



A.S.Nos.295, 296 & 299 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM:

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

A.S.Nos.295, 296 & 299 of 2011 and
M.P.No.1 of 2011

Judgment reserved on 26.06.2024	Judgment pronounced on 31.07.2024
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Premraja ... Appellant in A.S.Nos.295 & 296 of 2011 and
Respondent in A.S.No.299 of 2011

Vs.

Jayalakshmi ... Respondent in A.S.Nos.295 & 296 of 2011 and
Appellant in A.S.No.299 of 2011

Prayer in A.S.Nos.295 & 299 of 2011 : This First Appeal is filed under Section 96 read with Order 41 Rule 1 & 2 of Civil Procedure Code against the judgment and decree in O.S.No.127 of 2008 dated 07.01.2011 on the file of III Additional District Judge, Pondicherry.

Prayer in A.S.No.296 of 2011 : This First Appeal is filed under Section 96 read with Order 41 Rule 1 & 2 of Civil Procedure Code against the judgment and decree in O.S.No.36 of 2007 dated 07.01.2011 on the file of III Additional District Judge, Pondicherry.



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For Appellant }
in A.S.Nos.295 & }
296 of 2011 and } : Mr.V.Raghavachari,
Respondent in } Senior Counsel for
A.S.No.299/2011 } Ms.Anisha Gupta

For Respondent in }
in A.S.Nos.295 & }
296 of 2011 and } : Mr.T.M.Naveen
Appellant in }
A.S.No.299/2011 }

COMMON JUDGMENT

A.S.Nos.295 & 299 of 2011 have been filed challenging the judgment and decree made in O.S.No.127 of 2008 (originally numbered as O.S No.942 of 2005 on the file of III Additional District Munsif, Puducherry) dated 07.01.2011 on the file of III Additional District Judge, Pondicherry.

2. A.S.No.296 of 2011 has been filed against the judgment and decree made in O.S.No.36 of 2007 dated 07.01.2011 on the file of III Additional District Judge, Pondicherry.



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3. For the sake of convenience, parties are referred to as per their ranking in O.S.No.127 of 2008, wherein Jayalakshmi is the plaintiff and Premraja is the defendant.

4. The plaintiff Jayalakshmi originally filed suit in O.S.No.942 of 2005 before the III Additional District Munsif, Puducherry. In the said suit, written statement was filed and issues were framed. In pursuant to the administrative order in TOP No.88 of 2007, the said suit was transferred to III Additional District Judge, Puducherry and renumbered as O.S.No.127 of 2008.

5. This suit in O.S.No.127 of 2008 was filed by the plaintiff Jayalakshmi for specific performance of the suit sale agreement dated 18.11.1987. When the suit was in progress, it appears that the defendant Premraja has filed suit in O.S.No.36 of 2007 before the III Additional District Judge, Puducherry for the relief of declaration of title and for recovery of possession, free from superstructures if any. Both the cases were tried separately by the III Additional District Judge and evidence has been



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separately recorded and exhibits were also marked separately. However, after hearing the arguments, the learned Judge has thought fit to deliver a common judgment since the facts are interdependent with each other.

6. The short facts that are required for determination of all the three appeals are as under -

6(a) The suit property is Plot No.17 in Anna Nagar extension is measuring 40 feet x 60 feet. Alleged agreement of sale is dated 18.11.1987. In the plaint in O.S.No.127 of 2008, it is specifically pleaded by the plaintiff that on behalf of the plaintiff, her sister Kanagavalli signed the document under which defendant's father agreed to sell the plot for Rs.59,500/- and defendant's father has also received a sum of Rs.12,000/- on 18.11.1987. Originally, the father of the defendant had agreed to sell Plot No.17 to another party. Therefore, he offered to sell Plot No.19 to the plaintiff which is having lesser extent i.e. 35 feet x 60 feet and made a correction in the sale agreement and plaintiff husband's younger brother Poovendralingam signed as a witness in the said agreement agreeing to execute the sale agreement and receive the balance of sale consideration of Rs.47,500/-.



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6(b) The plaint further proceeds on the basis that she was delivered possession and enjoyment of Plot No.19 and she is in enjoyment of the property since the date of agreement dated 18.11.1987 and she raised a thatched hut. The plaintiff was not having worry about the registration since the defendant's father had a problem under the Urban Land Ceiling Act and further, payment of Rs.8,000/- on 02.03.1996 and Rs.10,000/- on 02.03.1998 was alleged to have been received by the father of the defendant. After the death of the father, the plaintiff made claims to the present defendant who is the sole legal heir. Originally he promised to execute the sale deed, however failed to do it and attempted to interfere with the possession resulting in police complaint. Therefore, she issued Ex.A2-legal notice dated 12.07.2004 and acknowledgment to the legal notice is marked as Ex.A3. She also made a representation to the police. In the plaint, she has also stated that she had prescriptive title by adverse possession for more than 12 years against the defendant / land owner and reserved rights for the same relief.

