



S.A.No.950 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.950 of 2003

1.Kanniah Dhass
2.Krishnan
3.Seenivasan
4.Suratha
5.Yamuna Devi

... Defendants 2 & 4 to 7/Appellants/
Appellants

Vs.

1.Sundaram @ Sundarathammal

... Plaintiff/1st Respondent/
1st Respondent

2.Narayana Karayalar
3.Mahalakshmi

...Defendants 3 & 8/Respondents
2 & 3/Respondents 2 & 3

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 23.06.1998 made in A.S.No. 203/1996, on the file of the Principal District Court, Tuticorin confirming the judgment and decree dated 05.12.1995 made in O.S.No.425 of 1992, on



S.A.No.950 of 2003

the file of the District Munsif Court, Srivaikundram.

For Appellants : Mr.P.Thiagarajan
for Mr.T.Selvakumaran
For R1 : Mr.M.P.Senthil
for Mr.J.Antony Jesus
For R3 : No appearance

J U D G M E N T

The first respondent is the plaintiff in O.S.No.425 of 1992, on the file of the Principal District Munsif, Srivaikundam. The first respondent filed the above said suit for permanent injunction against the appellants, and respondents 2 & 3.

2. After completing the pleadings and framing of issues, on the side of the plaintiff, he was examined as P.W.1 and 25 documents were marked as Ex.A1 to A25. On the side of the defendants, second defendant was examined as D.W.1 and 7 documents were marked as Ex B1 to Ex.B7.



S.A.No.950 of 2003

WEB COPY

3. After trial, the trial Court decreed the suit as prayed for. Aggrieved by the judgment and decree passed by the trial Court, the defendants 2, 4 to 7 filed an appeal before the Principal District Court, Tuticorin in A.S.No.203/1996. The learned Principal District Judge, Tuticorin, after hearing the arguments and re-appreciated the evidence, dismissed the appeal. Challenging the said dismissal of the judgment and decree, the appellants have filed the present second appeal by raising the following substantial questions of law:-

- “i. Whether the suit as framed is maintainable?
- ii. When the plaintiff failed to establish that there was any agreement to sell between him and 1st defendant is the learned District Judge right in granting permanent injunction without suit being filed for specific performance?
- iii. When the plaintiff failed to establish payment of advance by way of any documentary evidence when it was denied, is the learned District Judge right in granting



S.A.No.950 of 2003

the executable relief that too when the plaintiff has not come to Court with clean hands?”

4. The specific case of the first respondent/plaintiff is that the suit property was purchased by the first defendant in the year 1976 and the said property was belonged to the first defendant. The second defendant is the husband of the first defendant. As the second defendant was working in the Military, the defendants 1 & 2 lived in Bangalore. The third defendant is the co-brother of the second defendant and the suit property was under the supervision of the third defendant. The plaintiff approached the third defendant for purchasing the suit property and hence, the sale price was fixed at Rs.22,000/- and a sum of Rs.8,000/- was paid as an advance amount to the third defendant by the plaintiff on 19.03.1979 and the balance amount was paid by the plaintiff to the third defendant before 1983 in 6 installments. On the date of payment of advance amount in the year 1979 itself, the third defendant handed over the possession of the suit property to the plaintiff and only by the arrangement of the third defendant, the tax register in the Panchayat was also changed in the name of the plaintiff from



S.A.No.950 of 2003

that time onwards. The third defendant informed the plaintiff that the first defendant had agreed to execute the sale deed on receipt of the balance of the sale consideration. The second defendant, who is the husband of the first defendant also knew about the proposal for the sale of the suit property to the plaintiff on receipt of the money by the third defendant from the plaintiff towards the sale. The third defendant is a broker for purchasing the house properties. When the plaintiff insisted the third defendant to execute the sale deed through the 1st defendant, the third defendant told the plaintiff that the enjoyment of the suit house has been given to the plaintiff and as the plaintiff has changed the registry in the Panchayat to her name she need not press for execution of the sale deed immediately. Believing the words of the third defendant, the plaintiff did not take any steps to get the sale deed. After the purchase of the suit property, the plaintiff got the electricity connection to her name in the year 1986 for the suit building. After purchase of the suit property, the plaintiff effected improvements in the building by spending Rs.6,000/- for the main building and Rs.1,200/- for the tiled shed. The plaintiff is enjoying the suit building from 1979 onwards by



S.A.No.950 of 2003

paying tax to the building in the suit property. The plaintiff has perfected her title to the suit property by adverse possession also. The third defendant try to interfere with the possession taking advantage of the non-execution of the sale deed. Therefore, the present suit has been filed. Pending suit, the first defendant died and the defendants 4 to 8 are the legal representatives of the first defendant.

