



Application No.2679 of 2023  
in C.S.No.60 of 2023

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

**RESERVED ON : 17.07.2023**

**PRONOUNCED ON : 07.08.2023**

**CORAM:**

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**Application No.2679 of 2023**  
**in C.S.No.60 of 2023**

Mohammed Saleem ... Applicant / 1<sup>st</sup> Defendant

*versus*

1.RMC Travellers Inn Pvt. Ltd.,  
Represented by its Director  
M.Health Tito, residing at No.501-A,  
RMC House, Nalco Colony,  
North Street, Kottivakkam,  
Chennai - 600 041. ... 1<sup>st</sup> Respondent / Plaintiff

2.Ramasamy

3.Umayal Achi

4.Umayal Veerappan

@ Veerappan Umayal @ Uma Veerappan

5.Veerappan Arunachalam

6.Veerappan Manickavasagam



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7.Meenakshi Veerappan

@ V.Meenakshi

D/o.Late AR.Veerappan,  
Represented by her Power Agent,  
Veerappan Arunachalam,  
Old No.12, New No.29,  
Bishop Garden, R.A.Puram,  
Chennai - 600 028.

8.AR.Arunachalam

9.AR.Subbiah

S/o.Late VT.VR.Arunachalam Chettiar  
Represented by his Power Agent  
AR.Arunachalam  
S/o.Late VT.VR.Arunachalam Chettiar  
Y-83, 4<sup>th</sup> Street, Anna Nagar,  
Chennai - 600 040.

10.AR.Thenappan

11.AR.Lakshman

12.Rathna Sabesan

13.Dr.S.Parameswaran @ Alyappan Sabesan

14.Dr.S.Priyadharshini,

Represented by her Power Agent  
Rathana Sabesan  
W/o.Late Sabesan  
6/30, 2<sup>nd</sup> Street,  
East Abhiramapuram,  
Mylapore, Chennai - 600 004.



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15.The District Collector,  
Chennai District, Chennai Collector's Office,  
Chennai - 600 001.

16.The Revenue Divisional Officer,  
South Chennai Division,  
Guindy, Chennai - 600 042.

17.The Tahsildar,  
Velacherry Taluk,  
Chennai - 600 042.

... Respondents 2 to 17 /  
Defendants 2 to 17

**PRAYER:** Application filed under Order XIV Rule 8 of O.S. Rules read with Order VII Rule 11 of CPC, praying to reject the plaint against applicant / 1<sup>st</sup> defendant in C.S.No.60 of 2023.

For Applicant : Mr.N.L.Rajah  
Senior Counsel  
Mr.B.Harikrishnan

For Respondent No.1 : Mr.E.Prabu

For Respondent No.8 : Mr.G.R.M.Palaniappan

For Respondent No.11 : Mr.T.V.Selvan

For Respondent Nos.15 to 17 : Mr.P.Harish  
Government Advocate



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## **ORDER**

This Application has been filed by the applicant / 1<sup>st</sup> defendant to grant an order to reject the plaint in C.S.No.60 of 2023.

2. Heard the learned counsels for the applicant, respondents 1, 8, 11, learned Government Advocate for the respondents 15 to 17 and perused the materials available on record.

### **Application in brief:-**

3. The applicant is the 1<sup>st</sup> defendant; the 1<sup>st</sup> respondent / plaintiff has filed the suit seeking the reliefs for declaration that the suit property belongs to the plaintiff along with the consequential injunction against the defendants 1 and 2 and also for permanent injunction restraining the defendants 1 and 2 from fabricating or registering the documents in respect of the suit schedule property.

### **Submissions of the applicant:-**

4. The learned counsel for the applicant / 1<sup>st</sup> defendant submitted that the suit is not maintainable; it is averred in the plaint that during the second week of February 2017, some 40 persons trespassed into the suit property and forcibly



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removed the tin sheets and demolished the compound wall by claiming ownership; though it is stated that there is a denial of ownership in the year 2017 itself the 1<sup>st</sup> respondent / plaintiff has not filed any suit for declaration of his title but he had filed a suit in O.S.No.1409 of 2017 before the learned V Assistant Judge, City Civil Court, Chennai, for permanent injunction; even though the plaint averments would state that there was a cause of action for protecting the possession and title in the year 2017 itself, the relief of declaration was not sought in the earlier suit filed between the parties, the plaintiff neither reserved his right to file a suit for declaration any time later by seeking leave under Order II, Rule 2 CPC; the plaintiff's suit on the basis of his own pleadings is barred by limitation; the plaintiff has also alleged that he had filed a Writ Petition in W.P.No.7211 of 2021 by challenging the cancellation of patta and the said Writ Petition was dismissed on 27.08.2021 by directing the parties to approach the Civil Court to establish their title and hence the suit is liable to be rejected as barred by limitation. In support of his above submissions, the learned counsel for the applicant has cited the following judgments:-