6(c) In the written statement, the defendant / land owner has denied various allegations, interalia, contended that there is a material alteration in



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the plot number, signature of the father of the defendant is specifically disputed and the alleged Urban Land Ceiling Act was repealed by the Parliament in the year 2000 while the suit was filed in the year 2005. The suit is barred by limitation and the plaintiff is blowing hot and cold in the same breadth as she admits the title of the defendant while seeking the relief of specific performance. However, she has also reserved her rights to file separate suit for prescriptive title by adverse possession.

7. On the basis pleadings of both sides, the learned III Additional District Judge, Puducherry framed the following issues (in O.S.No.127 of 2008) -

- (i) Whether the sale agreement entered in between the plaintiff and the defendant dated 18.11.1987 is true, valid and binding on the parties ?
- (ii) Whether time is the essence of the contract ?
- (iii) Whether the sale agreement has become unenforceable as barred by limitation ?
- (iv) Whether the plaintiff has prescribed for a title to the suit property by adverse possession ?
- (v) Whether the suit is properly valued ?
- (vi) Whether the court fee paid is correct ?



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(vii) Whether the plaintiff is entitled to a decree for specific performance under the sale agreement dt.18.11.1987 ?

(viii) Whether the plaintiff is entitled to permanent injunction prayed for ?

(ix) To what relief, the plaintiff is entitled to .

8. In O.S.No.127 of 2008, on the side of the plaintiff, she examined herself as PW1 and marked Exs.A1 to A30. One Kanagavalli has been examined as PW2, Poovendralingam has been examined as PW3, Palanisamy has been examined as PW4 and marked Ex.A31 was marked through him. One L.Kannabiran, Bill Collector, Pondicherry Municipality has been examined as PW5 and marked Ex.A32 was marked through him. N.Karunakaran, Asst. Engineer of Electricity Department has been examined as PW6 and Ex.A33 was marked through him. R.Ramachandran, Asst. Engineer of PWD, Puducherry has been examined as PW7. On the side of the defendant, he examined himself as DW1 and marked Exs.B1 to B5.

9. Pending the suit in O.S.No.127 of 2008, the defendant Premraja has filed O.S.No.36 of 2007 seeking the relief of declaration to declare him as the



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absolute owner of the suit property and to deliver the vacant possession of the suit property, free from superstructures, if any. Written statement has been filed by Jayalakshmi and the following issues were framed in the said suit.

- (i) Whether the Will dated 30.01.1989 executed by Jayamarie in favour of plaintiff is true and valid ?
- (ii) Whether the plaintiff is entitled to get decree for declaration and for recovery of possession ?
- (iii) Whether the defendant is entitled for adverse possession ?
- (iv) To what relief ?

10. In O.S.No.36 of 2007, on the side of the plaintiff (Premraja), he examined himself as PW1 and marked Exs.A1 to A7. On the side of the defendant (Jayalakshmi), she examined herself as DW1 and marked Exs.B1 to B33.

11. On consideration of both oral and documentary evidence, the learned Judge has come to the conclusion that the plaintiff Jayalakshmi is



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entitled for specific performance of suit sale agreement however rejected the plea of the plaintiff that she had descriptive title by adverse possession and also held that in view of the escalation of the price, the plaintiff was directed to pay balance of sale consideration of Rs.29,500/- together with the market value of the plot as of the year 2005 and the market value shall be calculated by taking the Guide Line Register value for the year 2005 plus 25% of that value and 7.5% interest per annum on the balance sale consideration of Rs.29,500/- and dismissed the suit in O.S.No.36 of 2007 filed by the defendant Premraja for the relief of declaration and for recovery of possession. Hence, all the three appeals have been filed, as stated supra.

12. The defendant Premraja in O.S.No.127 of 2008 has preferred appeals in A.S.Nos.295 & 296 of 2011 and the plaintiff Jayalakshmi in the said suit has filed A.S.No.299 of 2011 against the decree directing her to pay additional amount as sale consideration and for re-assessment of the balance of sale consideration.



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WEB COPY 13. By administrative order, all these three appeals have been posted together before this Court.

14. Jayalakshmi is the plaintiff in O.S.No.127 of 2008 and defendant in O.S.Nos.36 of 2007. The defendant Premraja in O.S.No.127 of 2008 is the plaintiff in O.S.No.36 of 2007.

15. The parties as well as the property in both the suits are one and the same, hence they are disposed of by this common judgment.

16. In the first suit in O.S.No.127 of 2008, the plaintiff was examined as PW1. Her sister Kanagavalli was examined as PW2 and PW3 is the younger brother of husband of PW1. PW4 is an independent witness. PW5 to PW7 are officials through whom exhibits have been marked for house tax receipt and water tax receipt. The defendant Premraja examined himself as DW1 and sale deeds through which he claims title of the property namely sale deed dated 03.12.1981, 10.03.1982 and 19.10.1981 were marked as Exs.B1 to



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B3, Certified copy of Will dated 30.01.1989 was marked as Ex.B4 and death certificate of his mother Jayamarie was marked as Ex.B5.