5. The case of the appellants/defendants is that they denied the sale made by the third defendant in favour of the plaintiff on behalf of the first defendant. The suit property belongs to the first defendant. She has not given any authorisation or power of attorney to the third defendant to sell the property to the plaintiff. She never received any consideration much less than the advance amount either directly or through the third defendant and also she never received any balance sale consideration as averred in the plaint. The suit property belongs to the first defendant. The second defendant is the husband of the first defendant. Since the second defendant was working in the Military at Bangalore, both the defendants were lived in



S.A.No.950 of 2003

Bangalore. The third defendant is only a co-brother of the second defendant. From the date of purchase of the suit property, the plaintiff's husband got the suit property on lease for a monthly rent of Rs.100/- and was residing in the suit property. When the second defendant retired from the Military, he came to the suit property and demanded the plaintiff to vacate the suit building for his own use, the plaintiff agreed to vacate the suit building within a week and also gave a letter to that effect. Thereafter, the suit has been filed with false allegations only with a view to drag on the matter. Though the tax paid from the year 1979 in the name of the plaintiff and no patta was transferred and no property was transferred and no mutation took place from the year 1979 to 1992 in the name of the plaintiff. The property was continuously stood in the name of the first defendant alone. Further, the defendants stated that they never sold the property and they are enjoying the property as their own property without lessee. Therefore, the plaintiff is not entitled for the relief as such sought for in the plaint and prayed for dismissal of the suit.



S.A.No.950 of 2003

WEB COPY

6. While admitting the second appeal, this Court formulated the following substantial questions of law:-

“i. On the facts of this case, in the absence of the relief praying for a decree for specific performance, whether the suit for bare injunction is maintainable?

ii) Whether any laches on the part of the first defendant in proving the contract of tenancy between her and the plaintiff's husband would automatically clothe the plaintiff with the legal right of getting an injunction based on the oral agreement of sale?

iii) In the absence of any material at all to show that there was an oral agreement of sale and price was paid under the agreement of sale, have not the courts below committed an illegality in granting a decree for injunction?

iv) Whether the third defendant, who is shown to be the co-brother of the second defendant and when the property admittedly is owned by the first defendant, can legally act as an agent of the first defendant in the absence of any such authority given in writing?”



S.A.No.950 of 2003

WEB COPY

7. The learned counsel for the appellants would submit that the properties belongs to the first defendant and since the second defendant is the husband of the first defendant was working in Military at Bangalore, the first defendant was also residing along with second defendant and the plaintiff was in possession of the property on lease for monthly rent of Rs.100/-. The tax Register was also changed in the name of the plaintiff because the Executive Officer, Srivaikundam Panchayat Union issued an order dated 1.10.1992 that upto 31.03.1992. Tax in respect of building in the suit property was in the name of Sudalaiyadum Perumal, who is the first defendant's vendor's father name. There is no evidence for the payment of consideration of Rs.22,000/- to the appellants. Neither document nor reliable oral evidence to prove the payments alleged to have been made to the appellants. The appellants never sold the property to the first respondent/plaintiff and they never agreed to sell the properties to the first respondent/plaintiff and they did not receive any amount as sale consideration. The first respondent/plaintiff has not produced any iota of documents to prove that she has paid the money for sale consideration. The



S.A.No.950 of 2003

first defendant, who is the owner of the property, either agreed to sell the property or sold the property to the plaintiff. The plaintiff did not send any legal notice to the appellants to execute the sale deed and also for payment of any sale consideration. There is no contact between the first defendant and the plaintiff. The first respondent/plaintiff never paid any consideration for sale of the property to real owner. The first defendant never authorised the third defendant to sell the property by executing any deed. The plaintiff even during the course of chief examination did not speak about the payment of sale consideration.

