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OSA.Nos.41, 44 and 45/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P. DHANABAL

OSA.Nos.41, 44 and 45/2022 & CMP.No.27381/2023

OSA.No.41/2022:-

1.Mrs.R.Vijayakumari
2.Mr.K.Pandurangan

... Appellants

Vs.

C.Sudhaheer Reddy

... Respondent

Prayer:- Original Side Appeal filed under Order XXXIX Rule 1 of OS Rules read with Clause 15 of Letters Patent against judgment and decree dated 23.12.2021 made in CS.No.433/2011.

OSA.No.44/2022:-

K.Pandurangan

... Appellant

Vs.



OSA.Nos.41, 44 and 45/2022

1.Mrs.C.Parimala
2.C.Sudhaheer Reddy

... Respondents

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Prayer:- Original Side Appeal filed under Order XXXIX Rule 1 of OS Rules read with Clause 15 of Letters Patent against the judgment and decree dated 23.12.2021 made in CS.No.446/2009.

OSA.NO.45/2022:-

1.Vijayakumari
2.Mr.K.Pandurangan

... Appellants

Vs.

1.Bolla Aruna Kumari
2.Kari Vijaya Saradhi

... Respondents

Prayer:- Original Side Appeal filed under Section XXXIX Rule 1 of OS Rules read with Clause 15 of Letters Patent against the judgment and decree dated 23.12.2021 made in CS.No.431/2011.

For Appellants in
all the appeals : Mr.W.M.Abdul Majeed for
Mrs.G.Sumitra

For Respondents in
all the appeals : Mr.P.Subba Reddy



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OSA.Nos.41, 44 and 45/2022

COMMON JUDGMENT

[Delivered by S.S.SUNDAR, J.]

Defendants in the suit in CS.No.433/2011 are the appellants in OSA.No.41/2022. The 2nd appellant in OSA No. 41/2022 filed a suit in C.S.No. 446 of 2009 and OSA No. 44 of 2022 is filed as against the judgment and decree of the learned Single Judge dismissing the suit in C.S. No. 446 of 2009. As against the judgment and decree of the learned Single Judge, decreeing the suit in C.S.No.431 of 2011, OSA No.45 of 2022 is filed by the defendants in the said suit who are also the appellants in OSA.No.41/2022.

2. All the above three appeals arise out of three different suits which are connected. The subject matter of the three suits is either Plot Nos. 10 or 12, each measuring an extent of 4700 sq.ft in old survey number 19/2A and new survey no. 19/12 with a common passge measuring an entire extent of 600 sq.ft in Koyambedu Village, Egmore Taluk, Chennai District. Since identical and common issues arise for consideration and the pleadings are identical, all the appeals are disposed of by this common judgment.



WEB COPY 3.Few facts which would through light on the nature of dispute are as follows;

3.1.The appellants in all the three appeals are husband and wife. The 1st appellant Mrs.P.Vijayakumari is the wife and her husband Pandurangan is the 2nd appellant in OSA.No. 41 of 2022 and OSA.No. 45 of 2022. Mrs. P.Vijayakumari is the owner of plot no.11 by virtue of a Sale Deed dated 31.03.1997 which is on the western side of Plot No.10 and on the eastern side of Plot No.12. The plaintiffs in C.S.No. 431 of 2011 purchased Plot no. 10 on 31.12.1985 from the original owner. One Sudhaheer Reddy, plaintiff in CS.No.433/2011 purchased Plot No.12 on 24.12.2008. His vendor purchased the plot from the original owner on 16.09.1985. The plaintiffs in C.S.No. 433 of 2011 and C.S.No. 431 of 2011 therefore, purchased their respective plots which are on the eastern and western side of the property owned by the appellants.