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17. A.S.No.295 of 2011 has been preferred by the defeated defendant in the specific performance of suit filed by the respondent / plaintiff in O.S.No.127 of 2008 (originally O.S.No.942 of 2005). The plaintiff has come forward with a specific plea that there was a suit sale agreement Ex.A1 dated 18.11.1987. On perusal of Ex.A1, I find that there is a material alteration namely Plot No.17 was scored off and it is written as Plot No.19. There is no counter signature or initial on it. It was signed by a person who is shown as a vendor and another person Kanagavalli who is admittedly not the plaintiff, but sister of Jayalakshmi, examined as PW2 has signed the agreement. It is the specific case in the pleadings that for her and on behalf of the plaintiff Jayalakshmi, her sister Kanagavalli has signed Ex.A1 however, there is no such recital found in the said agreement assumes significance.

18(a). As per the agreement, the sale consideration is mentioned as Rs.59,5000/- and an amount of Rs.12,000/- was paid as advance. However,



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further payment of Rs.8,000/- alleged to have been paid on 02.03.1988 and Rs.10,000/- on 14.09.1988. For the reasons best known, the learned Trial Judge has not marked the subsequent payments as separate exhibits. Such a practice adopted by the Trial Court is hereby deprecated.

18(b) It is the specific case of the plaintiff, both in the pleadings as well as in the evidence as PW1 that, pursuant to the Ex.A1 - sale agreement on 18.11.1987, on receipt of Rs.12,000/-, the father of the defendant has delivered the vacant possession to the plaintiff. However, on perusal of Ex.A1, there is no such recital regarding the alleged delivery of possession, as claimed by the plaintiff. The plaintiff, in the plaint has averred that due to the Urban Land Ceiling Act, he has not bothered about getting the sale deed executed from the father of the defendant. The signature in the Ex.A1 was disputed by the defendant.

19. In the suit in A.S.No.296 of 2011, the appellant/defendant has sought for the relief of declaration of title and recovery of possession and hence, the following points arise for consideration in A.S.Nos.295 & 299 of 2011.



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20. Points for consideration in A.S.Nos.295 & 299 of 2011

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- (i) Whether Ex.A1 - suit sale agreement is true and genuine and enforceable ?
- (ii) Whether the alleged further payment on 02.03.1988 and 14.09.1988 are true and genuine ?
- (iii) Whether the plaintiff is ready and willing to perform his part of the contract ?
- (iv) Whether, as per the part performance of contract, Ex.A1, the plaintiff was let in possession by the father of the defendant ?
- (v) Whether the order of specific performance granted by the Trial Court is sustainable in law ?
- (vi) Whether the order of the Trial Court re-determining the balance of sale consideration based upon the guideline value with 25% namely as market value is sustainable in law ?
- (vii) Whether the plaintiff is entitled for declaration of title on the plea of adverse possession ?



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21. Points for consideration in A.S.No.296 of 2011

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(i) Whether the plaintiff is entitled for the relief of declaration on his title to the suit property ?

(ii) Whether the plaintiff is entitled for the relief of recovery of possession ?

(iii) Whether the defendant Jayalakshmi is entitled for provision under Section 53-A of the Transfer of Property Act ?

22. Heard Mr.V.Raghavachari, learned Senior Counsel appearing for the appellant / defendant Premraja and Mr.T.M.Naveen, learned counsel appearing for the respondent / plaintiff Jayalakshmi.

23. The learned Senior Counsel appearing for the appellant / defendant Premraja relied upon the following judgments -

(i) (2018) 15 SCC 80 [P.Meenakshisundaram v. P.Vijayakumar for the proposition that delay in payment of balance consideration and failure to prove possession pursuant to agreement for sale.



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(ii) (1969) 3 SCC 120 [Nathulal v.Phoolchand] for the proposition that essential ingredients to defend possession under Section 53A of the Transfer of Property Act.

(iii) (2002) 3 SCC 676 [Shrimant Shamrao Suryavanshi & Anr. v.Prahlad Bhairoba & Ors., for the proposition that essential ingredients to defend possession under Section 53A of the Transfer of Property Act.

(iv) S.A.No.815 of 2007 (Madras High Court)[G.Mahadevan v.L.Kotteswaran] for the preposition that lack of recital in the agreement for handing over.

(v) (2017) 1 MLJ 446 [N.K.Abubacker v.A.K.Zainuddin & Ors. For the proposition that when readiness and willingness is not proved, plaintiff not entitled to relief under Section 53A of the Transfer of Property Act.

(vi) (1996) 5 SCC 589 [Lourdu Mari David v.Louis Chinnaya Arogiaswamy] for the proposition that false plea by plaintiff is not entitled to discretionary relief.



