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S.A.No.167 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.06.2024

Pronounced on : 27.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A.No.167 of 2021

Jamaludeen

... Appellant

Vs.

Ramachandran

... Respondent

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree passed by the Principal Sub-Court, Mayiladuthurai, in A.S.No.53 of 2017, dated 20.03.2020, reversing the judgment and decree passed by the Additional District Munsif Court, Mayiladuthurai, in O.S.No.156 of 2014, dated 23.03.2017.

For Appellant : Ms.M.Nuzhath Khaanam
for Mr.I.Kowser Nissar

For Respondent : Ms.B.Poongkhulali



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JUDGMENT

This second appeal has been filed challenging the judgment and decree passed by the Principal Sub-Court, Mayiladuthurai, in A.S.No.53 of 2017, dated 20.03.2020.

2. In the suit, the appellant herein is the plaintiff and the respondent herein is the defendant. In the forthcoming paragraphs, the parties will be referred to as per their litigative status in the suit.

3. The suit in O.S.No.156 of 2014 on the file of the Additional District Munsif Court, Mayiladuthurai, was filed by the plaintiff against the defendant for declaration, recovery of possession and recovery of arrears of rent.

4. The plaintiff claims that the plaintiff is the owner of the suit schedule property by virtue of an oral Hiba obtained from his mother Rehmana Beevi through a Hiba confirmation letter dated 10.03.1995. Subsequent to the said Hiba, patta has also been transferred in his name. According to the plaintiff, the defendant was allowed to occupy the suit schedule property on a monthly rent of Rs.10/- and he has failed to pay



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the arrears of rent. The plaintiff has also pleaded that he had earlier filed a suit in O.S.No.408 of 2004 on the file of the Additional District Munsif Court, Mayiladuthurai, seeking for recovery of possession from the very same defendant, who was his tenant and who had failed to pay the rent and was an unauthorized occupant. According to the plaintiff, eventhough the suit in OS.No.408 of 2004 filed by the plaintiff came to be dismissed on 19.01.2006, the decision in the said suit does not have any bearing in the present suit (O.S.No.156 of 2014) filed subsequently by the plaintiff and is also not hit by the principles of *res-judicata* for the following reasons:-

(a) The earlier suit in O.S.No.408 of 2004 was filed for recovery of possession on the ground that there was a landlord-tenant relationship between the plaintiff and the defendant, and the cause of action in the earlier suit is different from the cause of action in the subsequent suit in O.S.No.156 of 2014.

(b) Since the defendant had disputed the Hiba executed in favour of the plaintiff by his mother Rehmana Beevi in the earlier suit in O.S.No.408 of 2004, the plaintiff was constrained to file the subsequent suit in O.S.No.156 of 2014.

(c) The decision rendered in O.S.No.408 of 2004 filed by the



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plaintiff seeking for recovery of possession based on a landlord-tenant relationship, which came to be dismissed on 19.01.2006, could not be challenged by the plaintiff immediately, since he was living in abroad at that time.

5. However, the defendant has contended as follows:-

(a) The suit in O.S.No.156 of 2014 filed by the plaintiff amounts to *res-judicata*, as in the previously instituted suit by the very same plaintiff in O.S.No.408 of 2004, a finding has been rendered against the plaintiff by holding that the plaintiff has not proved his title over the suit schedule property.

(b) There are discrepancies in the survey number disclosed in the registered sale deed standing in the name of the plaintiff's mother Rehmana Beevi dated 06.01.1973 and the Hiba confirmation letter dated 10.03.1995, through which, the plaintiff claims ownership of the suit schedule property.

(c) There is no valid Hiba executed by Rehmana Beevi in favour of the plaintiff, since the possession has not been delivered to the plaintiff by Rehmana Beevi in the said Hiba. Since the defendant continues to



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remain in possession of the suit schedule property, Rehmana Beevi could not have delivered possession of the suit schedule property to the plaintiff, which is an essential element of Hiba.

