



S.A.No.118 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2023

DELIVERED ON : 01.03.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.118 of 2019

and

**C.M.P.Nos.2467 of 2019, 13263 of 2021,
17 of 2022, 1332 of 2022 and 2412 of 2023**

Shanmugasamy Chettiar (deceased)

Represented by his legal representatives

1. S.Sudamani

2. S.Palanivel

3. S.Kumar @ Kumaravelu

4. S.Rajavelu

5. Vijayalakshmy

.. Appellants

Vs.

1. Dr.Louis Pragasam Kannaya

2. Natarajan Chettiar

(set exparte both in trial Court
and Lower Appellate Court)

3. Louis Sinnaya Arokiasamy

(set exparte both in trial Court
and Lower Appellate Court)

(cause title accepted vide
order of Court dated 15.11.2018
made in C.M.P.No.10662 of 2018
in S.A.SR.No.26810 of 2015)

.. Respondents

Prayer:- Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree passed in A.S.No.15 of 2013 dated 05.09.2014 on the file of the Principal District Judge, Puducherry confirming the Judgment and



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Decree passed in O.S.No.354 of 2005 dated 30.03.2012 on the file of the Additional Sub-judge, Puducherry and by allowing this second appeal with cost through out.

For Appellants : Mr.R.Natarajan

For Respondents

R1 : Mr.Prakash Adiapadam

R2 and R3 : exparte

JUDGMENT

This second appeal has been filed as against the Judgment and Decree passed in A.S.No.15 of 2013 dated 05.09.2014 on the file of the Principal District Judge, Puducherry confirming the Judgment and Decree passed in O.S.No.354 of 2005 dated 30.03.2012 on the file of the Additional Sub-judge, Puducherry, thereby decreeing the suit for delivery of possession of the suit schedule property.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The first respondent is the plaintiff. The appellant (since deceased), second and third respondents herein are the defendants. The case of the plaintiff in brief is that the suit property belong to the plaintiff, the third defendant and legal heirs of plaintiff's sister one Rathinamarie. During the family partition, the



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eastern side of “A” schedule suit property was allotted in favour of the third defendant and the western side of “A” schedule suit property was allotted in favour of the plaintiff. The “B” schedule property is nothing but part of the “A” schedule property. The first defendant was the tenant of the plaintiff in the suit schedule property for a monthly rent of Rs.2,500/-. The first defendant is also paying monthly rent from May 2000 to December 2002. Already, the plaintiff filed a suit for recovery of 1/6th portion of “A” schedule property from the first defendant in O.S.No.88 of 2004 on the file of the Additional Sub Court, Pondicherry. The first defendant relied upon the Judgment and decree passed in O.S.No.73 of 1999 on the file of the Additional Sub Court, Pondicherry, thereby asserting the status of being tenant of “A” schedule property. In fact, the plaintiff and the third defendant were the parties to the said suit. However, the plaintiff remained exparte and he came to know about the said suit only after seeing the written statement filed in O.S.No.88 of 2004 by the first defendant. The first defendant, being the tenant of “B” schedule property, which belongs to the plaintiff, ought to have paid the monthly rent on or before 5th of every month. The first defendant committed default in payment of rents and he is associating and trading business with the second defendant. The first defendant failed to pay the rent from the month of January 2003. Hence, the plaintiff issued notice, thereby called upon them to quit “B” schedule property



and handover vacant possession. Hence, the suit.

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4. Resisting the same, the first defendant filed a written statement stating that even according to the plaintiff, part of the suit property was already decreed in favour of the first defendant in O.S.No.73 of 1999, thereby restraining the plaintiff and the third defendant from disturbing the first defendant's peaceful possession and enjoyment of the suit property which is also part of the subject matter in the present suit. The said Judgment and Decree passed in O.S.No.73 of 1999 has become final. The plaintiff and his brother and sister had jointly executed a rental agreement with regard to the suit property to and in favour of one Siva Subramania Chettiar s/o Palanisamy Chettiar by the agreement dated 01.06.1986 for a monthly rent of Rs.720/-. The said Siva Subramania Chettiar died in the year 1988. He is none other than the brother of the first defendant. After the demise of the said Siva Subramania Chettiar, his brother one Balabaskaran had taken over the tenancy and the tenancy was attorned by the plaintiff, the third defendant and their sister. The said Balabaskaran also died in the year 1992 and on his demise, the first defendant had taken over the tenancy and he continued with the attornment. Thereafter, the lease agreement was revised and renewed thrice. However, the original lease agreement was retained with the plaintiff, the third defendant and their



