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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 29.8.2023.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A.No.491 of 2023

and

C.M.P.Nos.15113 and 15116 of 2023

1. Kannammal
2. Sudarshan Babu
3. Udhayakumar

Appellants

vs.

Hari Kadirvel Aiyappan @ Raju

Respondent

Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 28.7.2022 passed in A.S.No.71 of 2021 on the file of the Additional District Judge at Krishnagiri confirming the Judgment and decree dated 2.11.2021 passed in O.S.No.40 of 2018 on the file of the Additional Special Judge, Krishnagiri.

For Appellants : Mr.R.Govindasamy

For Respondent : Mr.Ravi for M/s.Gupta & Ravi

JUDGMENT

Defendants, who lost their case before both the courts below, have preferred the present Second Appeal.



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2. Respondent herein had filed a suit in O.S.No.40 of 2018 contending as under:-

i) The plaintiff is son of K.A.Lakshminarayana Chetty and the plaintiff was given in adoption to one Subbulakshmaiah Chetty @ Subbaiah Chetty as per the Adoption deed dated 21.09.2000. The suit property was originally purchased by the said Lakshminarayana Chetty as per the sale deed dated 26.05.1987 and since then the same has been in his possession and enjoyment.

ii) The plaintiff purchased the suit property from Lakshminarayana Chetty vide sale deed dated 14.07.2008 for a sale consideration of a sum of Rs.2,00,000/- and took possession of the same and thereupon, he has been paying house tax and electricity charges for the suit property. The plaintiff also obtained loan from the Tamil Nadu Mercantile Bank, Krishnagiri by mortgaging the suit property and also discharged the same subsequently.

iii) Whiles, on On 20.07.2008, the said K.A.Lakshminarayan Chetty, father of the plaintiff, requested the plaintiff to permit him to stay in the suit property for a monthly rent a sum of Rs.500/- and thereby the the plaintiff had permitted him to stay in the suit property.



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iv) The first defendant is a married woman and her native was nearby Kuppam and somehow she influenced K.A.Lakshminarayana Chetty and stayed with him in the suit property. The plaintiff issued notice dated 12.07.2010 calling upon them to vacate the suit property. The first defendant and the said K.A.Lakshminarayana Chetty received the said notice, but, failed to vacate the suit property. Hence, the plaintiff filed the suit in O.S.No.96/2011 on the file of District Munsif of Krishnagiri against the said K.A.Lakshminarayana Chetty and the first defendant to vacate the suit property and deliver possession of the same. But, unfortunately the suit filed by the plaintiff was dismissed on 14.11.2013.

v) After dismissal of the suit, the said K.A.Lakshminarayana Chetty left the suit house and is now staying with the plaintiff. In fact, the first defendant, claiming falsely that she is the second wife of K.A.Lakshminarayana Chetty and defendants 2 and 3 were born to the said K.A.Lakshminarayana Chetty, filed the maintenance petition in M.C.No.3 of 2009 before the Chief Judicial Magistrate, Krishnagiri and the same was dismissed.

vi) After dismissal of the suit, the first defendant allowed



defendants 2 and 3 to stay in the suit house. Hence, the plaintiff convened a panchayat and in the said panchayat, the defendants undertook to vacate the suit property but, they failed to comply with the same and on the other hand, the defendants are now denying the title of the plaintiff to the suit property and refused to deliver the possession of the suit property to the plaintiff.

vii) The defendants have no locus standi to deny the title of the plaintiff in the suit property and refused to deliver the possession of the same. The cause of action for the earlier suit is no way connected with the present suit. Therefore, the plaintiff has filed this suit for declaration of title and recovery of possession.

3. The averments in the written statement filed by first defendant, in brief and adopted by the second and third defendant, are as follows:-

i) The plaintiff claims to be the adopted son Subbulakshmaiahchetty @ Subbaiahchetty in order to claim a share in the properties of Sarasamma, wife of Subbulakshmaiahchetty @ Subbaiahchetty though he was not even born when Sarasamma was alive. The plaintiff is not the adopted son of Subbulakshmaiahchetty.



He is the son of the said K.A.Lakshminarayana Chetty and his first wife Lakshmamma.

ii) The first defendant was married to the said Lakshminarayana Chetty as per Hindu law and custom about 30 years ago at Sri Abbasla Kadiriah Temple, Guddalampallli Village in Kuppam Taluk, Chittoor District. As the said K.A.Lakshminarayana Chetty's wife Lakshmamma was chronically ill and bedridden, to look after her and then minor son namely the plaintiff, K.A.Lakshminarayana Chetty, with the consent of his wife Lakshmamma, had married the first defendant. Thereafter, the first defendant had been living with him in the same house as his wife. Out of the said marriage between this defendant with K.A.Lakshminarayana Chetty, defendants 2 and 3 were born and they are now living with the first defendant separately in the suit house property.

iii) The plaintiff was also living with them in the suit house. Stating that nobody was willing to give their daughter in marriage to the plaintiff, if this defendant who belongs to a different caste continued to live with the K.A.Lakshminarayana Chetty together, K.A.Lakshminarayana Chetty practically neglected to maintain the first defendant and her sons. Consequently the first defendant and her sons are living separately in the suit house and the first



defendant is living separately in the same house.