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- i. *Virgo Industries (Eng.) Pvt. Ltd. vs. Venturetech Solutions Pvt. Ltd.* reported in (2013) 1 SCC 625
- ii. *N.Ravindran vs. V.Ramachandran* reported in 2011 (3) CTC 153
- iii. *N.Ramachandran vs. E.Varadarajan* reported in 2014 SCC Online Mad 533

**Submissions of the 1<sup>st</sup> respondent:-**

5. The learned counsel for the 1<sup>st</sup> respondent / plaintiff has filed the counter and submitted that the plaintiff did not suppress anything in the present suit or in the earlier suit, for the mere denial of title by someone the 1<sup>st</sup> respondent / plaintiff need not file a suit for declaration; since the applicant / 1<sup>st</sup> defendant had tried to dispossess the plaintiff from the suit property by disturbing his possession, he has rightly exercised his right by way of filing a Civil Suit for saving his possession; since there was no serious threat to his title at the earlier point of time, the 1<sup>st</sup> respondent / plaintiff did not choose to file any suit for declaration and no occasion had arisen to seek any leave under Order II, Rule 2 CPC; only when the applicant / 1<sup>st</sup> defendant had managed to cancel the patta in the name of the 1<sup>st</sup> respondent / plaintiff he immediately filed a Writ Petition by challenging the order of cancellation of patta; while disposing the Writ Petition,



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this Court has granted liberty for both the parties to file a suit for declaration of their title; the applicant / 1<sup>st</sup> defendant has also filed a suit in O.S.No.5930 of 2022 but however he did not choose to seek any relief of declaration; he had sought the relief to declare various transactions as null and void and thus attempted to create cloud over the title of the plaintiff and hence, the 1<sup>st</sup> respondent / plaintiff had rightly come forward to file the suit for declaration along with the other reliefs. In support of the above contentions, the learned counsel for the 1<sup>st</sup> respondent / plaintiff has relied on the following judgments of the Hon'ble Supreme Court:-

- i. Anathula Sudhakar vs. P.Buchi Reddy* reported in (2008) 4 SCC 594
- ii. Shakti Bhog Food Industries Limited vs. Central Bank of India and another* reported in (2020) 17 SCC 260

**Discussions:-**

6. The fact that the 1<sup>st</sup> respondent / plaintiff has filed the suit against the applicant / first defendant in O.S.No.1409 of 2017 on the file of learned V Assistant Judge, City Civil Court, Chennai, is not denied by him. However it is claimed that the cause of action for the suit is disturbance to the possession and



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hence he had rightly chosen to file a suit for bare injunction and he did not seek any relief for title.

7. On perusal of the suit filed in O.S.No.1409 of 2017 before the learned V Assistant Judge, City Civil Court, Chennai, it is seen that the 1<sup>st</sup> respondent / plaintiff has pleaded the cause of action by stating that on 18.02.2017 the applicant / 1<sup>st</sup> defendant had trespassed into the suit property by damaging the tin sheets and iron posts and for which the 1<sup>st</sup> respondent / plaintiff has given a police complaint. Nowhere in the earlier suit the plaintiff has stated that there is a serious threat to his title. In the present plaint also the 1<sup>st</sup> respondent / plaintiff has only stated about the previous suit. Just because the applicant / first defendant or his men deny the title and claimed the title in respect of the property, the 1<sup>st</sup> respondent / plaintiff cannot be expected to rush to the Court to file a suit for declaration. Interference with the lawful possession of someone might be done by claiming title for the property. Not in all cases, the plaintiff should be expected to file a suit for declaration. Only when some serious



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materials are brought out to base the title claim of the opponent and if it has the tendency to shake the title of the plaintiff over the suit property, the plaintiff needs to rush to Court to protect his title by claiming declaration. In this regard, it is relevant to cite the decision of the Hon'ble Supreme Court held in *Anathula Sudhakar vs. P.Buchi Reddy* reported in (2008) 4 SCC 594 wherein it is held as under:-

*“17. There is some confusion as to in what circumstances the question of title will be directly and substantially in issue, and in what circumstances the question of title will be collaterally and incidentally in issue, in a suit for injunction simpliciter. In Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple vs. Rajanga Asari AIR 1965 Mad. 355, the Madras High Court considered an appeal arising from a suit for possession and injunction. The defendant contended that the plaintiff had filed an earlier suit for injunction which was dismissed, and therefore the plaintiff was precluded from agitating the issue of title in the subsequent suit, being barred by the principle of res judicata. It was held that the earlier suit was only for an injunction (to protect the standing crop on the land) and the averments in the plaint did not give rise to any question necessitating denial of plaintiff's title by the defendant; and as the earlier suit was concerned only with a*



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*possessory right and not title, the subsequent suit was not barred.*

*There are several decisions taking a similar view that in a suit for injunction, the question of title does not arise or would arise only incidentally or collaterally, and therefore a subsequent suit for declaration of title would not be barred.”*

8. The plaintiff has not pleaded in the earlier suit about the documents or the manner in which the applicant / 1<sup>st</sup> defendant had denied his title. Even as per the averments of the 1<sup>st</sup> respondent / plaintiff, the earlier suit was a suit for permanent injunction and not for the declaration of title of the applicant / 1<sup>st</sup> defendant. Since the applicant / 1<sup>st</sup> defendant had started to interfere with the possession and disturbed the 1<sup>st</sup> respondent / plaintiff, he rushed to the Court to save his possession and that was what expected at that given point of time. Since the plaintiff was holding the possession over the suit property he thought it fit to get a relief to safeguard his possession.

