defendants.

4. The plaintiff would further contend that the defendants have no manner of right, title or interest in the suit property and they were asked to vacate the property stating that they are in unauthorized occupation and to remove the unauthorized construction. Since the trespass is of a recent origin, the defendants cannot claim a right by ouster. Therefore, the plaintiff has come forward with the suit in question.



5. Since the written statement has slight variations in its narration each of the written statement is separately set out hereinbelow:-

Written statement of the defendant in OS.No.93 of 1993.

6. The defendant would contend that the suit property does not belong to the plaintiff. It belongs to one Narayanasamy Konar who had constructed an Ashram in the said property and was living there. The defendant from his childhood had been living with the said Narayanasamy Konar and after his death, the defendant and his family continue to live in the suit property. The occupation of Narayanasamy Konar was much prior to the sale in favour of the plaintiff. The defendant would contend that he and his predecessors in title have been in occupation of the property for several decades. The defendant would further contend that the legal notice had been issued by the plaintiff even before the sale deed was registered in his favour and that apart the valuation of the suit is very low and made with an intent to reduce the stamp duty. The date of alleged trespass is not given. This defendant had denied the title of the plaintiff and his vendor to the suit property and would therefore pray to have the suit dismissed.



Written statement of the defendant in OS.No.97 of 1993:-

7. This defendant had also denied the title of the plaintiff and his vendor to the suit property. It was the case of this defendant that the suit property was in the possession and enjoyment of one Panjanga Devar. This defendant is the sister-in-law of the said Panjanga Devar who is the brother of Mookan. They have been in possession and enjoyment of the suit property for over six decades. Superstructure had also been put up on the said land. The electricity connection and tax receipts stand only in the name of Mookan. That apart, there is no detail of the trespass and in the sale deed executed in favour of the plaintiff, the property is described as a vacant site whereas in reality there is a superstructure thereon. There are no details of the earlier sales. The dates of the alleged trespass has not been provided. The defendant would further submit that on 10.01.1946 one Kalasa Mudaliyar had executed a Will which described the properties as a Trust property and there is a specific recital prohibiting the sale by executors. This defendant had also contended that the suit had not been properly valued.



Written statement of the defendant in OS.No.96 of 1993.

8. The defendant denied the plaintiff's right or title to the suit property. It is his case that he is the son of one Muthukan Devar, the brother of Panjanga Devar. He and his predecessors in title have been in possession of the suit property for over 6 decades and to date, till the filing of the suit no claim has been made in respect of the suit property. The defendant has put up a superstructure and has been granted electricity connection in his name. The property is electrified and the electricity receipts and the property tax are being paid only in the name of the defendant. This defendant would submit that in the pre-suit notice issued by the plaintiff, the plaintiff had stated that the trespass was of a recent origin whereas no such details have been supplied in the plaint in question.

Written statement of the plaintiff in O.S.No.94 of 1993.

9. The defendant while denying the title of the plaintiff to the suit property had contended that he and prior to him his predecessors in title have been enjoying the suit property for over 5 decades. The suit property belonged to one Narayanasamy Konar and the suit property was his house



and in the adjacent property the said Narayanasamy Konar had constructed a temple and was conducting the Pooja therein. He had a son Kuppusamy who after the death of his father had come into possession of the suit property. The defendant is the Son-in-law of the said Kuppusamy. He is also the sister's son of Kuppusamy. This defendant had also raised a defence that the suit notice has been issued by the plaintiff even before the sale deed had been registered in his favour. That apart, the suit valuation is low and the description of the area trespassed into has not been detailed as also the date of trespass.

Written statement of the defendant in OS.No.95 of 1993

10. Here again, the title of the plaintiff to the suit property was denied and the defendant would contend that the properties were in possession of his father Panjanga Devar for over 60 years. The defendant has constructed a superstructure thereon and the electricity service connection and tax receipts stand in the name of Mookan, the brother of the defendant. The defendant would contend that he has been in un-disturbed possession and enjoyment of the property for over 60 years. No details about the trespass has been given and therefore the defendant sought for a dismissal of the suit



in question.

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11. The issues in all the 5 suits translated from Tamil language to English would read as follows:-

- 1. Whether the plaintiff is entitled to the reliefs as claimed by him?*
- 2. Whether the suit has been properly valued?*
- 3. To what reliefs the plaintiff is entitled to?*

12. Though common issues have been framed in all the five suits and the evidence in the said suits were more or less identical in the case of the plaintiff, there are slight variation on the side of the defendants, the learned District Munsif, Nagapattinam proceeded to try each of the suits separately.

