



S.A.No.100 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.11.2023
Pronounced on	20.02.2024

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

Second Appeal No.100 of 2016
and C.M.P.No.21421 of 2023

- 1.MurugesanAmalraj (Died)
- 2.M.Selvarani
- 3.M.Kumar

(A1 died, A2 & A3 are brought on record as LR's of the Deceased A1 vide Court Order dated 24.08.2023 made in C.M.P.No.5611 of 2022 in S.A.No.100 of 2016 (TVTSJ))

...Appellants

Vs.

V.R.Pattabiraman

...Respondent



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Prayer: Second Appeal has been filed under section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 06.07.2015 in A.S.No.54 of 2012 on the file of the Principal District Judge at Vellore in confirming the judgment and decree dated 16.06.2012 in O.S.No.140 of 2003 on the file of the Sub Court, Vellore.

For Appellants : Mr.V.Raghavachari
Senior Counsel
for Mr.A.Gouthaman

For Respondent : No Appearance

JUDGMENT

The defendant in the original suit is the appellant herein. The present second appeal is filed against the judgment and decree dated 06.07.2015 in A.S.No.54 of 2012 on the file of the Principal District Judge, Vellore in confirming the judgement and decree dated 16.06.2012 in O.S.No.140 of 2003 on the file of the Sub Court, Vellore.

2.The respondent/plaintiff has filed the suit before the Subordinate Court, Vellore in O.S.No.140 of 2003 seeking the relief of declaration of



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title in the suit property and directing the defendant to deliver the possession of the property to the plaintiff and also to direct the defendant to pay a sum of Rs.85,680/- as damages for use and occupation of the suit premises for one year prior to the filing of the suit. The learned Sub Judge, Vellore by judgment and decree dated 16.06.2012 decreed the suit.

3. Being dissatisfied with the findings arrived at by the learned Sub Judge, Vellore, the defendant preferred the appeal in A.S.No.54 of 2012 on the file of the Principal District Judge, Vellore, to set aside the judgment and decree dated 06.06.2015 passed by the learned Sub Judge, Vellore.

4. By judgment and decree dated 06.06.2015, the learned District Judge, Vellore dismissed the appeal by confirming the judgement and decree passed by the learned Sub Judge, Vellore in O.S.No.140 of 2003 dated 16.06.2012. Feeling aggrieved over the same, the defendant is before this Court with the present Second Appeal.



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5. For the sake of convenience, herein after, the parties are referred as discribed before the trial Court.

The brief averments made in the plaint are as follows:-

6.The suit property originally belonged to one Ruby Jesudas Manickam. She has purchased the property through a registered sale deed dated 08.09.1944. The said Ruby Jesudas Manickam founded a Trust called "Bishop Manickam Trust" in the name of her husband Bishop Manickam. She executed a will dated 29.10.1971 bequeathing the suit property to the said Trust.

7.The said Ruby Jesudas Manickam was in possession of the suit property from 08.09.1944, till she bequeathed the same to the Trust under will dated 29.10.1971. Thereafter Bishop Manickam Trust was in possession and enjoyment of the property. The said Will was probated by this court, Madras on 07.05.1986. The suit property was handed over to Bishop Manickam Trust.



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8.On 29.04.1991, the Bishop Manickam Trust represented by its Secretary, Treasurer, J.Vedamuthu through the power agent S.K.Ramakrishnan sold the suit property to the plaintiff, under a registered sale deed dated 29.04.1991 for Rs.5,00,000/-.

9.It is further submitted that at the time of purchase of the suit property by the plaintiff, the defendant was a tenant in the outhouse of the suit property and one Mrs.Devadhatha was a tenant in the main building. After purchase of the suit property by the plaintiff, the said Mrs.Devadhatha vacated the main building and handed over the possession to the plaintiff. Even in the suit in O.S.No.1033 of 1986 before the District Munsif Court, Vellore for bare injunction, the defendant had admitted that he is a tenant in the back portion of the suit property. The plaintiff would submit that only after Mrs.Devadhatha vacated the main building, the defendant surreptitiously occupied the main building and when the plaintiff demanded for rent, the defendant