3.2.From the pleading and evidence, the tile of palintiffs in C.S.No. 431 and 433 of 2011 is well established and they are also holding patta for



their respective plots. The plaintiffs in C.S.No. 433 of 2011 earlier filed the suit in O.S.No 3856 of 2009 which was later transferred and numbered as Tr.C.S.No. 30 of 2009 for bare injunction. Similarly the plaintiff in C.S.No. 431 of 2011 also filed a suit in O.S.No. 4031 of 2009 before the City Civil Court, Chennai which was later transferred to the original side of this Court and numbered as Tr.C.S.No.511 of 2013. Both the suits were filed against the appellants. Plaintiffs in the respective suits prayed for injunction in respect of the two plots purchased by them. In the case of the plaintiff in C.S.No. 431 of 2011, I.A.No. 7664 of 2009 in O.S.No. 431 of 2009 was allowed by granting interim injunction in favour of plaintiff in C.S.No. 4031 of 2009. After contest, the interim injunction was also confirmed in CMP.No 81/2009, by dismissing the petition to vacate the interim order on 26.08.2010. The Civil Revision Petition filed in CRP NO. 27/2011 was also dismissed by this Court 21.01.2011. However it is the case of the plaintiffs in C.S.No.431 of 2011 that the interim injunction granted by the lower court was not obeyed. Hence, they filed a petition under Order 39 Rule 2 A of CPC. It is contended by them that the defendants have encroached the property by committing contempt after the injunction was granted by the



civil court. Since the appellants disputed the title of the plaintiffs in C.S.No. 431 of 2011 and encroached the suit property, claiming title by adverse possession, it is stated that the subsequent suit in O.S.No. 431 of 2011 has been filed by the plaintiff for declaration of title and recovery of possession and for damages apart from other consequential reliefs. Almost on the identical facts, the plaint in C.S.No. 433 of 2011 also filed for identical relief alleging illegal encroachment by the appellants after the order of interim injunction was granted in the previous suit for bare injunction. The appellant in OSA.No.44/2011 who is the 2nd appellant in other appeals, filed civil suit in C.S.No. 446 of 2009 for declaration of title and for permanent injunction, claiming title by adverse possession.

3.3.The plaintiff in C.S.No. 433 of 2011, during pendency of the suit for injunction in Tr.C.S.No. 670 of 2009, obtained an order of injunction in I.A.No.7327 of 2009 in O.S.No. 3856 of 2009 on 07.05.2009. Further the 2nd appellant in OSA No. 41 of 2022 filed a suit earlier in O.S.No. 2201 of 2009 before the XVII Assistant City Civil Court, Chennai. During pendency of the suit, he also filed an interim application for injunction



and it is admitted even in the plaint in C.S.No. 446 of 2009 that no interim injunction was granted infavour of the plaintiff as he was unable to produce the original order from TASMAL. The said suit for injunction was filed in respect of plot no. 12 owned by the plaintiff in C.S.No. 433 of 2009. It is seen that the said suit was withdrawn simply later. No suit is filed by appellants in respect of Plot No.10.

3.4.The suits in Tr.C.S.No. 511 of 2013 and Tr.C.S.No. 670 of 2009 were dismissed as infructuous by the learned Single Judge while decreeing the suit in CS.Nos.431 and 433/2011. However, the suits filed by the purchasers of the property from rightful owners of the property, holding patta in C.S.Nos. 431 of 433 of 2011 were decreed as prayed for by the learned Single Judge. Aggrieved by the same, the defendants in C.S.No. 431 and 433 of 2011 and the plaintiff in C.S.No. 446 of 2009 have preferred the above three appeals.

4. The plaintiff in C.S.No. 431 and 433 of 2011 have traced their title under the respective sale deeds by registered documents of sale and the



patta that was given in favour of them by the revenue officials. There is no dispute that the property which are the subject matter in two suits in C.S.No.s 431 and 433 of 2011 originally belonged to one Barius P Lawyer. In the plaint in C.S.No. 446 of 2011 and in the written statement filed in CS.Nos.431 and 433/2011, the specific case of the appellants are as follows:

5. The subject matter of the suit property is in the exclusive physical possession of the plaintiff more than the statutory periods and that the plaintiff has prescribed title by adverse possession because of his uninterrupted possession and enjoyment of property since 1986. He relied upon the letters and agreements with TASMAL to say that he was in possession from 1986. It is admitted even in the plaint in CS.No.446/2009 that he had earlier filed a suit for interim injunction and that the civil court refused to grant interim injunction.

