



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Civil Appellate Jurisdiction )

Friday, the Thirtieth day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P.VELMURUGAN

CMP(MD) No.6750 of 2019  
IN  
SA(MD) No.113 of 2015

S.R.KALAISELVI

... PETITIONER/APPELLANT

Vs

1 PACKIASELVAM

2 RAJESWARI

... RESPONDENTS/RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to amend the plaint in O.S.431 of 2002 which is morefully described hereunder.

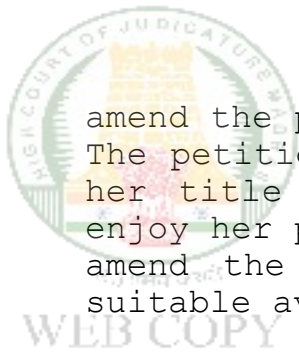
Prayer in SA(MD) No.113 of 2015:

To reverse and set aside Judgment and decree dated 08.07.2008 passed by the learned I Additional Subordinate Judge, Nagercoil in A.S.No.60/2006 in reversing the judgment and decree of II Additional District Munsif, Nagercoil, dated 27.02.2006 in O.S.No.431/2002.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.RAMESH, Advocate for the petitioner and of M/S.S.RAJASEKAR, Advocate on behalf of the Respondents the court made the following order:-

This petition has been filed to amend the plaint for recovery of possession for abundant cause.

2. The learned counsel for the petitioner would submit that the petitioner filed the suit before the trial Court for declaration and consequential relief of permanent injunction. Though the trial Court granted the relief of declaration, however, dismissed the suit for injunction. Aggrieved over the same, the plaintiff filed an appeal in A.S.No.60 of 2006 before the Additional Sub-Court, Nagercoil. The first appellate Court confirmed the judgment and decree of the trial Court. Against the judgment and decree, the appellant has filed the present second appeal. During the pendency of the second appeal, the appellant/petitioner has filed the present petition to



amend the plaint for consequential relief of recovery of possession. The petitioner is the real title holder of the suit property. Even her title to the suit property has been declared, she could not enjoy her property peacefully. Hence, she filed this application to amend the plaint for the relief of recovery of possession with suitable averment.

3. The learned counsel for the respondent would submit that though the trial Court granted the relief of declaration, however, found that the plaintiff was out of possession, therefore, consequential relief of permanent injunction was dismissed. The plaintiff/petitioner has filed the first appeal, the first appellate Court also while re-appreciating the evidence, confirmed the judgment and decree of the trial Court. The appellant has filed the second appeal in the year 2015, but till date he has not taken any steps to get the alternative relief. Both the Courts found that the plaintiff is out of possession and therefore, permanent injunction has not been granted. Now, after 20 years from the date of the filing of the suit, the petitioner has filed the present petition without giving any acceptable reason. Hence, this application is barred by limitation.

4. Admittedly, the petitioner is the plaintiff in O.S.No.431 of 2002 and the same was partly decreed on 16.07.2002. Though the relief of declaration was granted, however, the permanent injunction was dismissed. Aggrieved over the same, the plaintiff has filed an appeal in A.S.No.60 of 2006 before the Additional Sub-Court, Nagercoil. The first appellate Court confirmed the judgment and decree of the trial Court. Against the judgment and decree, the appellant has filed the present second appeal.

5. This Court while admitting the second appeal formulated the following substantial questions of law:-

"1) Whether the First Appellate Court is right in dismissing the suit in toto having found the plaintiff alone is having valid title?

2) Whether the First Appellate Court is right in dismissing the suit having found that Ex.A5 deed of settlement cannot be revoked as contemplated under Section 126 of PP Act?

3) Whether both the Courts below are not wrong in rejecting plea of possession of rights having right that plaintiff having valid title and defendants do not hold valid title?

4) Whether both the Courts below is right in not following the principles that possession follows title?

5) Whether both the Courts below is right in holding that the revenue records alone assert possession and title when registered deeds are available to prove title on the plaintiff?"

6. The petitioner has not taken any steps to amend the plaint for recovery of possession and he kept quite till 2019 and only in 2019 she has filed the present petition to amend the



plaint. It is a settled proposition of law that the recovery of possession has to be sought for within 12 years from the date of dispossession, if it is barred by limitation, no relief can be granted. The suit was filed in the year 2002 and now the application filed only in the year 2019 for the relief of recovery of possession and therefore, this Court finds that the relief sought for by the petitioner is barred by limitation. The reasons stated in the accompanying affidavit are not satisfied, hence, this application is dismissed.

7. List the second appeal on 06.07.2023.

sd/-  
30/06/2023

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05 /07/2023

Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

am

TO

- 1.THE I ADDITIONAL SUBORDINATE JUDGE, NAGERCOIL
- 2.THE II ADDITIONAL DISTRICT MUNSIF, NAGERCOIL,

ORDER  
IN  
CMP(MD) No.6750 of 2019  
IN  
SA(MD) No.113 of 2015  
Date :30/06/2023

RK/BUC/SAR- (05/07/2023) 3P/3C