9. Hence there was no issue relating to title is framed or needed to be framed in a suit for permanent injunction. Unless the 1<sup>st</sup> defendant wantonly



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invites such an action, the earlier suit filed for protecting possession is sufficient.

It will be worthwhile to extract the summary given by the Hon'ble Supreme Court held in *Anathula Sudhakar vs. P.Buchi Reddy* reported in (2008) 4 SCC 594, on the point when the suits for injunction or title can be filed:-

*“21.To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :*

*(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.*

*(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the*



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*property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.*

*(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar vs. Alagammal (2005) 6 SCC 202]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.*

*(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question*



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*of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”*

**10.** When the applicant / 1<sup>st</sup> defendant had interfered with the title on the basis of some revenue records and even the patta in the name of the plaintiff was cancelled, the plaintiff rightly felt the threat to his title and that prompted him to file a Writ Petition for challenging the cancellation of patta. While disposing the said Writ Petition, on 27.08.2021, the Court observed that the issue touches upon the title of the respective parties and hence they have to prove their claim for title over the suit property only by way of filing a suit before the Civil Court.



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**11.** Since liberty was given to the parties both of them have filed their respective suits. While the applicant / 1<sup>st</sup> defendant has filed the suit in O.S.No.5930 of 2022, the plaintiff has come forward with this suit to declare his title. Despite filing the suit in O.S.No.5930 of 2022, the 1<sup>st</sup> respondent did not choose to seek any declaration of his alleged title in respect of the suit property but his reliefs are primarily to declare certain sale deeds from the year 2011 as null and void. All those sale deeds are the plaintiff predecessors' title deeds and that would go to the root of the title of the plaintiff. Hence the plaintiff has rightly prompted to file the suit for title with the other reliefs in this given point of time.

**12.** The facts that led to filing the suit for injunction was less intention or even different when comparing to the present facts which led him to file a suit for declaring his title. Even though the plaintiff had derived the cause of action right from the date on which date his possession was disturbed, his right to file a suit for declaration is available to him from the time when the cloud was set against his title by the alleged subsequent acts and deeds of the applicant / 1<sup>st</sup> defendant.



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13. Even for any remote reasons, if the applicant / 1<sup>st</sup> defendant considers that the suit is hit by limitation, the question of limitation being mixed question of fact and law and the circumstances narrated above, the same can be pleaded by the applicant / 1<sup>st</sup> defendant in the written statement by allowing the Court to frame an issue regarding limitation and then try the same. To highlight the point of the 1<sup>st</sup> defendant that the factum of limitation is a mixed question of fact and law, he cited the decision of the Hon'ble Supreme Court held in ***Shakti Bhog Food Industries Limited vs. Central Bank of India and another*** reported in (2020) 17 SCC 260 wherein it is held as under:-

*“22.It is well-established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order 7 Rule 11 CPC is ruled out. In the present case, the assertion in the plaint is that the appellant verily believed that its claim was being processed by the regional office and the regional office would be taking appropriate decision at the earliest. That*



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*belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 8.5.2002 followed by another letter dated 19.9.2002 to the effect that the action taken by the Bank was in accordance with the rules and the appellant need not correspond with the Bank in that regard any further. This firm response from the respondent Bank could trigger the right of the appellant to sue the respondent Bank. Moreover, the fact that the appellant had eventually sent a legal notice on 28.11.2003 and again on 7.1.2005 and then filed the suit on 23.2.2005, is also invoked as giving rise to cause of action. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.”*

**14.** There can not be any disagreement that the maintainability of the suit can be seen only from the averments of the plaint. In the plaint the plaintiff has narrated the earlier suits and proceedings which were initiated against the applicant and he has specifically stated about the cancellation of patta and only thereafter, the plaintiff has rightly filed the suit for declaration and hence it is maintainable.



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**15.** In the result, the application in Application No.2679 of 2023 is dismissed.

**07.08.2023**

Speaking order

Index : Yes

Neutral Citation : Yes

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To

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Chennai District, Chennai Collector's Office,  
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- 2.The Revenue Divisional Officer,  
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**R.N.MANJULA, J.**

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**Pre-Delivery Order made in**  
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