6.It is also contended by the appellant in the plaint that he was unable to get interim injunction even though he moved the application during vacation. However it is contended that the said suit in O.S.No. 2201 of



2009 was later withdrawn as the Court refused to entertain any application during vacation. It is seen that after filing CS.No.446/2009, he withdrew the suit filed before the City Civil Court. The specific defence taken by the appellants in the written statement filed in C.S.Nos. 431 and 433 of 2011 can be stated briefly as under:

7.The plaintiffs in C.S.No. 431 and 433 of 2011 has earlier filed a bare suit for injunction. Later on the same cause of action, the plaintiffs had filed C.S.No. 431 and 433 of 2011 for declaration of title and recovery of possession. Therefore, the subsequent suits in C.S.No. 431 and 433 of 2011 are barred by Order 2 Rule 2 of CPC. While disputing the title of plaintiff in C.S.No. 431 of 2011, the contention of the appellant is that the documents are not clear as to the measurement and boundary descriptions. One of the prime contentions of the appellant in the suit filed by him is that he has prescribed title by adverse possession as he has been in possession and enjoyment of the property since 1986.



8. On the basis of the pleadings of all the parties in all the three suits, the Trial Court framed independent issues in all the three suits in the following manner:-

CS.No.431/2011:-

- 1) *Whether CS.No.431/2011 is hit by the principles of Order II Rule 2 of Civil Procedure Code?*
- 2) *Whether CS.No.431/2011 is maintainable in law particularly when the plaintiff had filed a suit in City Civil Court on the same cause of action and subsequently transferred to this Court in Tr.CS.No.511/2013?*
- 3) *Whether the defendants in CS.NO.431/2011 acquired right, title and interest by adverse possession?*
- 4) *Whether the defendants in CS.No.431/2011 are encroachers on the property or not?*
- 5) *Whether the plaintiffs are entitled for delivery of possession of the suit property from the defendants?*
- 6) *Whether the plaintiffs are entitled for damages for the use and occupation of the suit properties from the defendants?*



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7) *Whether the defendants are encroachers on the property even after knowing the injunction order obtained by the plaintiffs in OS.No.3856/2015?*

CS.No.433/2011:-

- (1) *Whether Tr.CS.No.670/2009 is hit by principles of Order II Rule 2 of Civil Procedure Code?*
- (2) *Whether CS.No.433/2011 is maintainable in law particularly when the plaintiff had filed a suit in City Civil Court on the same cause of action and subsequently transferred to this Court in Tr.CS.No.670/2009?*
- (3) *Whether the defendants in CS.No.433/2011 acquired right, title and interest by adverse possession?*
- (4) *Whether the defendants in CS.No.433/2011 are encroachers on the property or not?*
- (5) *Whether the plaintiffs in CS.No.433/2011 are entitled for delivery of possession of the suit property from the defendants?*
- (6) *Whether the plaintiffs in CS.No.433/2011 are entitled for damages for the use and occupation of the suit properties from the defendants in CS.No.433/2011?*
- (7) *Whether the defendants in CS.No.433/2011*



encroached on the property even after knowing the injunction order obtained by the plaintiffs in OS.No.3856/2015 Tr.CS.No.670/2009]?

9.In CS.No.431/2022, the 2nd plaintiff examined himself as PW1. The 1st defendant in the suit was examined as DW1. While Exs.P1 to P38 were marked on the side of plaintiffs, no document was filed by the defendants in the said suit. The plaintiff in CS.No.433/2011 examined himself as PW1 and marked Exs.P1 to P64. Whereas, no document was marked in the said suit by the defendants and no one was examined in CS.No.433/2011. Since the common issues were framed in all the three suits, the learned Single Judge held that the plaintiffs in CS.Nos.431 and 433/2011 are the title holders of Plot Nos.10 and 12 respectively. Since one of the issues raised by the appellants is that the suits filed by the plaintiffs in CS.Nos.431 and 433/2011 are hit by Order 2 Rule 2 of CPC, the learned Single Judge held in both the suits that two suits are not hit by Order 2 Rule 2 of CPC as the cause of action is entirely different from the cause of action for seeking a prayer for declaration of title and recovery of possession from the appellants.