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(vii) (2000) 3 SCC 708 [Roop Singh v.Ram Singh] for the proposition that plea of specific performance and adverse possession inconsistent with each other.

(viii) 2002 (4) LW 435 [Gopalsamy Chetty v.Selliamman Koil] for the proposition that only parties to a contract can sue under the contract; specific pleadings required even to claim part performance of contract.

(ix) 2014 (3) LW 988 [S.Thirugnanansambandam v.P.Kaliyaperumal] for the proposition that when agreement is disputed, burden of proof shifts back on the plaintiff to prove the same.

(x) AIR 2024 Mad 44 [K.S.Abdul Rajak v.Shanmugam] has proposition that plaintiff must exhibit willingness to pay balance consideration to be entitled to discretionary relief.

(xi) (2009) 10 SCC 223 [FGP Ltd.v.Saleh Hooseini Doctor] for the proposition that necessary ingredients to invoke under Section 53 A of the Transfer of Property Act.



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(xii) (2024) 1 MLJ 755 [Ultra Marine & Pigments v.Kala Karmegam] for the proposition that when party cannot prove that he was put in possession under the agreement, no protection under Section 53A can be granted.

(xiii) (1996) 1 SCC 639 [Mohan Lal v.Mirza Abdul Gaffar] for the proposition that Section 53A to be used as a shield, specific pleadings and evidence of part performance are required.

24. Mr.T.M.Naveen, learned counsel appearing for the respondent / plaintiff Jayalakshmi relied upon the following judgments -

(i) (2022) 14 SCC 793 [P.Daivasigamani v. S.Sambandan] wherein it is held that cause to file a suit for specific performance is said to have accrued on the date of execution of agreement of sale or the date when buyer noticed that performance was refused by the seller.

(ii) (2019) 6 SCC 233 [Beemaneni Maha Lakshmi v. Gangumalla Appa Rao] wherein the Hon'ble Apex Court has held that in a decree for specific performance, the essential ingredients of readiness and willingness of the plaintiff on the



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point whether the plaintiff possessed sufficient funds to pay balance consideration is inconsequential where the defendant himself failed to perform his part of contract.

(iii) 1995 (2) LW 50 (DB) [Vairavan v. K.S.Vaidyanandam & Ors] wherein the Hon'ble Division Bench of this Court has held that mere delay in coming to court not a reason to refuse specific performance when plaintiff has come within the period of limitation under Article 54 of Limitation Act (3 years from date fixed for specific performance)

(iv) 2020 (3) SCC 289 [Vundavalli Ratna Manikyam & Anr v. V.P.R.N. Prasada Rao] wherein the Larger Bench of the Hon'ble Apex Court has held that limitation for the purpose of grant of relief of specific performance and applicability of Article 54 and 113 was discussed. Their Lordships have further held that Article 113 of Limitation Act would apply and the right to sue accrues when subsequent to the quashment of the acquisition proceedings.

(v) 2002 (3) SCC 676 [Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi] wherein the Hon'ble Supreme Court has laid down conditions for application of



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Section 53-A of the Act for the purchaser to defend or protect his possession.

and also relied upon the decision rendered by me along with Brother Judge Hon'ble Mr.Justice P.B.Balaji in the Division Bench in A.S.(MD)No.123 of 2014 and M.P.(MD)No.1 of 2014 for the preposition that when the party was unable to show that he came into possession of suit property he cannot set up plea of adverse possession in their favour and appellant being admitted absolute owner of the suit property, he is entitled to recover possession.

25. In A.S.(MD)No.108 of 2012, dated 21.11.2023 the Division Bench of this Court in Oomman Babu vs.Sadasivam Thambi and Ors. (in which I am one of the party) on the point of criteria of readiness and willingness, as referred under Section 16(c) of Specific Relief Act was discussed.

26(a). After hearing the rival submissions, facts available on record, documentary evidence, law laid down by the Hon'ble Supreme Court in the above referred decisions and the decisions of this Court, I find that the schedule of property is a plot in Survey No.19 in Anna Nagar Extension,



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Puducherry measuring $35 \times 60 = 2100$ sq.ft. It originally belonged to one Jayamarie, the mother of the defendant in O.S.No.127 of 2008 (plaintiff in O.S.No.36 of 2007). The plaintiff has filed the suit for the relief of specific performance of the agreement of sale dated 18.11.1987 marked as Ex.A1. According to Ex.A1 the agreed sale consideration is Rs.59,500/-. On the other hand, three years after filing of the suit by the plaintiff, the defendant has filed O.S.No.36 of 2007.

26(b) There is no dispute that the suit property originally belonged to one Jayamarie, who is the mother of the defendant in O.S No.127 of 2008 (plaintiff in O.S.No.36 of 2007).