13. In O.S.No.93 of 1993, on the side of the plaintiff, Mr.Subramanian Pillai was examined as P.W.1 and one K.Sammandam as P.W.2 and Ex.A.1 to A.5 were marked. On the side of the defendant, the defendant had examined himself as D.W.1 and marked Ex.B.1 to B.25.



14. In OS.No.94 of 1993, on the side of the plaintiff, Mr.Subramanian Pillai was examined as P.W.1 and K.Sammandam as P.W.2 and Ex.A.1 to A.8 were marked. On the side of the defendant, the defendant had examined himself as D.W.1 and marked Ex.B.1 to B.27.

15. In OS.No.95 of 1993, on the side of the plaintiff, Mr.Subramanian Pillai was examined as P.W.1 and one K.Sammandam as P.W.2 and Ex.A.1 to A.9 were marked. On the side of the defendant, the defendant had examined herself as D.W.1 and Mr. Arunachalam as D.W.2 and marked Ex.B.1 to B.20.

16. In OS.No.96 of 1993, on the side of the plaintiff, Mr.Subramanian Pillai was examined as P.W.1 and K.Sammandam as P.W.2 and Ex.A.1 to A.6 were marked. On the side of the defendant, the defendant had examined himself as D.W.1 and Mr.Vasudevar and Mr.Solomon as D.W.2 and D.W.3 respectively and marked Ex.B.1 to B.20.

17. In OS.No.97 of 1993, on the side of the plaintiff, Mr.Subramanian Pillai was examined as P.W.1 and K.Sammandam as P.W.2 and Ex.A.1 to



A.6 were marked. On the side of the defendant, the defendant had examined herself as D.W.1 and Mr.Vasudevar and Mr.Solomon as D.W.2 and D.W.3 respectively and marked Ex.B.1 to B.20.

18. The Trial Court on considering the entire evidence on record dismissed the suit. As against the said judgement and decree the plaintiff had filed the various appeals which has been set out morefully in Para.No.2 of the judgement.

19. The lower Appellate Court proceeded to allow the appeal and set aside the judgement and decree of the Trial Court. Challenging the same the defendants are before this Court by way of these Second Appeals.

20. The Second Appeals have all been admitted on the following Substantial Question of law;

" Whether the first appellate Court is correct in reversing the judgement of the Trial Court, when there is necessary pleading for adverse possession in the written statement as well as in the reply notice, especially the



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finding is that the defendant is vested with title by his continuous possession and enjoyment of the suit schedule property for more than 50 years?"

21. In the course of the argument a question of law was raised by the learned counsel for the appellant/defendant that the suit itself is not maintainable as it squarely falls within the bar of Section 69 of the Partnership Act. Therefore, I have framed this additional substantial question of law which has been addressed by the counsels as well *"Whether Section 69(2) of the Partnership Act, 1932 is a bar to a suit filed by an unregistered firm ?"*

22. Heard the counsel on either side.

23. The lower Appellate Court has reversed the judgement of the Trial Court on the ground that the plea of adverse possession has not been raised by the defendants in their written statement and in the absence of such plea being taken the Trial Court has erred in dismissing the suit. This appears to be a total non-application of mind on the part of the lower



Appellate Court. A mere perusal of the written statement in each of the suits would clearly highlight the fact that the defendants in their respective suits have taken out a clear defence that the defendants and prior to them their predecessors in title have been in possession and enjoyment of the suit schedule property by putting up construction thereon and by being in possession and occupation of the same. Therefore, the findings of the lower Appellate Court that this plea has not been taken is *per se* fallacious and this erroneous observation has led to the lower Appellate Court allowing the appeal.

24. The Trial Court has dismissed the suits on the ground that the plaintiff who has come to Court seeking a relief of declaration of title has not produced any document other than the sale deed in their favour to prove title to the suit schedule property and its larger extent. They have not produced any document to show the title of their vendor to the suit schedule property as well as the larger share. In fact, a mere perusal of the judgement of the Trial Court would clearly indicate that the plaintiff has attempted to improve upon their pleadings by producing documents which the Trial Court has clearly found do not in any manner relate to the suit schedule



property and secondly on the ground that the defendants have produced ample evidence to prove their continued possession of the suit schedule property for several decades. Therefore, the question of law originally framed is answered in favour of the defendants. As regards the additional question of law that is now being framed it would be useful to make reference to Section 69 of the Indian Partnership Act which reads as follows:-

“Section 69. Effect of non-registration (1) No suit to enforce a right arising from a contract of or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the Register of firm as partners in the firm

(3) The provisions of sub section (1) and (2) shall apply



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also to a claim of Set - off or other proceeding to enforce a right arising from a contract, but shall not affect -

(a) The enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm or

(b) The powers of an official assignee, receiver of Court under the Presidency, towns insolvency Act 1909, or the Provincial insolvency Act, 1920, to realise the property of an insolvent partner.