WEB COPY 10.To the question whether the defendants in CS.Nos.431 and 433/2011 are encroachers, the Trial Court found that the defendants have no semblance of title and they had encroached into the property despite an order of injunction was granted against them in the previous suits filed by the respective plaintiffs in respect of the two properties. On the issue whether the appellants/defendants had acquired title by adverse possession, the answer by the Trial Court was negative. Therefore, as a consequence of the findings of the Trial Court, the suits filed by the plaintiffs in CS.Nos.431 and 433/2011 were decreed as prayed for. As regards damages for use and occupation of the suit properties, the Trial Court granted decree directing the defendants to pay a sum of Rs.35,00,000/- as unliquidated damages for illegal occupation in respect of Plot Nos.10 in CS.No.431/2011. The defendants in the suits are held liable to pay future damages at Rs.5 lakhs annually. Similarly, in CS.No.433/2011 also, the defendants were directed to pay a sum of Rs.35 lakhs as consolidated and unliquidated damages to the plaintiffs and future damages at Rs.5 lakhs per annum. The suit in CS.No.446/2009 was dismissed with cost. Aggrieved by the same, the



above appeals have been preferred by the defendants.

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11.The appeals were admitted on 02.03.2022. since caveat was filed on behalf of the 1st respondent, no interim order was granted at the time of admitting the appeals or any time later. All these appeals were clubbed together and from the docket sheet, it is seen that the matter was adjourned at the request of both sides on several occasions after November 2023. When the matter was listed on 24.10.2024, there was no representation for the appellants. Hence, this Court directed the appeals to be listed under the caption 'for dismissal' on 25.10.2024. When the matter was called on 25.10.2024, the learned counsel on record for the appellants submitted that the appellants have engaged some other counsel and filed a Memo dated 24.10.2024 before this Court in the following lines:-

"..The appellants have sought for change of vakalath and case bundles. For the reason that the present advocates who have handling the matters their appeals have been dismissed or disposed of summarily without fair hearing and opportunities with heave and exemplary costs. The appellants have reasonable apprehension that since they have engaged same counsel their appeals may also face same fate if they are to be conducted by the very same counsel before the same Hon'ble Division Bench.."



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12.After recording that the statement in the Memo is unfair and contemptuous, this Court taking note of the fact that the matter was listed before several Benches, directed the Registry to post the matter again under the caption 'for dismissal' on 29.10.2024. On 29.10.2024, a new counsel by name, Mr.Abdul Majeed, requested for an adjournment. This Court, thereafter adjourned this matter to today.

13.Even though independent issues were framed in each suit by the Trial Court, having regard to the fact that the pleadings and facts are almost identical and arguments were advanced raising common grounds in all these appeals, this Court is convinced that the following common issues can be framed in all the appeals for disposing these appeals by this common judgment:-

A) Whether the suits in CS.Nos.431 and 433/2011 are hit by principles of Order 2 Rule 2 of CPC in view of the fact that the plaintiffs in the respective suits had earlier filed suits in Tr.CS.No.511/2013 and 670/2009?

B) Whether the defendants in CS.Nos.431 and 433/2011 have



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prescribed title by adverse possession?

C) Whether the plaintiffs in CS.Nos.431 and 433/2011 have established their title to the respective suit properties?

D) Whether the defendants in the two suits are rank trespassers who have encroached the properties after an order of injunction granted in favour of plaintiffs in the previous suits filed by them for bare injunction?

E) Whether the plaintiffs in CS.Nos.431 and 433/2011 are entitled to recovery of possession of the suit properties? and

F) Whether the plaintiffs are entitled for damages for use and occupation of the suit properties?

G) Whether CMP.No.27381/2023 for reception of additional evidence can be allowed?

Issue No.[A]:-Whether the suits in CS.Nos.431 and 433/2011 are hit by principles of Order 2 Rule 2 of CPC:-



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14.The plaintiffs in CS.No.433/2011 instituted a suit in OS.No.3856/2009 before City Civil Court. Similarly, the plaintiff in CS.No.431/2011 filed a suit in OS.No.4031/2009. Both suits were later transferred before this Court and renumbered as Tr.CS.No.30/2009 and Tr.CS.No.511/2013 respectively. Both suits were filed for bare injunction against the defendants/appellants herein. It is admitted that in both the suits, the plaintiffs have obtained interim order of injunction and the attempt of the appellants herein to vacate the interim order, did not fructify. One of the appellants by name Pandurangan filed a suit in OS.No.2201/2009 before the City Civil Court for injunction and failed to get any order. Pending OS.No.2201/2009, the said Pandurangan filed a suit in CS.No.446/2009 before this Court. After filing CS.No.446/2009, the appellant Pandurangan withdrew the suit filed by him before the City Civil Court.