8. The first respondent/plaintiff cheated the appellants/defendants and obtained the electricity connection without the knowledge of the appellants/defendants and by taking advantage of the fact that the defendants are working in Bangalore. Therefore, the conclusion of the trial Court and the appellate court is erroneous and both the Courts did not consider that there is no sale deed and there is no receipt or acknowledgement for payment of sale consideration and they did not hand



S.A.No.950 of 2003

over the possession to the plaintiff. There is no vendor and purchaser relationship between the appellants and the respondents. There is only a relationship of landlord and tenant and therefore, the suit is not maintainable against the owner of the property, but the first respondent/plaintiff filed the suit as if she is the absolute owner of the suit property and she got the absolute right and ownership. Absolutely, no evidence except to show that in the year 1992 only patta was transferred, immediately, the appellants objected the same and thereafter, the plaintiff filed the suit. There is no question of adverse possession, since she never pleaded and claimed that the sale was effected in the year 1979 and the mutation took place in the year of 1979 and from 1979 to 1992 without any interruption and disturbance of the appellants/defendants, the plaintiff enjoying the property as her own. Further, the first respondent/plaintiff has not proved the title and ownership and she has no right to file a suit and plead that she has prescribed title by adverse possession. Absolutely, the plaintiff has no right and title over the suit property. The first respondent/plaintiff has failed to prove the title and ownership and therefore, she is not entitled for any relief of permanent



S.A.No.950 of 2003

injunction on the ground of ownership. Both the Courts failed to see that there is no privity of contract between the plaintiff and the first defendant for sale of the property and the plaintiff never paid any consideration for sale of the property to the real owner and prayed for allowing the appeal.

9. Learned counsel for the first respondent/plaintiff would submit that even from 1979 the plaintiff is in possession of the property and she was paying the property tax continuously and also obtained the electricity connection in her name and paying the electricity charge and enjoying the property as her own. Though the third defendant entered into the oral agreement and received the entire sale consideration and handed over the possession to the plaintiff and she is in possession of the property, the defendants have not produced any document to show that the properties stood in the name of the first defendant and also paid the tax in their name and entered into the lease agreement and put the plaintiff as a tenant. The plaintiff is enjoying the property from 1979 till today. Therefore, even from 1979 and till the filing of the suit in the year 1992 the plaintiff was in



S.A.No.950 of 2003

possession of the property, therefore, she has prescribed title by adverse possession also. Considering the long possession of the plaintiff and also the appellants/defendants were not proved that they entered into the lease agreement and based on the lease agreement, the first respondent/plaintiff was put in possession, the trial Court granted the decree in favour of the plaintiff. Therefore, both the courts below rightly appreciated and re-appreciated the oral and documentary evidence and rightly decreed the suit and there is no merit in the appeal and it is liable to be dismissed.

10. Heard the learned counsel appearing on both sides and perused the materials available on record.

11. The specific case of the first respondent/plaintiff is that the suit property belonged to the first defendant and she made a proposal to sell the property through the third defendant to the plaintiff and sale consideration for the suit property was fixed as Rs.22,000/- and out of which, she paid a sum of Rs.8,000/- on 19.03.1979 itself as advance and the



S.A.No.950 of 2003

WEB COPY

third defendant handed over the possession to the plaintiff on the same day and balance amount was paid by the first respondent/plaintiff to the third defendant before 1983 in 6 installments. Therefore, from the year 1979 onwards, the first respondent/plaintiff was enjoying the property as her own and she also paid the property tax from 1979 and obtained the electricity connection and she was in long possession and she got the absolute right over the property and possession over the property. All of a sudden, in the year 1992 the third defendant interfered with the possession and also instigated the second defendant to interfere with the property taking advantage of the non-execution of the sale deed after receiving the entire sale consideration.

12. The specific case of the appellants/defendants is that though the suit property purchased in the name of the first defendant since the second defendant, who is the husband of the first defendant, working in the Military, they let out the building for lease to the plaintiff and subsequently, taking advantage of the absence of the defendants 1 & 2, the plaintiff paid



S.A.No.950 of 2003

the tax and even though tax was not paid in the name of the 1st defendant, it was continuously paid in the name of the father of the vendor of the first defendant. The first respondent/plaintiff has not proved any oral and documentary evidence to show that the first defendant sold the property to the first respondent/plaintiff.

13. The first respondent/plaintiff cannot claim any adverse possession because mutation was not taken place in the name of the plaintiff from the year 1979 and over and above the statutory period. They cannot claim right under Section 53 (A) of the Transfer of Property Act and the first respondent/plaintiff herself admitted that there was no written agreement. When a person exercising the right under Section 53(A) of the Transfer of Property Act, the agreement should be in writing, therefore, the first respondent/plaintiff has no right in continuing the suit property, when she failed to pay the rent.