26(c) While the plaintiff in O.S.No.36 of 2007 (Defendant in O.S.No.127 of 2008) claims absolute ownership over the suit property on the basis of a Will executed in his favour by his mother Jayamarie, the plaintiff in O.S.No.127 of 2008 (defendant in O.S.No.36 of 2007) claims that she is an agreement – vendee and that she is also in possession and enjoyment of the suit property on the basis of the sale agreement dated 18.11.1987 and as such,



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the defendant in O.S.No.127 of 2008 (plaintiff in O.S.No.36 of 2007) is to execute the sale deed in her favour, since he is the legal heir of the deceased Jayamarie and the deceased Cothandapani.

26(d) The plaintiff seeks for the relief of specific performance under Ex.A1-suit sale agreement dated 18.11.1987. In the written statement as well as in the evidence as DW1, the genuineness of the said agreement was challenged on multiple grounds, interalia, that the signature found in the alleged agreement has been denied by the defendant and there is a material alteration as to the plot number and the agreement holder namely Jayalakshmi has not signed the alleged agreement Ex.A1 however the signature found is that of her sister Kanagavalli. However, a pleading was added as if the said Kanagavalli – PW2 has signed on behalf of her sister Jayalakshmi, plaintiff.

26(e) Both the plaintiff and her sister and the brother of the husband of PW1 were examined as PW1 to PW3. The plaintiff Jayalakshmi as PW1 has admitted that father and mother of the plaintiff died and the defendant Premraja is the sole legalheir and therefore, this Court has no hesitation to



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come to the conclusion that the defendant Premraja is the sole and absolute owner of the suit property.

26(f) Let us consider whether the plaintiff is entitled for specific performance of Ex.A1, alleged suit sale agreement.

27. Suit sale agreement is dated 18.11.1987. Suit was filed on 14.11.2005 as O.S.No.942 of 2005 and subsequently, re-numbered as O.S.No.127 of 2008. Defendant raised a plea of limitation. In the plaint, there is a specific averment that due to Urban Land Ceiling Act, he has not bothered or cared about execution of sale deed. After perusing the document viz. alleged suit sale agreement, this Court has noticed that there is an alteration of Plot No.17 as 19 and a plea was raised in the written statement to that effect. In the plaint as well as evidence as PW1, the plaintiff would depose that since Plot No.17 was already sold to some one else, it was altered as Plot No.19.



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28. For the best known reasons, she has not placed any material to show that after the alleged averment, Plot No.17 was allotted to someone else.

No steps have been taken to substantiate that property in Plot No.17 was sold and on the above settled premises, it was altered as Plot No.19 by scoring off 17 and written as 19. In the absence of any positive evidence to show that alteration is done pursuant to the above said representations, this Court is of the considered view that such alteration amounts to material alteration affecting the genuineness of Ex.A1 – suit sale agreement.

29. The plaint proceeds on the basis that plaintiff Jayalakshmi has entered into an agreement of sale with the father of the defendant who is represented as Power of Attorney of his wife Jayamarie. Ex.A25 was pressed into service. On perusal of Ex.A25, there is no schedule as mentioned in the said Power of Attorney. Be that as it may, even in Ex.A1, there is no recital that the said Cothandapani has entered into an agreement as Power of Attorney holder of his wife Jayamarie. There is no recital in Ex.A1 that PW2 has signed on behalf of Jayalakshmi, plaintiff and there is no recital in Ex.A1 that possession was handed over to the plaintiff Jayalakshmi.



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30. On perusal of Ex.A1, I find that it is only in the form of a receipt and not anything in the regular form of agreement. The alleged clause as if Urban Land Ceiling Act was in force which has prevented the parties from registering the sale deed is also not found therein and hence for the above reason, I have no hesitation to come to the conclusion that coming into existence of Ex.A1 itself is surrounded by sea of suspicion.

31. On perusal of Ex. A1, I find that the agreement is dated 18.11.1987 and the clause reads as two months time for completion of sale deed, i.e. on or before 18.01.1988. Hence, I find that the contention of the learned Senior Counsel for the appellant/defendant that the suit ought to have been filed within three years namely 18.01.1991 is found to have force.

32. For the Union Territory of Puducherry, Urban Land Ceiling Act have been revoked in the year 1999. One gazette notification was of the year 2000. In the instant case, suit was filed only in the year 2005 and hence three year period is also over and completed after the repealment of Urban Land Ceiling Act assumes significance.



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33. The plaintiff, both in the pleadings as well as in her evidence has raised a plea that she approached the defendant for execution of sale deed for the schedule mentioned property but she was evaded citing Urban Land Ceiling proceedings. No details have been brought as to when and where she contacted DW1 and demanded for execution of sale deed is bereft of details. PW1 has admitted in the cross examination that after the death of father of the defendant, she went and enquired but she has not stated anywhere that during the lifetime of the father of the defendant, she had asked for the execution of sale deed assumes significance. From 1987, till the date of filing of the suit in the year 2005, 18 years have passed away and there is no positive explanation for the long delay of 18 long years for preferring the suit for specific performance of contract.