15.The plaintiffs in CS.Nos.431 and 433/2011 specifically pleaded that the appellants have encroached the suit properties despite an order of injunction granted in their favour by the City Civil Court. Therefore, the present suits for declaration of title and for recovery of possession, is based



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on a cause of action which arose to them when the previous suit for injunction was pending and interim order of injunction was in force.

Having regard to the conduct of the appellants in indulging Forum Shopping, this Court has no reason to disbelieve the contentions of plaintiffs in CS.Nos.431 and 433/2011 in their plaint. The earlier suit was filed when the respective plaintiffs were in physical possession of the property. It is also to be noted that the suit property in both the suits are described as vacant. It is also admitted that there is no permanent structure in Plots No.10 and 12 and there is absolutely no evidence adduced by the appellants to show any overt act to suggest that the physical possession of the property was with the appellants when the earlier suit for injunction was filed. Even the alleged encroachment is by demolishing the compound wall put up by the plaintiffs. Since the cause of action is different for the plaintiffs to file a suit for declaration of title and recovery of possession and the plaintiffs were forced to file a suit for recovery of possession by a subsequent act of defendants as alleged in the plaint, this Court cannot dismiss the suits in CS.Nos.431 and 433/2011 without any further proof or evidence to discredit the contentions in the pleadings and in the evidence of



plaintiffs. Defendants did not produce any documents either in CS.No.431/2011 or in CS.No.433/2011. Except examining Pandurangan, the 2nd appellant in CS.No.431/2011, no other witness was examined in any of the suits. The evidence of PW1 in both CS.Nos.431 and 433/2011, cannot be assailed in the absence of any evidence to support the story of appellants. **Therefore, the contention of the appellants that the suits in CS.Nos.431 and 433/2011 are barred in view of principles of Order II Rule 2 of CPC cannot be countenanced.**

ISSUE No.[B]:-Whether the defendants in CS.Nos.431 and 433/2011 have prescribed title by adverse possession:-

16.First of all, the appellants have not even pleaded as required in law to consider the issue of "adverse possession".

17.In the written statement filed in CS.No.433/2011, the appellants have pleaded that the plaintiffs in CS.NO.433/2011 is not the owner of Plot No.12 by projecting the mistake in the description of the property in the original document of Sale dated 31.12.1985. It was then contended that the



suit property was acquired by CMWSSB by relying upon a few revenue records which would suggest some connection between CMWSSB and the property. However, things got clarified by production of substantial documents by plaintiffs to prove their undeniable title in respect of Plot No.12. There is no specific plea of adverse possession in the written statement of the appellants filed in CS.No.431/2011 and in CS.No.433/2011. Except pleading that the appellants are in possession, in the written statement filed by the appellants in the suits, there is no plea of adverse possession. Plea of adverse possession is taken in the plaint in CS.No.446/2009. However, the pleading in the plaint in CS.No.446/2009 is not sufficient to constitute a valid plea of adverse possession so that the Court is required to dwell into.

18.It is well settled that mere possession of property by anyone need not be adverse unless it is proved that the person in possession, who has no right to enter into the possession of the property, continues in possession setting up title in himself and adversely to the real owner over the statutory period of twelve years. When a person claims title by adverse possession, it



should be understood that he acquires title not on his own, but on account of inaction on the part of the real owner to recover possession from the person claiming title by adverse possession over a period of twelve years. Since such inaction extinguishes title of real owner, that possession in the hands of trespasser, sometimes, blossoms into title. Under Article 65 of Limitation Act, 1963, a suit for possession of immovable property based on title, has to be instituted within a period of twelve years from the date when the possession of defendant becomes adverse to the plaintiff. It is only by virtue of Section 27 of Limitation Act, the plaintiff who has failed to institute a suit for recovery of possession within twelve years from the date of possession by defendant becomes adverse, the plaintiff's right to property extinguish.