6. Based on the pleadings of the respective parties, the following issues were framed by the Trial Court in O.S.No.156 of 2014:-

- "1. Whether the plaintiff is having title for the suit schedule property?*
- 2. Whether the plaintiff is entitled for the relief of declaration as prayed for?*
- 3. Whether the plaintiff is entitled for the relief of recovery of possession as prayed for?*
- 4. Whether the plaintiff is entitled for relief of rental arrears as prayed for?*
- 5. To what relief the parties are entitled to?"*

7. Before the Trial Court, the plaintiff had filed 10 documents, which were marked as Exs.A1 to A10. On the side of the plaintiff, three witnesses were examined, namely, one Mr.Jawahar Ali, power agent of the plaintiff, as PW1; Ms.Petchiammal, Village Administrative Officer, as PW2; and one Mr.Muthukumaraswamy, retired Village Administrative Officer, as PW3. On the side of the defendant, six documents were filed,



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which were marked as Exs.B1 to B6; and two witnesses were examined, namely, the defendant himself as DW1 and one Mr.Kaliyamoorthy, a third party, as DW2.

8. The Trial Court, by its judgment and decree dated 23.03.2017 passed in O.S.No.156 of 2014, partly decreed the suit as prayed for by the plaintiff by granting the relief of declaration that the plaintiff is the sole owner of the suit schedule property and also directing the defendant to handover vacant possession of the suit schedule property to the plaintiff. However, the Trial Court refused to grant the relief of recovery of arrears of rent. The Trial Court, while partly decreeing the suit in favour of the plaintiff, as stated supra, has rendered the following findings:-

(a) The suit filed by the plaintiff in O.S.No.156 of 2014 is not hit by the principles of *res-judicata*, as the earlier suit in O.S.No.408 of 2004 was filed by the plaintiff based on the landlord-tenant relationship between the plaintiff and the defendant, whereas the present suit has been filed for declaration of title, recovery of possession and recovery of arrears of rent, based on the sale deed standing in the name of Rehmana Beevi, who has executed a Hiba in favour of the plaintiff, which has been confirmed through Hiba confirmation letter dated 10.03.1995. The Trial



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Court has categorically held that a finding rendered by the Court in the previously instituted suit in O.S.No.408 of 2004 with regard to title of the property has no bearing for the subsequent suit in O.S.No.156 of 2014, as it has been filed on a different cause of action and therefore, it would not amount to *res-judicata*.

9. Aggrieved by the judgment and decree dated 23.03.2017 passed in O.S.No.156 of 2014 by the Additional District Munsif Court, Mayiladuthurai, in favour of the plaintiff, the defendant has preferred first appeal in A.S.No.53 of 2017 before the Principal Sub-Court, Mayiladuthurai. The Lower Appellate Court, by its judgment and decree dated 20.03.2020, reversed the findings of the Trial Court by dismissing the suit filed by the plaintiff by giving the following reasons:-

(a) The decree in the earlier suit in O.S.No.408 of 2004, which was a suit for eviction based on a landlord-tenant relationship, constitutes and attracts the principles of *res-judicata* in the present suit in O.S.No.156 of 2014, which is for declaration and possession. Since the Lower Appellate Court has held that since the plaintiff had not proved his title in the earlier suit in O.S.No.408 of 2004, as seen from the findings of the Court in that



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suit, the present suit filed by the plaintiff in O.S.No.156 of 2014 is hit by the principles of *res-judicata*. In view of the categorical finding rendered in the earlier suit in O.S.No.408 of 2004 that the document under which the plaintiff claims title to the suit property does not tally with the parent document, it is clear that the plaintiff has failed to prove his title over the suit property.

(b) The Hiba allegedly executed by Rehmana Beevi in favour of the plaintiff is not valid, since the plaintiff is not in possession of the suit schedule property. The three pillars of a valid Hiba in Muslim Law are declaration, acceptance and delivery of possession. Since the possession of the suit schedule property has not been delivered by Rehmana Beevi to the plaintiff, who is her son, the alleged Hiba is not a valid Hiba.