34. This Court has given his anxious consideration for the satisfaction referred to by the learned counsel for the appellant in *Vundavalli Ratna Manikyan's case* . It is the case where the land acquisition proceedings have been quashed by the competent judicial forum and hence the Trial Court and



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Hon'ble Apex Court has laid down the law that only after the quashment of the acquisition proceedings, the period of limitation shall commence and hence held that on the facts and circumstances of that particular case, Article 113 of the Limitation Act shall come into force. Here, in the instant case, though the plaintiff raised the plea that he does not worry about getting the sale deed executed since the Urban Land (Ceiling and Regulation) Act was in force. No scrap or paper was filed by the plaintiff to show that Urban Land (Ceiling and Regulation) proceedings have been initiated against the owner of the property namely the mother of the defendant. Furthermore, in the instant case, the Act itself got repealed from the year 1999 as discussed infra. On the facts and circumstances of the case, the ratio laid down by the Hon'ble Supreme Court is not applicable.

35. The only plea that has been raised is the operation of Urban Land (Ceiling & Regulation) Act in the plaint. As stated supra, there is nothing on record to indicate that Urban Land Ceiling proceedings were in vogue, in Ex.A1. The defendant, in the written statement has stated that whether any Urban Land Ceiling Act was made available to the defendant family but



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absolutely there is no scrap of paper produced before the Court assumes significance. The said Urban Land Ceiling & Regulation Act was repealed by the Parliament in the year 2000 and even calculating from the year 2000, the suit having been filed only in the year 2005 is barred by long five years and hence I find that the suit is badly hit by latches and limitations.

36. Mr.T.M.Naveen, learned counsel appearing for the respondent/plaintiff would contend that the suit has been instituted from the date of the receipts and would rely upon Ex.A2 – legal notice (O.S.No.127 of 2008) issued on 12.07.2004. Thus, I find that the said Ex.A2 – legal notice is barred by limitation. By issuing a legal notice, after the period of limitation cannot extend the period of limitation. The said notice was issued since the police complaint has been lodged alleging that the respondent/plaintiff's family is in the habit of putting the huts in the vacant site in the house plot areas and since it is a civil dispute, the police have closed the complaint.

37(a) Mr.T.M.Naveen, learned counsel for the respondent/plaintiff would contend that the suit has been instituted within three years of the



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refusal. However, as discussed supra, even Ex.B2 was issued after the period of limitation and the same has no legal presumption or legal existence for elongation of the period of limitation prescribed under the statute. Hence, I find that the plea of limitation raised by the appellant/defendant is hereby confirmed.

37(b) As discussed supra, PW1 is the plaintiff but she has not signed Ex.A1 and no explanation is forthcoming for not signing the agreement which was signed by the plaintiff's sister Kanagavalli, PW2. PW2 in her evidence has stated that at the time of signing Ex.A1, the suit sale agreement, her sister namely the plaintiff Jayalakshmi was very much standing next to her. When that be so, this Court is at lost as to why the plaintiff has not signed the document. As stated supra, there is no recital in the said document that on behalf of the plaintiff, her sister PW2 is signing the document. PW3- Poovendralingam is none other than the husband of PW2 and he is an interested witness. Hence, coming into the existence of Ex.A1 is doubtful.



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WEB COPY 38. As discussed supra, Ex.A1 – suit sale agreement contains corrections in the plot Number and extent of plot. These corrections have not been attested. The explanation is built up in the plaint as well as in the evidence that Plot No.17 was agreed to be sold to some other person and therefore it was altered by Plot No.19. Had it be so, there must be endorsement or attestation on the above corrections. Therefore, the correction relating to Plot No.17 could have been taken place as stated by the plaintiff, much less on 18.11.1987. Absolutely, the plaintiff has not let in any evidence to dispel the sea of suspicion surrounding the material alteration of plot number and extent of land assumes significance.

39. Secondly, the plaintiff has not signed the suit sale agreement and no explanation was forthcoming as to why PW2 has chosen to sign on Ex.A1 when the plaintiff was very much available at that time. Hence, it also creates a doubt as to the case projected by the plaintiff and I find that coming into existence of Ex.A1 as projected in the plaint founds to be at contradictions with the evidence projected by PW1 & PW2.



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40. In view of the discrepancies in the correction of the agreement, this Court has no hesitation to come to the conclusion that in the absence of any positive explanation in various discrepancies, discussed supra, Ex.A1 cannot be held to be true and valid and suffers from material alteration and inconsistency with the pleadings and the evidence.

41. The defendant/appellant has denied the signature of his father. A strange observation has been made by the Trial Court as the Trial Court has compared the disputed signature namely three signatures with the two disputed signatures found in the very same document and arrived at a conclusion that the three signatures found in the disputed document are being tallied and held that the signature found in Ex.A1 is that of the father of the defendant. Such an approach adopted by the Trial Court is unsustainable in law and the same hereby stands vacated. When a signature is disputed and the document is relied upon by the plaintiff, she has to take necessary steps, as contemplated in the Civil Procedure Code to prove the signature found in the document is that of the father of the defendant. Hence, this point also goes against the respondent/plaintiff.