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iv) The plaintiff, after his marriage, has been living separately in a house in Veppananapallil. Since K.A.Lakshminarayana Chetty had neglected to maintain this defendant and her sons, this defendant had also filed a petition for maintenance for herself and her sons against the first defendant under section 125 of Cr.P.C before the court of Chief Judicial Magistrate, Krishnagiri. In order to frustrate and defeat this, the plaintiff claim that for maintenance K.A.Lakshminarayana Chetty had joined with the plaintiff and created the sale deed dated 14.07.2008 purporting to sell the suit house property to the plaintiff. Possession of the suit house was never given to the plaintiff.

v) The defendants are in possession of the suit house property as they are having interest in the suit property. It is only the first defendant, who has been paying the property tax to the panchayat and the electricity connection is in the name of the first defendant. Therefore, the suit may be dismissed with costs.

4. Based on the above pleadings, the following issues were framed for trial:-

1) Whether the suit property belongs to plaintiff?



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- 2) Whether the plaintiff is entitled to claim declaration of title?
- 3) Whether the plaintiff is entitled to claim possession of the suit property?
- 4) Whether the suit is barred by res judicata?
- 5) To what other relief the plaintiff is entitled to?

5. During the trial, on the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exhibits A1 to A8 were marked. On the side of the defendant, DW1 and D.W.2 were examined and Exhibits B1 to B4 were marked.

6. On conclusion of trial, the trial court decreed suit for declaration of title and the recovery of possession. Aggrieved against the same, the defendants have preferred Appeal Suit and the first appellate court concurred with the finding of the Trial Court. Challenging the concurrent finding of both the courts below, the present Second Appeal has been filed by the defendants.

7. Heard the learned counsel appearing for the parties and perused the materials available on record.



8. This court feels that an analysis of chronological events of the case would throw some light on the issue. The suit property was purchased by K.A.Lakshminarayana Chetty under Ex.A1 dated **26.5.1987** and the plaintiff, being his son, having been given in adoption to one Subbulakshmaiah Chetty @ Subbaiah Chetty as per the Adoption deed, Ex.A2 dated **21.09.2000**, had purchased the suit property from his father himself for a valid sale consideration of Rs.2,00,000/- under Ex.A3 dated **14.7.2008** and subsequently, on a request from his natural father on **20.7.2008**, he permitted him to stay in the suit property on a monthly rent a sum of Rs.500/-.

9. It appears that the dispute arose only when the first defendant, an already married, but, deserted woman, claiming to have married the natural father of the plaintiff, even during the life time of his first wife, started to stay with him in the suit property and ventured to file a petition in M.C.No.3 of 2009 before the Chief Judicial Magistrate, Krishnagiri claiming maintenance from the natural father of the plaintiff for herself and her two minor children alleging that she had been driven out of matrimonial home.

10. Smelling some foul play, to secure the suit property



purchased by him, the plaintiff had chosen to issue notice dated **12.07.2010** calling upon them to vacate the suit property. Since they had not vacated, he had filed the suit in O.S.No.96/2011 on the file of District Munsif of Krishnagiri against the said K.A.Lakshminarayana Chetty and the first defendant to vacate the suit property and deliver possession of the same. But, unfortunately the suit filed by the plaintiff was dismissed on **14.11.2013**.

11. Subsequently, the petition in M.C.No.3 of 2009 filed by the first defendant before the Chief Judicial Magistrate, Krishnagiri seeking maintenance also came to be dismissed by order dated **30.10.2015**. Ultimately, the plaintiff has come up with the present suit seeking a declaration of his title to the suit property and recovery of possession.

12. In this background, it is the case of the appellants/defendants that the courts below have erred in granting the relief of declaration of title and recovery of possession in favour of the plaintiff without considering the aspects that the present suit filed by the plaintiff is on an identical cause of action and it is barred



under Order II Rule 2 CPC apart from that it is barred by limitation and by res judicata.