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refused to pay. The defendant failed to pay the rents for the outhouse, which was occupied by him, at the time of purchase of the suit property by the plaintiff. Since the defendant attempted to trespass into the main building, the plaintiff filed an injunction suit in O.S.No.877 of 1991 and the same was dismissed. Meanwhile, the defendant's injunction suit in O.S.No.1033 of 1986, which was filed against the said Mrs.Devadhatta, was decreed in his favour. Since the defendant himself admitted in the above suit that he was a tenant in the outhouse portion of the suit property, the plaintiff in order to purchase peace, initially requested him to pay rent for his occupation in the suit property. In spite of repeated goodwill efforts by the plaintiff, the respondent refused to come for terms and evaded to pay the rents and prevented the plaintiff from going near the suit property. Hence, the plaintiff filed R.C.O.P.No.50 of 1992 for eviction of the tenant and the same was dismissed on the ground that there is no landlord tenant relationship between the parties herein.

10. Similarly, R.C.O.P.No.93 of 1992 was filed by this plaintiff against the defendant for fixation of fair rent, in which the rent was fixed



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at Rs.7,140 per month. But subsequently, the same was also dismissed on the ground that there was no land lord and tenant relationship between the parties. The appeal in R.C.A.No.40 of 1995 preferred by the plaintiff was also dismissed on the same ground. Hence, the plaintiff was constrained to file the present suit for declaration of title and for possession.

11.In the written statement filed by the defendant it is submitted that the defendant was never a tenant under Ruby Jesudas or under Bhishop Manickam trust and therefore, the question of paying rent from 1991 onwards do not arise. The defendant perfected his right and title to the suit property by prescription being in open, continuous uninterrupted possession and enjoyment of the suit property for more than the statutory period to the knowledge of the owners and thereby prescribed title to the suit property by adverse possession. Hence, the suit is barred by limitation as the claim has not been made within 12 years. It is further submitted that no cause of action arose on 29.04.1991 or on 15.11.2002



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as stated in the plaint. It is further stated in the additional written statement that, the plaintiff failed to include all the claims against the defendants in the previous suit in O.S.No.877 of 1991 and therefore, the suit is barred under Order 2 Rule 2 of CPC. The further averments in the additional written statement is that by virtue of the previous legal proceedings between the plaintiff and the defendant in respect of the suit property will operate as *res judicata*. It is further submitted that there cannot be any sale of trust property without proper sanction and permission. Therefore, the plaintiff is not entitled to any relief in the present suit. Hence, prayed for dismissal of the suit.

12. Based upon the said pleadings, the trial Court framed the following issues:-

1. தாவா சொத்தைப் பொறுத்து வாதி கோரும் விளம்புகை பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா?
2. பிரதிவாதிக்கு தாவா சொத்தில் எதிரிடை அனுபவ உரிமை மூலம் ஏற்பட்டுள்ளதா?
3. வாதிக்கும் பிரதிவாதிக்கும் இடையே உரிமையாளர் மற்றும்



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வாடகைதாரர் என்ற உறவு முறை உள்ளதா?

4. வாதி சுவாதீன பரிகாரம் பெறத்தக்கவரா?

5. வாதி கோரும் இழப்பீட்டுத்தொகை பிரதிவாதியிடமிருந்து கிடைக்கத்தக்கதா?

6. வாதிக்குகிடைக்கும் இதர பரிகாரம் என்ன?

13. On the side of the plaintiff, P.W.1 and P.W.2 were examined and 15 documents were mared Ex.A1 to A15. Similarly, on the side of the defendant D.W.1 was examined and filed 5 documents were marked as Ex.B1 to Ex.B5.

14. Considering the materials placed on record, the learned Sub Judge, Vellore vide Judgment and decree dated 16.06.2012, concluded that the plaintiff is the absolute owner of the suit property and therefore, held that the plaintiff is entitled for a declaratory relief and directed the defendant to vacate the suit premises within a period of two months and hand over the possession to the plaintiff. With regard to the other reliefs, the trial Court has rejected. In the first appeal filed by the defendant, the findings arrived at by the trial Court was confirmed.

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15. Aggrieved over the said findings of the First Appellate Court, the defendant is before this Court with this present Second Appeal. When the Second Appeal is taken for admission, this Court formulated the following substantial Questions of law:-

(a) Whether the Courts below were right in decreeing the suit filed by the plaintiff, ignoring the fact that even according to the Trust the defendant is a trespasser and he was in possession of the property in open, continuous, uninterrupted possession asserting hostile title for more than the prescribed period?