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42. The learned Additional District Judge, at Para 23 of the impugned judgment has observed that Ex.A1-suit sale agreement cannot be a time barred in view of the part performance of Ex.A1 and possession of the plaintiff has to be protected.

43(a) According to the plaintiff, she entered into possession of the property on the date of suit sale agreement, i.e. 18.11.1987. She is in possession of the suit property for about 22 years. She claims that she entered possession of the property pursuant to Ex.A1. For the reasons stated supra, Ex.A1 itself is found to be a fabricated document and not true and genuine for the reasons stated therein. That apart, there is no recital in Ex.A1 regarding handing over of possession assumes significance.

43(b) In the second part of the plaint, she also claims that she reserves her right to file separate suit for declaration of title on the basis of prescriptive title by adverse possession from the date of agreement, at para 8 of the plaint. During the evidence, PW1 developed her case further and deposed that she had prescriptive title by adverse possession and in the



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argument, it was projected that the plaintiff is the owner of the property by way of adverse possession. The Trial Court has also discussed in detail about the adverse possession.

44. First and foremost, this court finds that the plaintiff filed the suit for specific performance of the suit agreement against the defendant. She admits the title of the defendant. Having admitted the title of the defendant seeking the relief of specific performance against the first defendant to execute the sale deed from him, it is not open to the plaintiff to take counter plea to deny the title of the plaintiff. The law is settled on this point. Once the plaintiff files the suit for specific performance, she cannot plea for adverse possession since both the remedies are mutually exclusive.

45(a). In the decision reported in **2009 (1) CTC 366 [M.Subbiah v. T.Subbiah (died and 13 others)]**, this Court has held that person claiming adverse possession must have requisite animus. Without requisite animus, possession however long would not be adverse to real owner and further held that party obtaining the possession of the property in pursuance to sale



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agreement is not entitled to claim adverse possession so as to claim the benefit under Section 65 of the Limitation Act and further held that once the sale agreement is invalid, person who claims to be in possession of the property in pursuance to the sale agreement is not entitled to claim adverse possession.

45(b) I find that the decision referred to by the learned Senior Counsel fully covers the entire case between the parties. In the absence of any recital to show that under Ex.A1, the plaintiff was let in possession, her possession cannot be said to be a part performance of the suit sale agreement dehors. Ex.A1 is held to be a fabricated document and found to be not enforceable for the reasons stated supra.

46(a) The learned counsel for the respondent/plaintiff would draw my attention to Exs.B2 to B31. These are all marked as Exs.A2 to A33 in the other suit. Admittedly, these are all documents to show that representations was made with various statutory authorities running from the Inspector of police of various departments and Human Rights Commissioner,



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Superintendent of Police, General Secretary, Governor, President of India and

Member Secretary of Pondicherry Planning Authority and Ex.B15 to B28

goes to show payment of electricity connection charges, water bill quarter charges, voter census card, family ration card and house tax receipts.

46(b) On perusal of these documents, I find that the electricity bill, the earliest one is of the year 1999. So also is the water bill receipts is of the year 2000. House tax receipt is from the year 2007. Had the possession was given to the plaintiff under the agreement in the year 1987, however absolutely there is no document to show that the plaintiff is in possession from 1987 to 1999 namely for more than 12 years. Hence, this Court is of the considered view that as pleaded by the appellant/defendant, in the vacant site, the plaintiff has encroached upon the property by muscle power and put up a thatched hut thereby influencing locality people, got electricity receipt as occupier. Hence, I find that the plaintiff, as a rank encroacher, fabricated Ex.A1 to grab the property.



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47. In *Shrimant Shamrao Suryavanshi and another vs. Pralhad Bhairoba Suryavanshi by Lrs. and others*, the Hon'ble Supreme Court has considered the recommendations of the Special Committee on the issue, had ruled that mere expiration of the period of limitation for bringing a suit for specific performance would not debar a person in possession of an immovable property by way of part performance from setting up a plea, as contemplated therein in defence to protect his possession of the property involved. It remains to be stated that in the very same judgment, it underlined that if the conditions precedent, as enumerated, in [Section 53A](#) of the Act, are complied with, the law of limitation would not come in the way of the said person to avail the benefit of the protection to his possession as extended thereby even though a suit for specific performance of a contract by him had gone barred by limitation. Explicitly therefore, though mere expiry of the period of limitation for a suit for specific performance may not be a bar for a person in possession of an immovable property in part performance of a contract for transfer thereof for consideration to assert the shield of [Section 53A](#) of T.P. Act, it is nevertheless imperative that to avail the benefit of such



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protection, all the essential pre-requisites therefor would have to be obligatorily complied with.