19.In the present case, in CS.Nos.431 and 433/2011, the plaintiffs claim title based on original title deeds and continuous enjoyment as per the revenue records. To claim adverse possession, the appellants should establish that the suit filed by the plaintiffs is barred by limitation as the plaintiffs have not laid the suit for recovery of possession within twelve



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years from the date of dispossession. By virtue of the interim order obtained by the plaintiffs in the earlier suits filed by them for bare injunction, this Court can also presume that the plaintiffs were found to be in possession after getting interim order during pendency of the previous suits. This presumption can also be rebutted if the appellants have substantial documents to prove their physical possession at least on the date when the earlier suit was filed. From the pleadings and nature of evidence, the appellants claimed to be in possession not on the basis of any superstructure or by any overt act, but by showing that TASMAC has granted license for running a bar attached to a shop. The letter or document, filed by the appellants do not refer to Plot No.10 or Plot No.12. It is not known how the appellants could possibly rely upon such letters to show their physical possession. Therefore, a person who pleads adverse possession should plea and prove that his possession became adverse to the plaintiff with effect from such date. Further, he should prove his continuance, uninterrupted possession to claim title by description. In the present case, there is not even a pleading in the written statement as to when



the possession of defendants became adverse. Admittedly, the appellants have not produced any document to prove at least their physical possession.

20. The Hon'ble Supreme Court, in the case of ***Ravinder Kaur Grewal Vs. Manjith Kaur and Others [AIR 2019 SC 3827 : 2019 [4] CTC 936]***, has dealt with the requirements to prove adverse possession in the following lines:-

"57. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec-vi, i.e., adequate in continuity, nec-clam, i.e., adequate in publicity and nec-precario, i.e., adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence, he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile color of title is required. Trespasser's long possession is not synonym with adverse possession. Trespasser's possession is construed to be on behalf of the owner; the causal user does not constitute adverse possession. The owner can take possession from a trespasser at any point of time. Possessor looks after the property, protect it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession."



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21. It has also been recognized in law that a person who pleads title by adverse possession should prove his possession in denial of true owner's title must be peaceful, open and continuous. In this case, even before the matter reaches Court, there were criminal complaints. In the absence of any revenue records in favour of appellants at any time during or before this litigation, this Court is unable to consider the plea of adverse possession as it is a genuine and *bona fide* one. The documents filed by the plaintiffs would amply prove their undeniable title. Though no document was filed before the Trial Court by the defendants, the plaintiffs have produced before this Court a few letters and agreements along with a petition for reception of additional documents. The 2nd appellant Pandurangan has produced some documents before this Court to show that he was a transport contractor for M/s.TASMAC and that a bar license was applied by the 1st appellant. Most of the documents filed by the appellants do not refer to the suit properties. It is pertinent to mention that none of the documents were produced before the Trial Court so that this Court can also look into those documents. Therefore, we hold that the appellants has failed to plead adverse possession as required in law and hence, the contention of the learned counsel for the



appellants on the question of adverse possession, cannot be countenanced.

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22. In the instant case, the 1st appellant in OSA.Nos.41 and 45/2022 is the absolute owner of Plot No.11. As seen from the pleadings and documents, the appellants have no semblance of right over any extent of land in respect of Plots No.10 and 12 belong to plaintiffs in the two suits. It is seen that the appellants claimed to have run a Bar attached to TASMACH shop in Plot No.11. It is only by taking advantage of the position that the adjacent plots namely, Plots No.10 and 12 are vacant, the appellants might have used the vacant land or extended their Bar by allowing the customers visiting TASMACH to use the vacant land. Taking advantage of this, the appellants raised the plea of adverse possession before us even without proper plea before the Trial Court. Though the issue of adverse possession was considered by the Trial Court, this Court does not even find merit to frame this as an issue. A mere fact that the person who sets up title, use a portion of somebody's land on temporary basis, the same cannot be taken as an act of user against real owner especially when there is nothing to show that such use of plaintiffs' plots, show any adverse claim of title. When the



suit property is a vacant land and the character of the land is not denied in the written statement, this Court finds no basis for a plea of adverse possession in the absence of permanent structure or building put up by the appellants. In the absence of a plea and evidence to show that the appellants were in physical possession of Plots No.10 and 12 in its entirety, the issue cannot be decided merely on the basis of any surmises.