14. The first substantial question of law is answered as follows:-



S.A.No.950 of 2003

WEB COPY

(i) As already stated that except the averments made in the plaint, there is no evidence to show that there is an agreement between the owner of the property/1st defendant and the plaintiff. Further, the plaintiff has not proved the oral agreement and fixation of sale consideration of Rs.22,000/-, out of which, Rs.8,000/- was paid as advance in the year 1979 and also balance sale consideration was paid in 6 installments till 1983 and she was put in possession as a purchaser. Since there is no sale agreement executed by the first defendant in the name of the plaintiff and assuming that the plaintiff paid the entire amount and she got the possession, the plaintiff should have sent a notice to the appellants/defendants to execute the sale deed or otherwise she should have file a suit for specific performance.

(ii) In this case, except the pleadings no oral and documentary evidence to prove that the first defendant entered into the agreement with the plaintiff for selling the suit property. The plaintiff has not proved that the first defendant entered into the agreement of sale and also not proved that the first defendant authorised the third defendant to enter into the sale agreement or sell the property to the first respondent/plaintiff and received



S.A.No.950 of 2003

the entire sale consideration from the plaintiff. If the first defendant failed to execute the sale deed, she should have file the suit for specific performance.

(ii) In this case, this Court finds that the plaintiff has not proved either the first defendant or through the third defendant, the first defendant entered into the sale agreement and failed to execute the sale deed. Therefore, it is for the plaintiff to prove her case on her own strength and she cannot take advantage of the loopholes left by the defendants.

(iv) In this case, this Court finds that there was no sale agreement either oral or written and there is no proof for payment of sale consideration and advance amount and there is no proof that the plaintiff was put in possession as the purchaser of the suit property. Therefore, mere taking advantage of the possession of the property, the plaintiff cannot say that there was an agreement and through the agreement, she was enjoying the property and if the agreement is true, she can file the suit for specific performance and she cannot file the suit for declaration and especially the appellants/defendants denied the agreement and sale consideration.



S.A.No.950 of 2003

WEB COPY

Therefore, the first substantial question of law is answered in favour of the appellants and as against the first respondent/plaintiff.

15. The second substantial question of law is answered as follows:-

(i) Though the case of the appellants/defendants is that the first defendant purchased the property and since the first defendant's husband, who is the second defendant, working in the Army in Bangalore and they were away from the property, the plaintiff was put in possession as a tenant for a monthly rent of Rs.100/-. The case of the first respondent/plaintiff is that she entered into the possession as a purchaser and the third defendant put her in possession and proposed to sell the property and sale consideration was fixed as Rs.22,000/- and paid a sum of Rs.8,000/- as advance in the year 1979 and thereafter, balance sale consideration was paid and she paid tax and obtained the electricity connection, therefore, she is in possession of the property as a original owner.



S.A.No.950 of 2003

WEB COPY

(ii) The defendants did not agree to sell the property and they never entered into the agreement of sale and they never received any amount for sale consideration and they never handed over the possession to the plaintiff and the plaintiff was only the tenant in the suit property. Admittedly, there is no tenancy agreement. The plaintiff has failed to file the lease agreement and she did not file any rent receipts. The suit filed by the first respondent/plaintiff for injunction and she has not proved her case in the manner known to law and she cannot take advantage of the loopholes left by the defendants since there was no tenancy agreement and no rent receipts were filed. The first respondent/plaintiff was not automatically get any legal right since the first respondent/plaintiff admitted the ownership of the first defendant.

(iii) The only plea of the first respondent/plaintiff is that the first defendant agreed to sell the property through the third defendant, but in this case, absolutely there is no power of attorney and there is no authorisation given by the first defendant to the third defendant to sell the property.



S.A.No.950 of 2003

WEB COPY

Therefore, the first respondent/plaintiff has to prove that the first defendant either agreed to sell the property and received the entire sale consideration and put her in possession as a purchaser. In this regard, there is no iota of evidence to show that the third defendant either sold the property or entered into an agreement and transferred the property as already stated in the plaint. All the tax receipts from the year 1979 to 1992 stood in the name of the father of the vendor of the first defendant. The first defendant is the owner of the property. Her ownership was not disputed and therefore, even the plaintiff stated that she entered into the possession as a purchaser, it is for the plaintiff to prove that there was a sale agreement and sale consideration was paid and also handed over the possession to the purchaser. Further, the plaintiff has not proved that she is in enjoyment of the property over and above the statutory period as her own property with the knowledge of the real owner without any interference. Therefore, there is no plea of adverse possession.