sister. While being so, one the brothers of the first defendant i.e. Ananda Baskaran, colluded with the plaintiff along with his brother and sister's husband and clandestinely made some arrangements in order to vacate the first defendant. Hence, the first defendant was constrained to file a suit in O.S.No.73 of 1999 for declaration with regard to the suit property and permanent injunction as against the plaintiff, his brother and sister's husband one A.John Ambroise and the brother of the first defendant. He further stated that the plaint itself is barred under law. The provision under Order 2 Rule 2 of CPC has stopped the plaintiff from filing suit for the same relief and in respect of reliefs which were relinquished and waived in the earlier suit. There is no cause of action for filing the present suit and prayed for dismissal of the suit.

5. On the basis of the pleadings, the Trial Court framed the following issues:-

“ 1. Whether the plaintiff is stopped from filing the present suit for the reliefs which were relinquished and waived in the earlier suit?

2. Whether the suit is barred by the provision of order 2 rule 2 of CPC?

3. Whether the description of the property is correct?

4. Whether the payment of Court fee is correct?



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5. *Whether the plaint has cause of action?*

6. *Whether the suit is barred by the Principals of resjudicata?*

7. *Whether the first defendant is continuously paying the rent without any details?*

8. *Whether the plaintiff is entitled to get the relief as prayed for?*

9. *To what relief if any the parties are entitled to?"*

6. On the side of the plaintiff, he had examined P.W.1 and marked Exs.A1 to 14. On the side of the defendants, they had examined D.W.1 and no document was marked. On a perusal of oral and documentary evidences, the Trial Court decreed the suit and ordered for eviction. Aggrieved by the same, the first defendant preferred an appeal and the same was also dismissed confirming the Judgment and Decree passed by the Trial Court. Hence, this second appeal.

7. This Court admitted this second appeal on the following substantial questions of law:-

“(a) Whether the course adopted by the lower appellate Court in omitting to deal with petition filed under Order 41 Rule 17 for reception of additional documents being the registered sale deeds so executed way back in the year 03.06.1991 and 13.02.1999 by the first respondent plaintiff and his brother and sister in I.A.No.1184 of 2014 in A.S.No.15 of 2013 whereby



resulted in total failure of justice and caused grave injustice besides contrary to law?

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b) Whether the lower appellate court is right in ignoring the additional documents being the registered sale deeds filed in I.A.No.1184 of 2014 in A.S.No.15 of 2013 especially when these documents straight away nullify and deny the claim of the first respondent/plaintiff in instituting the suit itself before the Court of law besides such an act of the first respondent plaintiff would amount to playing fraud upon the Court? ”

8. Pending this second appeal, the appellant filed C.M.P.No.1332 of 2022, to receive additional documents. The learned counsel for the appellant would submit that while pending appeal suit before the first appellate Court, the appellant herein filed an application under Order 41 Rule 27 CPC r/w Section 151 CPC for reception of additional documents i.e. sale deeds dated 03.06.1991, 23.03.1992 and 13.02.1999 and nullify, deny and dis-entitle plaintiff to sustain the claim made in the suit, since the plaintiff had lost title and ownership by reasons of execution of registered sale deed in respect of the suit properties long ago i.e. much prior to filing the present suit. Unfortunately, the first appellate Court did not even pass any order in the CMP and dismissed the appeal suit. The appellant had categorically brought to the notice of the first appellate Court in respect of the sale executed by the plaintiff, his brother and his sister in the year 1991 and in the year 1999 in respect of the suit property. However, without considering the same, the first appellate Court dismissed the



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appeal suit. Though, the present suit itself is barred by law and by operation of Order 2 Rule 2 CPC, already the plaintiff filed a suit in O.S.No.88 of 2004 and subsequently it was transferred to the file of the IInd Additional District Munsif, and renumbered as O.S.No.1202 of 2005 and the same was dismissed without any liberty to file a fresh suit, on the same cause of action.

9. While being so, the plaintiff has no cause of action for filing the second suit and it is barred by law. Therefore, the appellant filed C.M.P.No.1332 of 2022 to receive the sale deed dated 30.06.2014 registered vide Document No.4710 of 2014 as additional document in the present second appeal. He further submitted that the appellants are the legal heirs of the deceased Shanmugasamy Chettiar. The plaintiff had sold one portion of the suit property comprised in R.S.No.243/27 along with other sharer to one Sampath by the registered sale deed dated 30.06.2014, ad-measuring 13558 sq.ft registered vide Document No.4710 of 2014. The appellants came to know about the said document during the pendency of the second appeal. The suit itself is filed for recovery of possession in respect of the property which was already conveyed in favour of one Sampath. Therefore, the plaintiffs suppressed the entire facts and filed a suit for ejectment. Even before filing the suit, the property comprised in R.S.No.243/19 was sold and after filing the suit,



the property comprised in R.S.No.243/27 was also sold out.