ISSUE No.[C]:-Whether the plaintiffs in CS.Nos.431 and 433/2011 have established their title to the respective suit properties:-

23.This Court has briefly narrated the facts in the opening paragraphs and the nature of dispute. This Court has already seen that Plots No.10, 11 and 12 are continuous and adjacent plots in a layout which was laid out by the original owner. While Plot No.10 is on the eastern side, Plot No.11 is the middle plot and Plot No.12 is on the western side. From the documents, it is seen that originally the entire property belonged to a firm of which one Philly Lawyer and Arunachalam were partners. After the death of Mr.Philly Lawyer, his estate devolved on his son by name Mr.Darius P.Lawyer. The entire land was developed as a layout and sold. Plaintiffs in



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CS.No.431/2011 purchased Plot No.10 under a registered Sale Deed dated 31.12.1985 from the original owners. Even though the plaintiffs in CS.No.433/2011 purchased Plot No.12 by a registered Sale Deed dated 24.12.2008, his predecessors in interest had purchased Plot No.12 from the original owner on 16.09.1985. There is no dispute that the middle plot [Plot NO.11] belonged to Mrs.Vijayakumari, the 1st appellant in OSA.Nos.41 and 45/2022 on 31.03.1997 nearly 12 years after the adjacent plot was produced by the plaintiff in CS.No.431/2011. The voluminous documents filed by the plaintiffs in CS.Nos.431 and 433/2011 would show the undeniable title of plaintiffs in both the suits. Even though there is a small mistake in the Sale Deed in favour of plaintiffs in CS.No.433/2011, a Rectification Deed was executed. The Encumbrance Certificates and revenue records as on date, would show the perfect title of plaintiffs in the two suits. As a matter of fact, except the examination of Mr.K.Pandurangan, the 2nd appellant in OSA.Nos.41 and 45/2022, no other independent witness was examined by the defendants.



24.It is unfortunate to notice that the defendants have not filed any documents in the two suits in CS.Nos.431 and 433/2011. Without any document, the defendants/appellants disputed the title of plaintiffs/respondents. The plaintiffs in CS.Nos.431 and 433/2011 have meticulously produced before the Trial Court, all the documents to prove their title. No other document is filed to contradict any of the documents filed by the plaintiffs in the two suits. No one is examined to doubt the veracity of the statement of PW1 or the documents produced by the plaintiffs. The Trial Court, therefore has held with certainty that the plaintiffs in CS.Nos.431 & 433/2011 have pleaded their title in respect of the two plots which is on the eastern and western side of the plot owned by the 1st appellant in OSA.Nos.41 and 45/2022.

25.In CS.No.433/2011, the defendants have pleaded that the suit property belonged to TWAD Board [now Chennai Metro Water Supply and Sewerage Board [CMWSSB]]. However, it is proved in trial that except an entry in the revenue records which is unauthorised, the plaintiffs in CS.Nos.431 and 433/2011 also established their absolute title in respect of



Plot No.12. Even though it is contended by the appellants that the description of the property in the Sale Deed in favour of the plaintiffs in CS.No.433/2011 is wrong, the facts are established by another registered document dated 23.10.1986. Even the defendants in the suits in CS.Nos.431 and 433/2011 have prescribed title by adverse possession. Therefore, the contention of the defendants in the written statements denying the title of plaintiffs in CS.Nos.431 and 433/2011 are demonstrably false and devoid of any merits.

ISSUE No.[D]:-Whether the appellants/defendants are rank trespassers?

26.Learned Trial Judge has held that the appellants are just trespassers who had entered into the land when an order of injunction was in force. The learned counsel for the appellants is unable to demonstrate how the appellants are in lawful possession. As pointed out already, in the absence of any documents showing appellants' title or right to be in possession, the possession of the appellants is unlawful and hence, the appellants **are just rank trespassers.**



ISSUE No.[E]:-Whether the plaintiffs are entitled for recovery of possession of the suit properties:-

27.Having regard to the conclusions this Court reached above, the plaintiffs cannot be denied the relief of recovery of possession as the plaintiffs have proved their title.