13. A perusal of the judgments rendered by both the courts below would reveal that all the issues raised by the parties including the above aspects have been dealt with by the courts below before ever granting the relief sought for by the plaintiff. While the plaintiff has produced Exs.A1 to A3, sale deed standing in the name of his natural father, adoption deed and the sale deed standing in the name of the plaintiff and examined PW2, a witness for the adoption deed to prove his case, the defendants have failed to disprove the same though they deny the case of the plaintiff and they have chosen to produce only the Birth Certificate and School records in respect of defendants 2 and 3. It is peculiar to note that the defendants have taken much effort to deny the adoption of the plaintiff, which has no relevance at all to the issue on hand in the present suit as no claim has been made by the plaintiff on the basis of such adoption which has been rightly observed by the courts below.

14. Even with regard to Ex.A3, sale deed in favour of the plaintiff executed by his natural father, the defendants have taken a



stand as if it was brought into picture in collusion between the father and the son only to thwart the claim of of maintenance of the first defendant. But, it is seen that the petition seeking maintenance in M.C.No.3 of 2009 is of the year 2009, whereas, the sale deed in Ex.A3 came to be executed on 14.7.2008 itself. The suit property, admittedly, being a self-acquired property of the natural father of the plaintiff as evidenced by Ex.A1 sale deed, the only peculiarity found with regard to Ex.A3, sale deed is nothing but, it has been executed in favour of the plaintiff by his natural father instead of conveying the suit property by way of gift or settlement. Such an aspect does not raise any suspicion on the part of either the plaintiff or his natural father, rather, it reflects the mind of the natural father in protecting the interest of his son, the plaintiff from any legal consequences at a later stage at the instance of the first defendant or anybody else and that must be the reason the father had not denied the title of the plaintiff in the Suit for ejectment filed by the plaintiff in O.S.No.96 of 2011.

15. Therefore, the plaintiff, having acquired a clear title to the suit property, has come up with the present suit, whereas, the defendants, who had not acquired any independent right over the suit



property and continued their possession of the suit property alongwith the natural father of the plaintiff, cannot have better right than the natural father of the plaintiff, who had already sold the suit property to the plaintiff and lost his right over the same.

16. It is surprising to note that the defendants have taken a puny stand that the plaintiff had already filed a suit in O.S.No.96 of 2011 on the identical issue, which was already dismissed and thereby, the present suit is barred by res judicata and barred under Order II Rule 2 CPC and it is a time barred one.

17. The earlier suit in O.S.No.96 of 2011 appears to have been filed by the plaintiff for ejectment of his natural father and the defendants herein claiming landlord-tenant relationship between the parties, which was dismissed by the learned District Munsif, Krishnagiri, on technicality that notice issued therein was not in accordance with Section 106 of the Transfer of Property Act and the relationship of landlord-tenant has not been proved, whereas, the present suit has been filed by the plaintiff seeking the relief of declaration of title and recovery of possession in the year 2018.



18. In this regard, it is relevant to note that while dismissing the earlier suit in O.S.No.96 of 2011 on the above technicalities without deciding the title in respect of the suit property, the court had observed that the defendants therein were only trespassers and granted liberty to the plaintiff to pursue his remedy by filing a fresh suit for declaration of title and recovery of possession. Such being the outcome of the earlier suit, the ground taken by the defendants that the present suit is barred by res judicata is not sustainable. Similarly, when the court had already provided liberty to the plaintiff to file a fresh suit, the contention that the present suit is barred under Order II Rule 2 CPC is also not sustainable.

19. Coming to the limitation aspect, as held by the Apex Court in ***Sopanrao and another vs. Syed Mehmood and others*** ((2019) 7 SCC 76), whenever a suit is filed for obtaining any other declarations not covered by the Articles of the Limitation Act, the period of limitation is only three years and the period begins to run when the right to sue first accrues, whereas under Article 65 of the Act, whenever a suit is filed for possession of immovable property or any interest therein based on title, the period of limitation for filing



the suit is 12 years and the period begins to run when the possession of the defendants becomes adverse to the plaintiff and therefore, Article 58 of the Act makes it is clear that if it is a suit for declaration simpliciter without asking for any ancillary relief, the period of limitation is three years. According to Article 65 of the Act, whenever a suit for recovery of possession is filed basing on a title, the period of limitation is twelve years and this aspect has also been rightly observed by the first appellate court.

20. In view of the above, this court finds that there is no illegality or perversity in the findings of the courts below and they do not warrant any interference by this court. The questions raised by the appellant in the present Second Appeal, having been already dealt with by the courts below and decided and sans any substantial question of law involved, this court is of the view that the Second Appeal does not merit consideration and thereby, it is liable to be dismissed without being admitted. Accordingly, it is dismissed. No costs. The connected Miscellaneous Petitions are also dismissed.

29.8.2023.

Index: Yes/No.



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To

1. Additional District Judge,
Krishnagiri.
2. Additional Special Judge,
Krishnagiri.
3. Section Officer,
V.R. Section,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.

Ssk.

S.A.No.491 of 2023

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