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10. In support of his contention, he relied upon the Judgments reported in *AIR 1969 MADRAS 324* in the case of *Saradambal Vs A.M.P.Arunachalam*, in *1994 (1) SCC 1* in the case of *S.P.Chengalvaraya Naidu (dead) by LRS Vs. Jagannath (dead) by LRS and others*, in *2018 (3) MWN (Civil) 781* in the case of *Corporation of Madras and another Vs M.Parthasarathy and others*, in *2012 (6) SCC 430* in the case of *A.Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others* and in *2014 (2) SCC 269* in the case of *Union of India and others Vs. Vasavi Cooperative Housing Society Limited and others*.

11. Per contra, the learned counsel for the respondents would submit that the appellant cannot be permitted to lead additional evidence. It would amount to filling-up the lacuna or patch-up the weak points. Order 41 Rule 27 CPC can be invoked only under specific circumstances i.e. when the Trial Court has refused to receive such evidence sought to be adduced, or when such evidence sought to be adduced was not available despite exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due



diligence, be produced by him at the time when the decree was passed, and when if the appellate Court feels that if it is necessary to pronounce the Judgment. The alleged documents which are sought to be marked by the appellants in the present appeal are no way related to the suit property and it relates to some other property. Therefore, the said documents are absolutely not necessary to decide this appeal. Further, there is absolutely no pleadings in order to mark documents as additional evidence. A party cannot be permitted to lead evidence without any pleading and no amount of evidence can also be looked into, upon a plea which was never put forward in the pleadings. He further submitted that the appellant since deceased, who is the first defendant in the suit had consistently maintained a stand that in the written statement, chief examination and during the cross examination that he is a tenant in the suit property and the respondents are the landlords of the suit property. In fact, the Judgment and Decree passed in O.S.No.73 of 1999 clearly revealed that the father of the appellant since deceased, was a tenant and he filed a suit for declaration declaring his tenancy right over the property and consequential injunction. Therefore, in view of the admission made by the first defendant, the legal heirs of the first defendant cannot take a stand whereby denying title of the plaintiff. The tenant is always a tenant and tenant cannot challenge the title of the landlord and after having accepted the title of the landlord and



attornment of tenancy with regard to the suit property, the learned counsel for the plaintiff has to prove his case. The suit cannot be decreed on the basis of weakness of the defendants.

12. In support of his contention, he relied upon the Judgments reported in *2009 (4) MLJ 900 (SC)* in the case of *Bachhaj Nahar Vs Nilima Mandal and others*, in *2017 (2) SCC 274* in the case of *Bismillah be (dead) by legal representatives Vs Majeed Shah*, in *2002 (2) Supreme 203* in the case of *Sheela and others Vs. Firm Prahlad Rai Prem Prakash*, in *2018 (6) SCC 744* in the case of *Apollo Zipper India Limited Vs. W.Newman and Company Limited* and in *2011 1 LW 824* in the case of *Ravichandran and others Vs Paramasivam*.

13. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the first respondent.

14. The plaintiff filed a suit for ejectment and damages in respect of the suit properties. Admittedly, the suit property belongs to the plaintiff, the third defendant and their sister Rathinamarie. In the partition, “A” schedule property was allotted to the plaintiff towards his share, in which the appellant is the



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tenant and he was paying monthly rent of Rs.2500/- in respect of “B” schedule property from May 2000 to December 2002. While being so, the appellant was in arrears of payment of rent from January 2003. Therefore, the plaintiff filed a suit for recovery of 1/6th share of “A” schedule property from the appellant in O.S.No.88 of 2004 on the file of the Additional Sub Court, Pondicherry for declaration declaring him as tenant of “A” schedule property and also for injunction. In the said suit, the plaintiff and the third defendant remained exparte and an exparte decree was passed. Therefore, the plaintiff had not pressed the said suit. Thereafter, the first defendant is in arrears of payment of rent and committed wilfull default in payment of rent. The plaintiff caused notice and filed a suit. The said suit was decreed and aggrieved by the same, the appellant filed an appeal suit. While pending appeal suit, the appellant filed an application under Order 41 Rule 27 CPC for reception of additional documents in I.A.No.1184 of 2014 in A.S.No.15 of 2013.