(iv) Even otherwise, the plaintiff has not plead and proved the adverse possession in the manner known to law. Once ownership of the



S.A.No.950 of 2003

property is admitted, they have to prove the same through the document, but in this case, no valid document was filed that the plaintiff is in possession of the property as the purchaser/owner. Under these circumstances, in the absence of valid title and right over the property, the plaintiff is not entitled to get the injunction. More so, the defendants denied the agreement of sale and has stated that she has not received any amount for sale consideration and they never put the plaintiff in possession as purchaser of the property and the right and title of the ownership has not been transferred. There is no iota of evidence to prove that the right and title have been transferred in the name of the plaintiff by the real owner. The plaintiff is not entitled to get the relief of permanent injunction.

16. The question of law No.3 is answered as follows:-

(i) The specific case of the first respondent/plaintiff is that the property belonging to the first defendant. The second defendant is the husband of the first defendant. The third defendant is the co-brother of the second defendant. The third defendant agreed to sell the property or proposed to sell the property on behalf of the first defendant.



S.A.No.950 of 2003

WEB COPY

(ii) The plaintiff approached the third defendant for proposal of purchasing the suit property and the third defendant obtained the sale consideration on behalf of the first defendant and put the plaintiff in possession of the suit property. Mutation also took place in the name of the plaintiff and she paid the tax and obtained the electricity connection and she is in possession of the property as the absolute owner of the property. Though the defendants/appellants denied all the facts and they never entered into an agreement of sale and they never agreed to sell the property and they never received any amount for sale consideration and there is no vendor and purchaser relationship, the plaintiff has not proved that there is an oral agreement and none of the independent witnesses have spoken about the same except the plaintiff.

(iii) The written statement filed by the second defendant was adopted by the third defendant and they did not admit that they entered into the sale agreement or put the plaintiff in possession and therefore, it is for the duty of the plaintiff to prove that there was an oral agreement for sale



S.A.No.950 of 2003

and the sale consideration was paid under the agreement of sale. The plaintiff herself admitted during the evidence that there was no agreement and there was no proof to show that the defendants received a sum of Rs. 8,000/- as advance and subsequently, they received the balance sale consideration in 6 installments. Admittedly the plaintiff has not proved his case except some tax receipts from 1979-92 which is not absolutely stood in the name of the plaintiff and it is stood in the name of the predecessor in title. Therefore, mere payment will not give any right.

(iv) Admittedly, the plaintiff was in possession and according to the defendants they put her in possession as a tenant and therefore, mere payment on tax will not give any absolute right to the plaintiff. Admittedly the defendants 1 & 2 were not residing in the suit properties or in the village and they were away from the suit property and therefore, the plaintiff is in possession. The defendants have stated that they had put the plaintiff in possession as a lessee. Though the tenancy has not been proved, it is for the plaintiff, who claim title, to prove that she has the absolute right and title over the property. The plaintiff has not proved her case as averred in the



S.A.No.950 of 2003

plaint and nature of the possession also not proved and also not proved the ownership of the property or the right over the property and she cannot take advantage of the loopholes left by the defendants. Further, the plaintiff has not proved the averments made in the plaint that they entered into the agreement of sale and also paid the sale consideration and she was put in possession as a purchaser and absolutely no pre-suit notice was sent and seeking the relief of declaration by way of adverse possession has not been pleaded and proved. Therefore, granting injunction based on the absolute right is not correct. The substantial question of law is answered against the first respondent/plaintiff and in favour of the appellants.

17. The substantial question of No.4 is answered as follows:-

(i) The specific case of the first respondent/plaintiff is that the first defendant is the owner of the property and the second defendant is the husband of the first defendant. The third defendant is the co-brother of the second defendant. The third defendant made a proposal to sell the property on behalf of the first defendant to the plaintiff in the year 1979 and they



S.A.No.950 of 2003

fixed the sale consideration of Rs.22,000/- and Rs.8,000/- was paid as an advance amount of the sale consideration to the third defendant and the third defendant handed over the possession to the plaintiff. Therefore, as a purchaser, the plaintiff enjoying the property. The appellants/defendants have specifically denied either sale or proposal of the sale and receipt of money either the advance money or the balance sale consideration and did not authorise the third defendant to execute the agreement or sale deed or to sell the property.

(ii) From the plaint averments it is seen that the first respondent/plaintiff admitted the ownership of the property. The first respondent/plaintiff did not enter into the agreement to purchase the property directly from the owner of the property namely the first defendant and also she has not stated that she has paid the advance amount or sale consideration directly to the first defendant and she has also not stated that the first defendant handed over the possession to the plaintiff as a purchaser.



