



S.A.Nos.2281 of 2003 and 197 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 02.02.2023

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

S.A.Nos.2281 of 2003 and 197 of 2007

and

C.M.P.No.1779 and 1783 of 2023

The Pazhaverkadu Venkatasami,
Gramani Trust, by its Trustee,
S.Venkataraman

... Appellant in both S.As

-Vs.-

John Basha
2003

..Respondent in S.A.No.2281 of

Ansar
2007

.. Respondent in S.A.No.197 of

Prayer in S.A.No.2281 of 2003: Second Appeal filed under Section 100 of the Code of Civil Procedure Code against the judgment and decree made in A.S.No.127 of 1998 dated 13.01.2000 on the file of the VI Additional Judge, City Civil Court, Madras, confirming the judgment and decree made in O.S.No.10 of 1987 dated 26.06.1996.



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Prayer in S.A.No.197 of 2007: Second Appeal filed under Section 100 of the Code of Civil Procedure Code against the judgment and decree dated 18.11.2003 made in A.S.No.225 of 1989 on the file of VII Additional Judge, City Civil Court, Madras, confirming the judgment and decree dated 30.11.1988 made in O.S.No.5622 of 1985 on the file of the I Assistant Judge, City Civil Court, Madras.

For appellant ... Mr.R.Thiagarajan
in both cases

For Respondent ... Mr.P.Rajendran
in both cases

COMMON JUDGMENT

The plaintiff in the two suits, which have given rise to the second appeals is the appellant herein. The facts in both the cases are the same. Therefore, a common judgment is being pronounced.

2. S.A.No.2281 of 2003 arises from out of the judgment and



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decree in O.S.No.10 of 1987 on the file of the I Assistant Judge, City Civil Court, Chennai dismissing the suit filed by the plaintiff as against which an appeal in A.S.No.127 of 1998 was filed by the plaintiff before the VI Additional Judge, City Civil Court, Chennai.

3. S.A.No.197 of 2007 arises out of the judgment and decree in O.S.No.5622 of 1985 on the file of the I Assistant Judge, City Civil Court, Chennai dismissing the suit filed by the plaintiff, which was confirmed by the judgment and decree of the VII Additional Judge, City Civil Court, Chennai in A.S.No.225 of 1989. Both the suits are filed for recovery of possession of the suit schedule property and for damages. The suit property, which is the subject matter of O.S.No.10 of 1987 is Door No.78, Vaidyanatha Mudali Street, Tondiarpet, Madras – 81, comprised in R.S.No.3940/2, S.No.2617, Collector's Certificate No.3514 measuring an extent of 924 sq.ft. The suit property, which is the subject matter of O.S.No.5622 of 1985, is Door No.83 of the very same street, measuring an extent of 1000 sq.ft. in



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all.

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4. It is the case of the plaintiff in both the suits that the land comprised in S.No.3940/2, Old No.3217, Collector's Certificate No.3614, measuring 2 ½ kanis at Vaidyanatha Mudali Street, Tondiarpet absolutely belonged to the Trust and the suit property is a portion of the larger extent. The defendants in the suits are tenants in their respective suit properties. The tenant in the suit O.S.No.10 of 1987 was paying a rent of Rs.40/- and the tenant in respect of the suit O.S.No.5622 of 1985 was paying a monthly rental of Rs.25/-. It is the case of the plaintiff that from the year 1981, the defendants are in default of payment of rents. A lawyer's notice dated 17.09.1985 was issued to the defendant in O.S.No.10 of 1987 and notice dated 12.03.1985 was issued to the defendant in O.S.No.5622 of 1985 calling upon them to pay the rent. However, despite receipt of the same, the defendants had not come forward to clear the arrears.



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Thereafter, notice dated 02.07.1986 to the defendant in O.S.No.10 of 1987 and notice dated 13.03.1985 in respect of the defendant in O.S.No.5622 of 1985 was issued by the plaintiff terminating the tenancy and directing the defendants to quit and deliver the vacant possession of the property. Despite this, the defendants have not complied with the request. Therefore, the plaintiff has come forward with the respective suits for the reliefs stated supra.

5. The defense of the defendants in both the suits were identical. They had denied the landlord-tenant relationship between the plaintiff and themselves. It is their contention that they and prior to them, their predecessors-in-title have been in continuous possession and enjoyment of the property. The Trust has never been in possession of the same and neither have the defendants paid any rents to the plaintiff. The superstructure of the suit property has been put up only by the defendants and not by the plaintiff. They further stated that there was no cause of action for filing the suit and the defendants



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have been in possession and enjoyment of the property much before the purchase by the plaintiff. As an alternative plea, the defendants had pleaded an adverse possession. Therefore, they sought for dismissal of the suits.

6. The I Assistant Judge, City Civil Court, Chennai had framed the following issues: (O.S.No.5622 of 1985)

a) Whether the plaintiff is entitled for recovery of possession of the suit property?

b) Whether is plaintiff is entitled for arrears of rent?

7. In O.S.No.10 of 1987, the following issues were framed:

(1) எதிரிடை அனுபவத்தின் மூலம் பிரதிவாதிக்கு சொத்து பாத்தியப்பட்டு விட்டது என்பது சரியா?

(2) வழக்கு தாக்கல் செய்த விதத்தில் நிலைநிறுத்த முடியாதது என்பது சரியா?



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(3) வழக்கிற்கு முலக்காரணம் இல்லை என்பது

சரியா?

(4) வாதி கோரியுள்ள பரிகாரத்திற்கு வாதி

உரியவரா?