(b) Whether the instant suit is barred under Order II, Rule 2 of the Civil Procedure Code and the principles of *res judicata*?

(c) Whether Ex.A5, on the basis of which the plaintiff claims title, is valid in law in the absence of sanction from the competent court?



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16.The learned counsel appearing for the defendant would submit that as per Ex.B.12, copy of the registered Bhishop Manickam Trust deed dated 21.04.1970, the above Trust is a public and charitable trust. While so, no permission was obtained from the competent Court as per Indian Trust Act. However, the Courts below erroneously came to the conclusion that the resolution passed by the trustees is sufficient to alienate the suit property, which is totally against law. The trust property should be alienated through a public auction in order to get better purchaser for good value. To support his contention, the learned counsel for the defendant has relied upon the following cases reported in

1. ***1994(1) SCC 475 [committee of Management of Panchayapp's Trust Vs.Official Trustee of Madras and others]***
2. ***2013(3) CTC 870. [Gopalakrishnan Vs. Tiruparankundam Arumuga Nainar Trust]***
3. ***2007 (8) SCC 75***



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17.His further argument is that the plaintiff filed O.S.No.877/91 for bare injunction, mentioning the defendant has trespasser. Therefore, on the date of filing the above suit itself the plaintiff had a cause of action for filing a suit for declaration and recovery of possession. But, the plaintiff has not obtained any permission to file a fresh suit. Hence, the present suit is barred under Order 2 Rule 2 of CPC. To support his contention he has relied upon the judgement reported in **2022 (2) L.W.799** in which it is held that, a first suit for injunction was filed and subsequent suit for specific performance is barred under Order 2 Rule 2 CPC. Since on the date of filing the earlier suit, the plaintiff had a cause of action for filing the second suit. Therefore, in the absence of liberty to file the second suit, the same is barred under Order 2 Rule 2 of CPC. In the present case also, on the date of filing the suit for injunction, the plaintiff had a cause of action for filing the present suit for declaration and recovery of possession. Hence, the present suit for declaration and recovery of possession is not maintainable.

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18.The learned counsel further argued that the Rent Control proceedings initiated by the plaintiff was dismissed on the ground that there is no landlord and tenant relationship between the plaintiff and the defendant, which would also operate as *res judicata*. However, the trial Court erroneously held that the defendant is a tenant under the plaintiff, when the plaintiff and his vendor failed to establish the fact that the defendant is a tenant in the suit property. Hence, the findings of the 1st appellate Court requires interference.

19.The further submission of the learned counsel for the defendant is that the First Appellate Court decreed the suit mainly on the ground that the defendant has not produced any documents relating to the earlier litigation. In the first appeal, the defendant filed an application for receipt of documents filed along with the said petition. The above documents were received and marked as Exs.B.6 to B.20 and no findings were given by the first appellate Court with regard to those documents and thereby



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violated the procedure contemplated under Order 41 Rule 27 of CPC. He would further submit that even in the second appeal, the defendant has filed a petition to receive additional evidence and the same was allowed by this Court. In the said petition the defendant filed a caveat petition filed by the plaintiff's vendor stating the appellant as trespasser. The learned counsel would submit that even in Ex.A.5 sale deed through which the plaintiffs purchased the suit property, the vendors of the plaintiff referred the defendant as squatter and not as a tenant. However, the original sale deed was not produced by the plaintiff as contemplated under Section 65 of the Indian Evidence Act. To support his contention, he has relied upon the following judgements in

1.2011(6) CTC 747

2.2009 (4) CTC 440

3. 2015(4) L.W.424

20.The learned counsel for the defendant further argued that the defendant came to the property 20 years back even before the formation of trust. The trust was formed in the year 1971. The property was



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purchased by the plaintiff only in the year 1991. Therefore, even as against the vendor of the plaintiff, the defendant has established their right and title by way of adverse possession. Neither the plaintiff nor the predecessors in title established on what basis the defendant is in possession of the property. The learned counsel would submit that mere proof of title is not sufficient to shift the burden of proof to the defendant. And that, the person who claims title to property could also claim right by adverse possession. To support his contention he has relied upon the judgement reported in

1.2010 (2) MLJ

2.2005 (3) L.W.167

21. With regard to limitation the learned counsel for the defendant would submit that the defendant came to the suit property even 20 years prior to formation of trust. The Will in favour of the trust was executed in the year 1971. However, the probate was granted only on 07.06.1986. While so, the suit ought to have been filed before 1983. Hence, the suit



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is barred by limitation. Hence, the learned counsel appearing for the appellant/defendant would submit that the Courts below erred in decreeing the suit in favour of the plaintiff, which is liable to be set aside.