(c) The plaintiff has approached the Court with unclean hands as seen from the survey number in Hiba confirmation letter dated 10.03.1995 produced by the plaintiff in O.S.No.408 of 2004 and O.S.No.156 of 2014. In the Hiba confirmation letter marked in O.S.No.156 of 2014, the survey number is disclosed as 90/1, whereas in the Hiba confirmation letter marked in the previous suit in O.S.No.408 of 2004, the survey number is shown as 9/1. The survey number has been



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altered by the plaintiff in the Hiba confirmation letter dated 10.03.1995 to 90/1 to tally with the survey number disclosed in the sale deed standing in the name of Rehmana Beevi, which is the parent document.

10. Aggrieved by the judgment and decree passed by the Lower Appellate Court in A.S.No.53 of 2017, dated 20.03.2020, the plaintiff has preferred this second appeal. This Court, while admitting the second appeal on 01.03.2021, formulated the following substantial questions of law:-

"(a) Whether the Lower Appellate Court erred in holding the decree in the earlier suit O.S.No.408/2004 which was a suit for eviction based on Landlord-tenant relationship constituted and attracted principles of res-judicta in the present suit O.S.No.156/2014 which is for declaration and possession?

(b) Whether the Lower Appellate Court erred in holding that the hiba was not valid as appellant is not in possession of the suit property?"

11. Heard Ms.M.Nuzhath Khaanam, learned counsel for the appellant; and Ms.B.Poongkhulali, learned counsel for the respondent.



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12. In support of the plaintiff's contentions, as stated supra, the learned counsel for the appellant/plaintiff has relied upon the following authorities:-

(a) ***Ramchandra Dagdu Sonavane Vs. Vithu Hira Mahar [2009 (10) SCC 273]*** for the purpose of the proposition that an incidental finding on title in the earlier suit will not bind the later suit, where the title is directly an issue. Therefore, such a limited finding on the former suit for possession cannot be held to operate as *res-judicata* for the subsequent suit for declaration and possession.

(b) ***Govindammal (died) and others Vs. Arumugham [1998 (1) CTC 501]***. In the said decision, this Court has reiterated therein that in a suit for recovery of possession, the Court can confine itself to find prima-facie title only for the limited purpose of granting or refusing such relief and cannot adjudicate the title.

(c) ***Soura Beeviammal Vs. Ameena Ammal [1981 (94) LW 502]***. The said decision has been relied upon by the learned counsel for the appellant for the proposition that if, on a plea taken by the defendant, the question of title arises, it can be gone into only for the purpose of determining as to whether the relationship of tenancy subsisted between



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the plaintiff and the defendant. If it is found that the relationship between the plaintiff and the defendant does not subsist, the plaintiff must fail in the suit as instituted by him and the suit cannot be converted into a suit for declaration of title and for recovery of possession on the basis of title.

13. Relying upon the aforesaid decisions, the learned counsel for the appellant would contend that if there is any finding relating to title in the former suit, the same cannot held to operate as *res-judicata* in the subsequent suit, as the said finding was only an incidental finding.

14. The learned counsel for the appellant would further contend that the Lower Appellate Court has erroneously relied upon a decision of the Hon'ble Supreme Court in ***Mohd. Nooman Vs. Md.Jabed Alam & Ors. [2010 (3) SCC Civil 880]*** for the purpose of coming to the conclusion that the present suit filed by the plaintiff is hit by the principles of *res-judicata* . According to her, in fact, in the aforesaid decision of the Hon'ble Suprme Court, it has been made clear that in a suit for eviction, which is based on a landlord-tenant relationship, even if the question of title is raised, it is only determined in an ancillary manner and it is not binding in a subsequent suit concerning title dispute. She



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would further contend that the cause of action for filing the previous suit is different from the cause of action for filing the present suit.