15. The learned counsel for the appellant mainly contended that the appellate Court failed to pass order in the said application without considering the documents which were proposed to be marked are essential to decide the appeal suit. On a perusal of records revealed that the first appellate Court passed separate order in I.A.No.1184 of 2014 in A.S.No.15 of 2013 by an order



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dated 05.09.2014 i.e. on the same date of judgment and decree passed in

A.S.No.15 of 2013, thereby dismissed the same. In the Judgment and Decree passed in O.S.No.73 of 1999 on the file of the Additional Sub Court, Pondicherry, revealed that it was filed for declaration with regard to the tenancy right over the suit property and for permanent injunction as against the plaintiff and the third defendant. Therefore, the appellant categorically admitted that he is the tenant and he had not pleaded the alleged mis-description of the suit property in the written statement. In fact, his evidence was also not to that effect. Therefore, he is not entitled to raise a new plea before the appellate Court without any pleadings. While pending this second appeal, again the appellant filed an application in C.M.P.No.1332 of 2022 to receive additional evidence in respect of the sale deed dated 30.06.2014 registered vide Document No.4710 of 2014. As rightly contended by the learned counsel for the plaintiff that it is well settled law that a party cannot be permitted to lead evidence without any pleading and no amount of evidence can also be looked into, upon a plea which is never put forward in the pleadings. A question which was not the subject matter of an issue cannot be decided by the Court. The Court should confine its decision to the question raised in pleadings. Further, no amount of evidence or argument could be looked into or considered in the absence of specific plea and issues. Therefore, the first substantial question of law is



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answered against the appellants and in favour of the plaintiff.

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16. The learned counsel for the appellant vehemently contended that the plaintiff failed to bring to the notice of the earlier suit filed by him for recovery of possession in respect of 1/6th share of the suit schedule property and as such the present suit is clearly barred by Principles of resjudicata.

17. A perusal of records revealed that the appellant claims that he is a tenant of suit schedule property in O.S.No.73 of 1999. Therefore, the plaintiff had withdrawn the suit in O.S.No.88 of 2004 filed for recovery of possession. The present suit has been filed on the cause of action that the appellant failed to pay rent and as such it has been filed for ejectment, since the appellant categorically admitted that he is a tenant under the plaintiff. Therefore, no Principles of resjudicata would attract for the present suit. There is no question of suppression of fact and no fraud committed by the plaintiff. Therefore, the Judgments cited by the learned counsel for the appellant are not helpful to the case on hand.

18. The Hon'ble Supreme Court of India held that the law relating to



derivative title of the landlord and challenge if made, to such title by the tenant during subsistence of tenancy in relation to demised property is fairly well settled. Though, by virtue of Section 116 of the Indian Evidence Act, 1992, the tenant is estopped from challenging title of his landlord during the continuance of the tenancy, yet the tenant/lessee is entitled to challenge the derivative title of an assignee/vendee of the original landlord of the demised property in an action brought by the assignee/vendee against the tenant for his eviction from the demised property under the rent laws. This right of a tenant is, however, subject to one caveat that the tenant/lessee has not attorned to the assignee/vendee. In other words, if the tenant/lessee pays rent to the assignee/vendee of the tenanted property then it results in creation of an attornment between the parties which, in turn, deprives the tenant/lessee to challenge the derivative title of an assignee/vendee in the proceedings.

19. In the case of hand, admittedly, the appellant was paying the rent to the plaintiff. Only from the month of January 2003, he had committed default and refused to pay any rent to the petition premises. Therefore, he cannot challenge the title of the plaintiff in respect of the suit schedule property. That apart, on a perusal of deposition also revealed that he is the tenant under the plaintiff and was paying rent till December 2002 for the suit property. Further,



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the application filed under Order 41 Rule 27 CPC should not be heard separately and it should be heard along with the appeal on merits. The scope of such requirement cannot be extended by holding that the order passed in such an application should be either incorporated in the judgment itself or should be made simultaneously while pronouncing judgment in the appeal.

20. Therefore, the first appellate Court rightly dismissed the application filed to receive the additional documents, simultaneously along with the appeal suit. The second substantial question of law involved in this case is also answered in favour of the plaintiff. Hence, this Court finds no infirmity or illegality in the orders passed by the Courts below and also finds no substantial questions of law is involved in this case and the second appeal is liable to be dismissed.

21. Accordingly, this Second Appeal is dismissed. Consequently, connected Miscellaneous petitions are closed. No costs.

.03.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.



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To

1. The Principal District Judge, Puducherry.
2. The Additional Sub-judge, Puducherry.

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and

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