ISSUE No.[F]:-Whether the plaintiffs are entitled for damages for use and occupation of the suit properties:-

28.Even though the plaintiffs have come forward with the plea of damages at Rs.2 lakhs per month, the Trial Court fixed future decretal damages at Rs.5 lakhs per annum and also directed the appellants to pay a sum of Rs.35 lakhs as damages for illegal occupation of Plot No.12. Similar amounts were also awarded in respect of Plot No.10 also. Even though the claim for damages is not support by any mathematical calculation, having regard to the valuation of building location namely, the plots are located in a commercially potential locality, the Trial Court awarded the above amounts by way of consolidated unliquidated damages and for future damages. This Court is of the view that said sums are very reasonable. This Court, having



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regard to the conduct of the appellants who wanted to grab the valuable lands of plaintiffs in an unfair manner, is unable to interfere with the order of the learned Single Judge in directing the appellants to pay a sum of Rs.35 lakhs to each of the plaintiffs and to pay a future damages for use and occupation at Rs.5 lakhs per annum.

Whether the petition for reception of additional evidence can be entertained:-

29.CMP.No.27381/2023 is filed by the appellants in OSA.No.41/2022 for reception of additional documents which are listed in the Judge's summons from Item No.1 to 36. This Court has carefully considered the application and the documents. Most of the documents are relied upon by the appellants to show that the appellants are engaged in business with TASMAC either as a transport contractor or for running a Bar. Having regard to the fact that there is no plea of adverse possession in the two suits filed by the appellants in CS.Nos.431 and 433/2011 and the appellants have not pleaded independent title, this Court finds that no document is relevant in the present suits. Further, in the absence of required



plea to establish adverse possession, these additional documents cannot be received as evidence as it is settled that no amount of evidence without pleading is admissible in law. Further, ingredients of Order 41 Rule 27 of CPC are not satisfied. The application is filed only in OSA.No.41/2022. In the application, the appellants have stated that they were under the bona fide impression that additional documents which had been entrusted with their advocate, have been exhibited before this Court. It is further stated that the documents were filed along with the plaint and that by inadvertence and oversight, the documents have not been marked due to change of counsel for the appellants.

30.The appellants just put blame on the erstwhile counsel engaged by them before the Trial Court for not marking the documents. The truth is, the same counsel who has now presented the appeals for the appellants, appeared before the learned Single Judge to prosecute the suits till the judgment is delivered. The appellants knowing fully well that they have no case on merits, did not examine any witness in two suits nor marked any documents in all the three suits. However, quite surprisingly, the



application is now filed for reception of additional documents indirectly to fill up gaps by examining further witnesses. As pointed out by this Court, the reasons stated in the affidavit filed in support of the miscellaneous application for reception of additional documents, are not genuine and do not satisfy the requirements of Order 41 Rule 27 of CPC. There is no acceptable for not producing the documents at the trial stage. Therefore, this Court finds no merit in the application for reception of additional documents. **Accordingly, CMP.No.27381/2023 stands dismissed.**

31.This is a typical case of land grabbing, where the appellants had made an unsuccessful attempt to grab the properties of the plaintiffs. The defendants in CS.Nos.431 and 433/2011 have set up pleas which are not supported by any document. Now, an attempt is made to produce documents without any explanation, why the documents were not produced before the Trial Court. The appellants have not examined any witnesses in the other two suits and no document is marked. The suit was filed in the year 2009 and decreed only in the year 2021. Even the appeals are filed only in the year 2022. Application for reception of Additional documents



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was filed only during 2023. It is to be noted that the same counsel who has filed the appeals, had argued before the Trial Court and has authored the application for reception of additional documents. The judicial process is misused by persons like the appellants. This Court cannot come to the aid of such persons.

32.Having regard to the conclusions arrived at above on every issue raised before this Court, this Court is unable to find any reason to interfere with the judgment and decree of the learned Single Judge. The appeal is devoid of any merits and liable to be dismissed.

33.Accordingly, OSA.Nos.41, 44 and 45/2022 stand **dismissed**. No costs.

(S.S.S.R., J.) (P.D.B., J.)
04.11.2024

AP

Internet : Yes
Index : Yes
Neutral Citation : Yes



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To
The Section Officer
VR Section, High Court
Chennai.



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S.S. SUNDAR, J.
and
P. DHANABAL, J.

AP

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