15. The learned counsel for the appellant has also relied upon a decision of the Hon'ble Supreme Court in ***Keshar Bai Vs. Chuhunulal [AIR 2014 SC (Civil)]***, wherein the judgment rendered in Mohd. Nooman's case (cited supra) has been distinguished. The Hon'ble Supreme Court in ***Keshar Bai's case (cited supra)*** has clarified the ratio laid down in *Mohd. Nooman's case*, by declaring that ordinarily it is true that in a suit for eviction, even if the Court goes into the question of title and examine the issue in an ancillary manner, in such cases, any observation or finding on the question of title would certainly not be binding in any subsequent suit on the dispute of title. The Hon'ble Supreme Court has further clarified that the case with which it was dealing fell in an exceptional category of very limited number of cases and thereby it is further held that no parallel can be drawn from ***Mohd. Nooman case*** and in that case, issue of title was framed and it arose out of exceptional facts and must be restricted to those facts.

16. Per contra, in support of the defendant's contentions, as pleaded



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in the written statement, which is also supported by the impugned judgment and decree passed by the Lower Appellate Court, the learned counsel for respondent/defendant drew the attention of this Court to the decision of the Hon'ble Supreme Court in ***Mohd. Nooman's case (cited supra)*** relied upon by the Lower Appellate Court. According to the learned counsel for the respondent, the said decision is directly applicable to the case on hand. According to her, since the question of title was directly and substantially in issue between the parties in the earlier suit for eviction, the Lower Appellate Court has rightly given a finding that the suit is hit by the principles of *res-judicata*.

17. The learned counsel for the respondent would further contend that in an earlier decision of the Hon'ble Supreme Court in ***Kushal Pal & Ors. Vs. Mohal Pal and Ors. [(1976) 1 SCC 449]***, the Hon'ble Supreme Court has held that if the first suit was instituted for recovery of arrears of rent and eviction, and the second suit was filed for declaration of title and for recovery of possession, then the second suit is hit by the principles of *res-judicata*.

18. The learned counsel for the respondent has also relied upon a



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decision of the Hon'ble Supreme Court in the case of ***Maqbool Alam***

Khan Vs. Khodaija [AIR 1966 SC 1194] for the proposition that in order to prove that there was a valid Hiba, a party claiming Hiba should prove the existence of the three pillars of a valid gift (Hiba), namely, declaration, acceptance and delivery of possession. Since the plaintiff is not in possession of the suit schedule property, he has not proved one of the essential elements of a valid Hiba. Hence, according to her, the Lower Appellate Court has rightly held that there is no valid Hiba in favour of the plaintiff. The learned counsel for the respondent, therefore, submits that the Lower Appellate Court has rightly applied the doctrine of *res-judicata* and has rightly held that the suit in O.S.No.156 of 2014 is hit by the principles of *res-judicata* and the Lower Appellate Court has rightly held that the alleged Hiba claimed by the plaintiff is not a valid Hiba, as the plaintiff is not in possession of the suit schedule property.

DISCUSSION:

19. In this second appeal, the issues that arise for consideration are as follows:-

(a) whether the subsequent suit filed for declaration, recovery of possession and for arrears of rent, will amount to *res-judicata* when the



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very same plaintiff had filed a previous suit seeking for eviction of the very same defendant based on landlord-tenant relationship, wherein the Court had dismissed the suit by holding that the plaintiff has not proved his title over the very same suit schedule property, which is the subject matter of the subsequent suit?

(b) Whether a valid Hiba was executed in favour of the plaintiff by his mother Rehmana Beevi?

(c) Whether delivery of physical possession is necessary to prove Hiba by the donor to donee.

(d) Whether the defendant has proved that he is entitled to retain possession of the suit schedule property through adverse possession?

(e) Whether the suit filed by the plaintiff is barred by limitation? since, in the previously instituted suit, a decision was rendered in the year 2006 itself, which decision had also attained finality.

RES-JUDICATA:-

20. Section 11 of the Civil Procedure Code (CPC) deals with *res-judicata*. As per the said provision, once an issue has been finally decided by a Court, it cannot be made a subject matter of another suit. The Courts are barred from entertaining suits in which the matter directly



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and substantially in issue has already been finally decided by another court in a previously instituted suit. The definition of *res-judicata* provided under Section 11 of CPC is not exhaustive. The rationale of the principles of *res-judicata* can be traced to three judicial maxims:

(a) Nemo debet bis vexari pro una et eadem causa; this maxim means no person shall be subject to prosecution for the same action twice. This principle aims to protect an offender from frivolous litigation.