S.A.No.950 of 2003

WEB COPY

(iii) From the reading of the oral and documentary evidence it is seen that the plaintiff has not produced any document that the first defendant has given any authorisation or power of attorney to the third defendant to deal with the property either to sell the property or entered into an agreement or lease out the property. Therefore, in the absence of the any authorisation or power of attorney, the third defendant has no right either enter into the agreement or to sell the property. The third defendant also acted as a agent and he never entered into the sale agreement or sale deed in favour of the first defendant and therefore, the plaintiff has to prove her case on her own strength and she cannot take the advantage of the loopholes left by the defendants.

(iv) The suit is filed for permanent injunction stating that the plaintiff has got absolute right and enjoyment over the property. It is for the plaintiff to prove that she has got the absolute right. The claim of the plaintiff is that she purchased the property from the first defendant through



S.A.No.950 of 2003

the third defendant and therefore, she is in possession of the property and she has paid the sale consideration and also mutation had taken place in her name. But absolutely, no evidence to show that the first defendant has given authorisation to the third defendant and the plaintiff has not proved that the first defendant acknowledged the amount received from the plaintiff through the third defendant either for advance or for sale consideration. Absolutely there is no evidence, except the plaint averments that the third defendant made a proposal to sell the suit property on behalf of the first defendant and she paid the advance amount of Rs.8,000/- in the year 1979 and balance amount was paid by 6 installments till 1983. There is no iota of evidence has been produced and there is no oral and documentary evidence were produced that in the absence of the independent witness, the plaintiff fixed the sale consideration of Rs.22,000/-, out of which Rs.8,000/- was paid as advance and balance sale consideration was paid in 6 installments.

(v) Therefore, in the absence of any oral and documentary evidence, she is right to be in possession of the suit property as the owner of



S.A.No.950 of 2003

WEB COPY

the property. Without any authorisation and even power of attorney or any other valid documents that the third defendant was authorised by the first defendant to sell the property or agreed to sell the property, this Court finds that the first respondent/plaintiff has failed to prove her case. The third defendant has no locus-standi or power to enter into any transaction on behalf of the first defendant. However, the plaintiff has also not proved the same except the averments made in the plaint and no documents are filed to prove the said facts. Therefore, the fourth substantial question of law is answered in favour of the appellants and as against the first respondent/plaintiff.

18. Under these circumstances, the suit filed for declaration is not correct and therefore, the first respondent/plaintiff is not entitled to get the permanent injunction as a lawful owner and she has not proved the absolute right and ownership over the property. Therefore, the judgment and decree passed by the trial Court are liable to be set aside. All the substantial questions of law are answered accordingly in favour of the appellants and against the respondents/defendants.



S.A.No.950 of 2003

WEB COPY

19. Since the appellants admitted the possession of the first respondent and she has not established the absolute right and ownership of the property and the appellants/defendants have not filed any counter claim regarding the arrears of rent or the eviction or recovery of possession, the appellants are at liberty to work out their remedy in the manner known to law to get the possession of the property from the first respondent/plaintiff.

20. Since the first respondent/plaintiff has not proved the absolute right and title over the property and failed to prove the right over the property and also she denied the landlord and tenant relationship and also she never paid any money either rent or any money for use and occupation. Since, she admitted that the first defendant is the owner of the property, the Court below also found that the first defendant is the owner of the property and denied the right of the plaintiff to be in possession of the property. The plaintiff deemed to be into a tress-passer or unauthorized occupant.



S.A.No.950 of 2003

WEB COPY

21. The suit is pending from the year 1992 and therefore, unfortunately, the Advocates, who appeared for the appellants in the trial Court as well as in the appellate Court has not properly advised their client either to file the counter claim or to file the separate suit for recovery of possession or for eviction. In case, if the appellants filed the suit for eviction, the trial Court is directed to consider the length of the year, dispose of the same within a period of six months from the date of filing of the suit.

22. Accordingly, the second appeal is allowed. No costs.

Index : Yes / No

Speaking Order : Yes / No

21.04.2023

am/skn



S.A.No.950 of 2003

WEB COPY

To

- 1.The Principal District Judge,
Tuticorin.
- 2.The District Munsif,
Srivaikundram.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.No.950 of 2003

P.VELMURUGAN, J.

am/skn

S.A.No.950 of 2003

21.04.2023