22.The respondent remained ex-parte in the appeal.

Substantial question Nos. 1 to 3

23.*Firstly*, it has to be seen whether the suit is barred under Order 2 Rule 2 CPC. Admittedly, the plaintiff has filed a suit in O.S.No.877/1991 for bare injunction. It is the case of the plaintiff that at the time of purchase of the suit property by the plaintiff, the defendant was a tenant in the outhouse of the suit property. One Mrs.Devadhatta was a tenant in the main building. After the purchase of the suit property by the plaintiff, the said Mrs.Devadhatta vacated the main building and handed over possession to the plaintiff. This is evident from the fact of filing the suit in O.S.No.1033 of 1986 by the defendant in which, the defendant admitted that he was a tenant in the back portion of the suit



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property. The plaintiffs submit that when Mrs.Devadhatta vacated the main building, the defendant attempted to trespass into the main building. Hence, the plaintiff filed a suit in O.S.No.877 of 1991 for injunction. Thereafter the defendant surreptitiously occupied the main building and therefore, the plaintiff not permitted the above suit and the suit was dismissed as not pressed. However, the suit filed by the defendant in O.S.No.1033 of 1986 was decreed in his favour. According to the plaintiff, in order to maintain cordial relationship with the defendant who was in illegal occupation of the suit property, the plaintiff requested him to pay the rent, which was refused by the defendant. Hence, the plaintiff was constrained to file R.C.O.P.No. 50 of 1990 for eviction of the defendant and R.C.O.P.No.93 of 1992 for fixing a fair rent and the above petitions were dismissed by the Rent Control Tribunal on the ground that there was no landlord tenant relationship between the plaintiff and the defendant. The appeal preferred by the plaintiff in R.C.A.No.40 of 1995 was also dismissed on the same ground. Hence, he was constrained to file the present suit in O.S.No.140 of 2003 for



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declaration and possession of suit property. Now, it has to be seen whether the present suit is barred under Order 2 Rule 2 of CPC which reads as follows:

"Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. "

24.The requirement is that the plaintiff is duty bound to claim the entire relief. The principal underlying Order 2 Rule 2 of CPC is that no man can be vexed twice over the same cause of action. All claims and relief which arise from a cause of action, must be comprehended in one single suit. The *sine quo non* for invoking Order 2 Rule 2 against the plaintiff by the defendant is that the relief which the plaintiff has claimed in the second suit was also available to the plaintiff for being claimed in the previous suit as the cause of action pleaded in the previous suit against the defendant and yet not claimed by the plaintiff. Therefore, the cause of action in both the suits must be same.



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25. In the present suit, the plaintiff would submit that when one Devadhatta,, who was in occupation of the main building vacated, the defendant who was a tenant in the outhouse, attempted to trespass in the main building and therefore, the plaintiff filed the suit in O.S.No.877/1991 for permanent injunction restraining the defendant from entering into the suit property. Thereafter, the defendant trespassed into the main building. Hence, the said suit was not pressed by the plaintiff. He then requested the defendant to pay the rents for the portion occupied by him, which was refused by the defendant. Hence, the plaintiff initiated R.C.O.P proceedings against the defendant. Since the Rent Control petitions were dismissed on the ground that there was no landlord and tenant relationship between the plaintiff and the defendant, the plaintiff filed the present suit for declaration and for recovery of possession. Therefore, the cause of action arose in the earlier suit is different from the cause of action in the present suit. Hence, it cannot be said that the suit is barred under Order 2 Rule 2 CPC.



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26.The next point for consideration is that whether the sale in favour of the plaintiff made by the public Trust, vendor of the plaintiff, without obtaining the Court permission is valid under law. Admittedly, no permission was obtained from a Competent Court before alienation. It is also not in dispute that the suit property originally belong to the Bishop Manickam Trust. The contention of the plaintiff is that the said alienation was made in pursuant to a resolution passed by the members of the Trust. No doubt, in order to safeguard the interest of the Trust and its properties, the permission of the Court is required. The present suit is filed by the plaintiff for declaration of title and recovery of possession, the plaintiff claims title to the suit property by virtue of a sale deed in his favour. The defendant must establish whether he is in lawful possession of the suit property and that the plaintiff has no right or interest in the suit property. While so, the defendant cannot challenge the sale by stating that the permission of Court is required.