(b) Res judicata pro veritate accipitur; a decision of a judicial authority must be duly accepted as correct. If the judicial decision is not respected as conclusive, then there will be indefinite litigation, which will lead to confusion and chaos.

(c) Interest republicae ut sit finis litium; The interest of State lies to put an end to litigation. It is a part of the public policy of the country that the courts should not be overburdened by the filing of a repeated suit over the same subject matter.

21. The jurisprudential significance of above said three principles makes *res-judicata* a universal concept. Merely because a matter was in issue in a former suit would not suffice to invoke the doctrine of *res-judicata*. It is necessary that the matter be directly and substantially in



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issue in the previous suit. It should have been alleged by one party and admitted or denied by the other party. The admission or denial may be done expressly or by necessary implication.

22. The doctrine of *res-judicata* applies where the issues in the two suits are identical in nature. Thus, even if the cause of action, object and relief claimed in the two suits are distinct, the doctrine of *res-judicata* can be invoked so long as the issues are identical. A suit may also involve certain subsidiary issues that are secondary to the primary issues. Those issues that are ancillary to the substantial and direct issues are known as collateral or incidental issues. The doctrine of *res-judicata* cannot be invoked with respect to these collateral or incidental issues.

23. The Hon'ble Supreme Court in a recent judgment, which has not been cited by both the counsels, in the case of ***Yadaiah and another Vs. State of Telengana and others [2023 (10) SCC 755]*** has held that the effective test to distinguish between a fundamental or collateral determination is hinged on inquiry of whether the determination concerned was so vital to a decision that without which decision itself cannot stand independently. The Hon'ble Supreme Court has further held



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in the said decision that any determination, despite being deliberate or formal, cannot give rise to application of doctrine of *res-judicata* if it is not essential or fundamental in nature. It is further held that even where the inquiry is answered satisfactorily, there is still another test to pass, namely, whether determination is immediate foundation of decision as opposed to merely a proposition collateral or subsidiary only i.e. not more than part of reasoning supporting conclusion. According to the Hon'ble Supreme Court, a mere step in reasoning is insufficient. What is required is no less than a determination of law, or fact or both, fundamental to the substantive decision.

24. In the decision relied upon by the learned counsel for the appellant in ***Keshar Bai's case (cited supra)***, the Hon'ble Supreme Court has distinguished ***Mohd. Nooman's case (cited supra)*** relied upon by the learned counsel for the respondent, and has clarified that the views expressed in *Mohd. Noorman's case* was restricted to the facts in that case and further clarified that ordinarily in a suit for eviction even if the Court goes into the question of title it examines the issue in an ancillary manner and in such cases, any observation or finding on the question of title would certainly not be binding in any subsequent suit on the dispute of



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title.

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25. It is clear from the decisions rendered by the Hon'ble Supreme Court in *Yadaiah's case (cited supra)* and *Keshar Bai's case (cited supra)* that if the determination by the Court in a previously instituted suit is collateral or incidental determination and the said determination is not vital for deciding the suit, the subsequent suit for declaration of title between the very same parties will not amount to *res-judicata*.

26. In the case on hand, the previously instituted suit in O.S.No.408 of 2004 was a suit for eviction based on landlord-tenant relationship. In the said suit, the plaintiff claimed that the defendant was his tenant and did not pay the arrears of rent and on that ground, he had filed the suit for possession for evicting the defendant. There was no necessity for the Court in that suit to decide the title with regard to the suit schedule property and no issue was also framed by the Court regarding the title. Further, only due to the fact that there was a discrepancy in the survey number disclosed in the parent sale deed and in the Hiba confirmation letter dated 10.03.1995, the Court, in the previously instituted suit, had held that the plaintiff has not proved his title over the suit schedule property. The finding given by the Court in



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the previously instituted suit with regard to title of the suit schedule property is only a collateral or incidental finding and the said finding is not essential for the purpose of determining whether there was a landlord-tenant relationship subsisting between the plaintiff and the defendant or not.