(4). (This section shall not apply)

(a) To firms or to partners in firms which have no place of business in the territories to which this Act extends, or whose places of business in the said territories are situated in areas to which by notification under section 56, this chapter does not apply, or

(b) to any suit or claim of set off not exceeding one hundred rupees in value which in the presidency towns, is not of a kind specified in section 19 of the Presidency shall cause Court Act, 1882 or outside the Presidency towns, is not of a kind specified in the Second Schedule to the Provisional small cause



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Courts Act 1887. or to any proceeding or execution in other proceeding incidental to or arising from any such suit or claim.”

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25. A perusal of the same would clearly show that the suit filed by a partnership firm against a third party would be barred if it is in respect of any of the contingencies contemplated therein. The bar under Section 69(2) of the Indian Partnership Act (hereinafter referred to as the Act) would operate if the firm had a contract with a third party in respect of its business transactions.

26. The Hon'ble Supreme Court in the judgement reported in **(2000) 3 SCC 250 - Haldiram Bhujawala and Another Vs. Anand Kumar Deepak Kumar and Another** has stated that the bar under Section 69(2) of the Act would operate where the contract by an un-registered firm as referred in Section 69(2) of the Act should not only be one entered by the firm with a third party defendant but must also be one entered by the plaintiff firm in the course of its business dealing with such third party. In Para.No.25 of the said judgement, the learned Judges have clarified the contracts which would attract the bar under Section 69(2) of the Act.



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Further, [Section 69\(2\)](#) is not attracted to any and every contract referred to in the plaint as the source of title to an asset owned by the firm. If the plaint referred to such a contract it could only be as a historical fact. For example, if the plaint filed by the unregistered firm refers to the source of the firm's title to a motor car and states that the plaintiff has purchased and received a Motor Car from a foreign buyer under a contract and that the defendant has unauthorisedly removed it from the plaintiff firm's possession, it is clear that the relief for possession against defendant in the suit does not arise from any contract with defendant entered into in the course of plaintiff firm's business with defendants but is based on the alleged unauthorised removal of the vehicle from the plaintiff firm's custody by the defendant. In such a situation, the fact that the unregistered firm has purchased the vehicle from somebody else under a contract has absolutely no bearing on the right of the firm to sue the defendant for possession of the vehicle. Such a suit would be maintainable and [Section 69\(2\)](#) would not be a bar, even if the firm is unregistered on the date of suit. The position in the present case is not different.



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*In fact, the Act has not prescribed that the transactions or contracts entered into by a firm with a third party are bad in law if the firm is an unregistered firm. On the other hand, if the firm is not registered on date of suit and the suit is to enforce a right arising out of a contract with the third party- defendant in the course of its business, then it will be open to the plaintiff to seek withdrawal of the plaint with leave and file a fresh suit after registration of the firm subject of course to the law of limitation and subject to the provisions of the [Limitation Act](#). This is so even if the suit is dismissed for a formal defect. [Section 14](#) of the Limitation Act will be available inasmuch as the suit has failed because the defect of non-registration falls within the words "other cause of like nature" in [section 14](#) of the Limitation Act, 1963. (See *Surajmal Dagduramji Shop v. M/s. Srikishan Ram Kishan*)*

For all the reasons given above, it is clear that the suit is based on infringement of statutory rights under the Trade Marks Act. It is also based upon the common law principle of tort applicable to passing-off actions. The suit is not for enforcement of any right arising out of a contract entered into by or on behalf



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of the unregistered firm with third parties in the course of the firm's business transactions. The suit is therefore not barred by section 69(2).

27. In the instant case, the suit is filed by the plaintiff firm not on the basis of any contract that they had with the defendants but on the ground that they are the owners of the property and the defendants are trespassers and therefore possession of the property has to be handed over back to them. Therefore, the additional Substantial question of law is answered against the defendants. In the light of this Court holding the Substantial question of law originally framed in favour of the defendants, the Second Appeals are allowed and the judgement and decree passed by the lower Appellate Court/ Additional District Judge, Nagapattinam in A.S.Nos.2 to 6 of 1997 is set aside and Judgement and Decree of the Trial Court/ The District Munsif, Nagapattinam in O.S.Nos.93 to 97 of 1993 is confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed, if any.

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Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

1. The Additional District Judge, Nagapattinam.
2. The District Munsif, Nagapattinam.



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