Ultimately, the trial Court dismissed both the suits holding that the plaintiff had not been able to prove the tenancy between them and the defendants and that the defendants have been in possession and enjoyment of the property for over so many years. The learned trial Judge has held that the suits as filed are not maintainable. Aggrieved over the respective decrees, the appellant had filed first appeals before the VI Assistant Judge, City Civil Court and VII Assistant Judge, City Civil Court, Chennai in A.S.No.127 of 1998 and A.S.No.225 of 1989 respectively. The lower appellate Court has also concurred with the judgments and decrees of the trial Court and dismissed the appeals. The appellate Court had also held that the plaintiff had not proved their title to the suit schedule property and no documents have been



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filed to prove the same. Challenging the same, the plaintiff is before this Court.

8. In A.S.No.225 of 1989, the plaintiff had filed additional documents, which have been marked as Exs.A4 to A11 and the defendants had filed Exs.B1 to B7, which were the property tax receipts form the year 1967 onwards. Aggrieved by the concurrent judgments and decrees of the lower appellate Court, the plaintiff has filed the above second appeals, which have been admitted on the following substantial questions of law:

S.A.No.2281 of 2003:

i. Whether the Courts below are right in holding despite in the absence of any tangible record in support of the contention of the respondent that he has perfected his title by adverse possession to hold that the appellant has not proved his title, right and entitlement



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to maintain the suit?

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S.A.No.197 of 2007:

a) Whether Courts below are correct in dismissing the suit after having found that the plaintiff established its title over the suit land by producing the documents Exs.A5,6,10 and 11?.

b) Whether Courts below are correct in holding that the defendant established adverse possession without considering truth that the defendant and his predecessor's claimed ownership over the suit land and in such circumstances the defendant cannot claim adverse possession?

c) Whether the defendant is entitled to claim ownership as well as the adverse possession over the suit land simultaneously?

9. After arguments had been submitted by both the learned



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counsel, the learned counsel for the plaintiff sought time to produce certain documents with the requisite petitions. Thereafter, the appellant has filed C.M.P.Nos.1779 and 1783 of 2023 for receiving documents, which included the scheme decree and lease agreements entered into with different parties in respect of property in the same vicinity of the suit property and also permanent land register extracts in respect of the suit survey number.

10. Heard the learned counsels on the CMPs and second appeals.

11. The lease deeds and the permanent land register extract are all subsequent to the filing of the second appeals itself. The plaintiff has not given any explanation as to why they have not filed the scheme decree before the Courts below, particularly, when the defendants had denied the title of the plaintiff to the suit property. The filing of additional documents is not a matter of routine or a

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matter of right and can be entertained only if it complies with the requirements of Order 41 Rule 27 CPC.

12. Order 41 Rule 27 C.P.C clearly provides that the party to an appeal cannot produce additional evidence both documentary or oral except where the Court below from which the appeal has been preferred has refused to admit evidence which ought to have been admitted, or where the parties seeking to produce additional evidence to establish before the Court, that despite they exercising due diligence, they were not in a position to procure the documents. The instant case does not fall within the above parameters. That apart, the scheme decree was already filed in A.S.No.225 of 1989, and there is no necessity to once again produce before this Court. Therefore, in the light of the above, **C.M.P.Nos.1779 and 1783 of 2023 are dismissed.**

13. The plaintiff has come to Court with a case that up to the



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year 1981, the defendant in the suits had been paying the monthly rents and it is from the year 1981, the default has started. They have also stated that the defendants are the tenants under them. To prove the above, no documents whatsoever have been filed by the plaintiff. That apart, challenging the judgment and decree in A.S.No.225 of 1989, the plaintiff had filed a Second Appeal before this Court in S.A.No.254 of 1981 and the said appeal was allowed by a judgment and decree dated 27.08.2002 and the matter was remitted back to the lower appellate Court for enabling the appellant to produce the documents to establish their title to the property as well as to prove the tenancy. Despite this specific judgment, the plaintiff has not produced any documents to prove the same. On the contrary, the defendant in O.S.No.10 of 1987 has produced the house tax receipts starting from the year 1977. Likewise, after remand, the defendant in the suit O.S.No.5622 of 1985 has filed house tax receipts from the year 1967. The scheme decree produced on the side of the plaintiff does not prove that the suit property is a part of item No.3 of the suit properties



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scheduled in the scheme decree. In fact, the Door Number shown in the Collector's certificate in O.S.No.10 of 1987 and in the suit property in O.S.No.5622 of 1985 is totally different. The plaintiff, who has come to the Court pleading a case, is bound to prove his case and he cannot rely upon weakness of the defense. The contention of the appellant's counsel that by pleading adverse possession, the defendant has set up an inconsistent plea cannot be countenanced, since the plea of adverse possession has been taken only as an alternative plea. The Hon'ble Supreme Court in the judgment reported in **2009 (13) SCC 229 [L.N.Aswathama and Another Vs.P.Prakash]**, while considering a similar defense where a person, who claims title under the document also alternatively contends that he has perfected title, had held that such a defense cannot be taken as an inconsistent plea, but should be considered only as an alternative plea, which is available to the defendant. In the instant case, the plaintiff, who claims to be the owner of the property even under the scheme decree of the year 1954, has not been able to establish the fact that the defendants are tenants



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under them. I therefore see no reason to interfere with the well considered judgments and decrees of the Courts below, which has been passed, after considering the evidence in detail. Consequently, the substantial questions of law are answered against the plaintiff and the second appeals are dismissed confirming the decrees of the Courts below. No costs. Consequently, **C.M.P.No.1779 and 1783 of 2023 are dismissed.**

02.02.2023

srn

To

1. The VI Additional Judge, City Civil Court, Madras
2. The VII Additional Judge, City Civil Court, Madras
3. The Section Officer, V.R.Section, High Court, Madras



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P.T.ASHA.J.,

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