27. The Hon'ble Supreme Court in *Yadaiah's case (cited supra)* has made it clear that the effective test to distinguish between a fundamental or collateral determination is hinged on inquiry of whether the determination concerned was so vital to a decision that without which decision itself cannot stand independently. The Hon'ble Supreme Court has also held that any determination, despite being deliberate or formal, cannot give rise to application of doctrine of *res-judicata*, if it is not essential or fundamental in nature. The Hon'ble Supreme Court has also further held in the said decision that even where the enquiry of whether determination concerned was so vital to the decision, without which, the decision itself cannot stand independently, is answered satisfactorily, there is still another test to pass, namely, whether determination is immediate foundation of decision as opposed to merely a proposition collateral or subsidiary only, i.e., not more than part of reasoning



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supporting conclusion. The Hon'ble Supreme Court held that a mere step in reasoning is insufficient and what is required is no less than a determination of law, or fact or both, fundamental to the substantive decision.

28. In the case on hand, as stated supra, the previously instituted suit was filed by the very same plaintiff seeking for eviction of the defendant from the suit schedule property based on a landlord-tenant relationship, but, whereas the present suit has been filed for declaration of title. The issue that arose for consideration in the earlier suit was whether there was a landlord-tenant relationship between the plaintiff and the defendant and whether the defendant is liable to be evicted or not? But, whereas in the subsequent suit, the primary issue for consideration is whether the plaintiff is the owner of the suit schedule property and is he entitled for the relief of declaration of title in his favour. The cause of action for filing the earlier suit is different from the cause of action for filing the subsequent suit. In the previously instituted suit, a finding rendered therein with regard to title is a mere step in the reasoning of the Court for coming to the conclusion that the plaintiff is not entitled for eviction on the ground that he has not proved his title based on the



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evidence available on record. In the previously instituted suit, only due to the fact that there was a discrepancy in the survey number between the parent sale deed and the Hiba confirmation letter dated 10.03.1995, the Court had come to the conclusion that the plaintiff has not proved his title.

29. In the case on hand, the survey number disclosed in the Hiba confirmation letter dated 10.03.1995 (Ex.A2) tallies with the survey number mentioned in the parent sale deed dated 06.01.1973 (Ex.A1). Therefore, a finding rendered in the previously instituted suit with regard to title of the suit schedule property is only a collateral or incidental finding, which has no bearing to the present case, which is a suit filed for a different cause of action by the plaintiff seeking for declaration of title and recovery of possession. The plaintiff has also filed documents, namely, the parent sale deed standing in the name of his mother Rehmana Beevi; Hiba confirmation letter dated 10.03.1995; and the patta standing in his name, which would exclusively prove that he is the owner of the suit schedule property and the defendant is liable to be evicted. The three essential elements of Hiba, namely, declaration, acceptance and delivery of possession, have been satisfied by the plaintiff. As seen from the Hiba



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confirmation letter dated 10.03.1995 (Ex.A2), Hiba has been executed by the plaintiff's mother in his favour. The third element of Hiba, namely, delivery of possession is satisfied if constructive possession is handed over to the plaintiff by his mother-Rehmana Beevi and there is no necessity for handing over physical possession. Wherever there are tenants/licensees or properties occupied by encroachers, there can only be constructive possession and there cannot be actual delivery of possession to the donee. Therefore, to satisfy the third requirement, namely, delivery of possession, it would suffice if constructive possession is given to the donee and there is no legal requirement for delivery of physical possession. In the case on hand, constructive possession has been given to the plaintiff by his mother by virtue of the Hiba confirmation letter dated 10.03.1995 (Ex.A2), and the patta has also been transferred in his name subsequently. Hence, the aforesaid three essential elements of Hiba have been satisfied by the plaintiff.