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27.The next point for consideration is that whether the Courts below erroneously held, the defendant as tenant when the fact remains that the rent control proceedings initiated by the plaintiff were dismissed on the ground that there is no jural relationship between the plaintiff and the defendant. The plaintiff has filed the above suit for recovery of possession of the suit property from the defendant on the ground that the defendant is in wrongful possession of the suit property. Therefore, the findings rendered by the first Appellate Court that the defendant is a tenant under the plaintiff is immaterial and it will not affect the rights of the plaintiff in this suit, unless the defendant proves that he is in lawful possession of the suit property.

28.The next submission made by the learned counsel for the appellant is that, the defendant is in possession of the suit property for more than 20 years, even before the formation of Trust. Therefore, the defendants have established their right and title by way of adverse possession. His further contention is that, the defendants who claim title



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to property is also permitted to claim right by adverse possession.

Whereas, the plaintiff or the predecessors in title failed to establish on what basis the defendant is in possession of the suit property. No doubt the defendant who claims title to property could also claim right by adverse possession. But the burden is on the defendant that he had acquired title by adverse possession.

29.Now it has to be seen that whether the defendant has acquired title to the suit property either by prescription or by adverse possession. It is settled law that mere possession even if it is true for any number of years will not cloth the person in enjoyment with the title by adverse possession. The important ingredients of adverse possession should have been satisfied, which are in two folds.

30.Firstly, defendant has to recognize the title of the plaintiff against whom adverse possession is claimed.



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31.*Secondly*, defendant must enjoy the property adverse to the plaintiff who is the title holder in interest after making him known that such enjoyment is against his own interest. Such averments are absent in the written statement of the defendant. The specific contention of the defendant is that the plaintiff has no title to the suit property and the sale deed in favour of the plaintiff is a fabricated document. By such contention the defendant is not willing to recognize the title of the plaintiff.

32.The earlier litigations would also reveal that the property was not enjoyed by the defendant adverse to the interest of the plaintiff. The defendant claims himself as a tenant in earlier litigation i.e., in O.S.No.1033 of 86 and he is described as trespasser or squatter by the plaintiff and his predecessor in title. Therefore, the earlier litigations would prove that the plaintiff and his predecessor in title as owners of the property, never abandoned the property to the adverse possession on the acquiescence of the owner to the hostile acts and claims of the person in possession. The physical fact of exclusive possession and *animus*



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possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should prove, on what date he came into possession, what was the nature of his possession, whether the factum of possession was known to the other party, how long his possession has continued and his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence.

33. According to the plaintiff, the defendant from the outhouse forcibly trespassed into the main building when the erstwhile tenant vacated the said building. The defendant failed to establish that he was in possession and enjoyment of the suit property for more than 20 years. The defendant has not produced any evidence to prove that, on what



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dated he came into possession of the suit property, what was the nature of his possession, how long his possession has been continued open and undisturbed. He has not substantiated the same by tangible evidence. Therefore, the defendant failed to establish that he acquired a title by prescription on adverse possession. Even in the year 1986, while filing O.S.No.1033 of 1986, the defendant admitted that he is a tenant in the suit property. The earlier litigations between the parties would suffice that, the defendant was not in possession of the suit property continuous and uninterrupted. Hence, the arguments putforth by the learned counsel for the defendant, that the defendant was in possession of the suit property for a long continuous period without any disturbance and acquired title by adverse possession is unsustainable. Since the defendant failed to prove his title and lawful possession in the suit property, he cannot question the validity of the sale deed in favour of the plaintiff. The above substantial questions of law are answered accordingly.



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34.In the result, this second appeal is dismissed. The defendant is directed to hand over possession of the suit property within period of two months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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K.GOVINDARAJAN THILAKAVADI, J.

vsn

To

- 1) The Subordinate Court, Rasipuram.
- 2) The District Munsif Court, Rasipuram.

**Pre delivery judgment made in
Second Appeal No.100 of 2016
and C.M.P.No.21421 of 2023**

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