48. However, in the instant case, for the reasons stated supra, very basis of the suit, namely the alleged suit sale agreement is found to be fabricated surrounded with sea of suspicion and affect with the material of alteration and possession was not handed over in pursuance of the alleged sale agreement. Hence, in the absence of any positive evidence, as pointed out in the said judgment in ***Shrimant Shamrao Suryavanshi's case***, having not satisfied the tests laid down in the said decision, the plaintiff is not entitled for any such observation or the ratio laid down by the Hon'ble Supreme Court.

49. In view of the settled preposition of law that the plea of specific performance and the plea of adverse possession cannot go together and they are mutually exclusive. The plea raised by the plaintiff stands negatived.



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WEB COPY 50. My attention was drawn by Mr.T.M.Naveen, learned counsel for the respondent/plaintiff to Exs.B26, B27 & B31. Exs.B26 & B27 are sale deeds dated 28.11.1981 & 10.03.1982 executed in favour of one Janaki Krishnan and Soundarambal respectively. Ex.B31 does not advance the case of the plaintiff since it was a gift deed executed by the alleged owner.

Readiness and Willingness :-

51. Though the plaintiff is seeking the relief of specific performance, she has to satisfy the twin ingredients contemplated under Section 16 (c) of the Specific Relief Act . While she claim that she is ready with money and ready to purchase the property, in the pleadings, she has stated that she was not bothered about getting the sale deed executed since the Urban Land (Ceiling & Regulation) Act was in force. As stated supra, though the Urban Land (Ceiling & Regulation) Act was repealed for the Puducherry in the year 1999, the suit was filed only in the year 2005 and legal notice was also issued only on 12.07.2004. Hence, I find that the plaintiff has miserably failed to show that she has intention to purchase the property. Only after the



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defendant/appellant came to schedule property and lodged police complaint, they have moved the civil proceedings assumes significance.

52. On the point of readiness, to satisfy the criteria ready with money, my attention was drawn to the affidavit filed by the plaintiff before the Electricity Board that she is seeking electricity connection as she could not get the sale deed since she is not having balance sale consideration. It is her own signed affidavit in the non-judicial stamp paper before the electricity authorities for the purpose of getting electricity connection. Hence, even on the score of readiness and willingness, I find that the plaintiff has not fulfilled the conditions to substantiate the ingredients contained in Section 16 (c) of the Specific Relief Act. The Trial Court appears to have totally forgotten about the provisions and granted the decree for specific performance. Hence, this Court finds that the plaintiff Jayalakshmi in O.S.No.127 of 2008 is not entitled for the relief of specific performance. Accordingly, the judgment and decree dated 07.01.2011 made in O.S.No.127 of 2008 is hereby set aside and O.S.No.127 of 2008 shall stand dismissed.



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53. Though before the Trial Court, the plaintiff Jayalakshmi has raised certain allegations against the Will, however, in the proof affidavit she had stated that the original land owner Jayamarie had executed a Power of Attorney in favour of her husband Cothandapani and marked Ex.A25 – Power of Attorney dated 06.06.1981.

54. On perusal of the above said exhibits, I find that there is no schedule to the property. The land owner Jayamarie died on 26.06.1992 and her husband Cothandapani died and the defendant Premraja is the sole legal heir was admitted by PW1. Hence, this Court finds that in view of the specific admission by PW1 in the evidence in O.S.No.127 of 2008 who is also DW1 in O.S.No.36 of 2007, the defendant Premraja being the sole legal heir of Jayamarie and her father Cothandapani also having died, the Trial Court has committed an error in rejecting the relief of declaration of title of Premraja with regard to the suit property which this Court observes as patent error on the face of the record. Accordingly, the contra finding rendered by the Trial Court in O.S.No.36 of 2007 is hereby set aside, in view of the admission made by the Jayalakshmi as PW1.



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55. In view of the finding in the preceding paragraph, the suit filed by the appellant as plaintiff in O.S.No.36 of 2007 for declaration of his title to suit property is hereby ordered and it is further held that he is entitled for recovery of possession since the plaintiff Jayalakshmi is found to be a rank encroacher and thus by due process of law, she can be evicted. Accordingly, suit in O.S.No.36 of 2007 is hereby decreed as prayed for.

56. In the result, **both the appeals in A.S.Nos.295 and 296 of 2011 are allowed** setting aside the judgment and decree in O.S.No.127 of 2008 dated 07.01.2011 on the file of III Additional District Judge, Pondicherry. In view of the finding rendered in A.S.Nos.295 & 296 of 2011, appeal filed by the Jayalakshmi (plaintiff in O.S.No.127 of 2008) in **A.S.No.299 of 2011 stands dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

31.07.2024

Index : Yes/No
Neutral Citation : Yes/No
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RMT.TEEKAA RAMAN, J.

(rgr)

To

1.The III Additional District Judge,
Pondicherry.

2.The Section Officer
VR Section,
High Court,
Madras.

Pre-delivery Common Judgment in
A.S.Nos.295, 296 & 299 of 2011

31.07.2024