30. On the other hand, the defendant has not produced any iota of evidence that he has been in continuous possession and enjoyment of the suit schedule property for more than 12 years without any interruption from the plaintiff whatsoever, which is an essential requirement for proving adverse possession. The suit has also been filed within the



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period of 12 years from the decision rendered in the previously instituted suit in O.S.No.408 of 2004, which was rendered on 19.01.2006. Hence, the plea of limitation claimed by the defendant also fails.

31. The filing of family ration card, Voter ID, Aadhar card, house tax receipt dated 14.03.2012, which have been marked as Exs.B3 to B6, do not prove that the defendant has been in continuous possession and enjoyment of the suit schedule property without any interruption from the plaintiff for more than 12 years. Therefore, the plea of adverse possession taken by the defendant has been rightly refused by the Trial Court.

32. The survey number disclosed in the Hiba confirmation letter dated 10.03.1995 marked in the previous suit as well as in the subsequent suit does not tally. However, it is not in dispute that the survey number disclosed in the Hiba confirmation letter dated 10.03.1995, marked as Ex.A2 in the subsequent suit, is the correct survey number. Therefore, considering the fact that Hiba has also been executed by the plaintiff's mother Rehmana Beevi, as was pleaded in the previously instituted suit; that the original sale deed dated 06.01.1973 (Ex.A1) (parent document)



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standing in the name of the plaintiff's mother Rehmana Beevi has also been filed and marked as Ex.A1; and that the ownership is also supported by patta standing in the name of the plaintiff, which has also been marked as Ex.A3, this Court does not find any infirmity in the findings of the Trial Court that the plaintiff is the absolute owner of the suit schedule property.

33. The contention of the defendant that the survey number 9/1 disclosed in the Hiba confirmation letter, which was marked as exhibit in the previously instituted suit, has been tampered with in the Hiba confirmation letter dated 10.03.1995, which has been marked as Ex.A2 in the subsequent suit filed by the plaintiff, has not been proved through an expert opinion or through any other evidence placed on record by the defendant. The Trial Court, by its judgment and decree dated 23.03.2017 passed in O.S.No.156 of 2014, has rightly appreciated the evidence available on record and has partly decreed the suit in favour of the plaintiff by granting declaratory relief and also by granting the relief of recovery of possession. The Trial Court has rightly negated the pleas of *res-judicata*, limitation and adverse possession taken by the defendant, and the findings rendered by the Trial Court on those pleas are based only



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on the evidence available on record. However, the Lower Appellate Court, by a perverse finding, which is not in accordance with law, by misappreciating the evidence, has erroneously held that the suit is hit by the principle of *res-judicata* and, due to the fact that the survey number does tally in the Hiba confirmation letter marked in the previously instituted suit and in the subsequent suit, has erroneously dismissed the suit for declaration and recovery of possession, thereby erroneously reversing the well considered findings of the Trial Court.

34. For the foregoing reasons, the substantial questions of law framed by this Court are answered in favour of the plaintiff by holding that the suit in O.S.No.156 of 2014 is not hit by the principles of *res-judicata*, since the decree passed in the previously instituted suit in O.S.No.408 of 2004 was a suit filed for eviction based on a landlord-tenant relationship and was for a different cause of action and the finding regarding the title rendered in that suit is an incidental finding, which has no bearing for the present suit in O.S.No.156 of 2014. The plaintiff has also proved through the parent sale deed dated 06.01.1973 (Ex.A1) and through the Hiba confirmation letter dated 10.03.1995 (Ex.A2) that he is the absolute owner of the suit schedule property.



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35. In the result, the impugned judgment and decree dated 20.03.2020 passed by the Principal Sub-Court, Mayiladuthurai, in A.S.No.53 of 2017, is hereby set aside and the second appeal is allowed by confirming the judgment and decree passed by the Trial Court in O.S.No.156 of 2014, dated 23.03.2017. No Costs.

27.06.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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To

- 1.The Principal Sub-Court,
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- 2.Additional District Munsif Court,
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Judgment in

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