



WEB COPY



S.A.No.529 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2025

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.529 of 2000

Subramania Assary

.. Appellant

Vs.

1.Vaithianatha Pillai

2.Manickam

3.Santhamurthy

.. Respondents

Prayer: Appeal filed under Section 100 of the Code of Civil Procedure, praying to set aside the decree and judgment passed in A.S.No.57 of 1998, dated 30.04.1999 on the file of the III Additional District Judge, Pondicherry, and confirming the decree and judgment passed in O.S.No.352 of 1994 dated 30.06.1998, on the file of the II Additional District Munsif, Pondicherry, dismissing the suit.

For Appellant : Mr.Mohammed Arshadullah Sheriff
for Mr.R.Kamalesh Kannan

For Respondents : Ms.Sumithra

J U D G M E N T

The present appeal arises against the judgment and decree of the III Additional District Judge at Pondicherry in A.S.No.57 of 1998 dated 30.04.1999, in reversing the judgment and decree of the learned II



S.A.No.529 of 2000

Additional District Munsif, Pondicherry in O.S.No.352 of 1994 dated 30.06.1998.

2.The sole defendant is the appellant. For the sake of convenience, the parties shall be referred as per their rank in the suit.

3.The plaintiffs presented O.S.No.352 of 1994, seeking the relief of permanent injunction restraining the sole defendant from interfering with the peaceful possession and enjoyment of the suit property.

4.The case of the plaintiff is that the suit property was purchased by one Seethalakshmi, by way of two registered sale deeds dated 30.10.1972 and 25.01.1973. Seethalakshmi passed away leaving behind first plaintiff – her husband, and plaintiffs 2 & 3 – her sons, to succeed to her estate. The plaintiffs alleged that the defendant, who is their neighbor, was in unauthorized occupation of the suit property which belonged to them. Hence, they have initiated proceedings for recovery of possession. That proceeding culminated in S.A.No.29 of 1989. On the date of presentation of the suit, the second appeal was still pending. Taking advantage of the pendency of the second appeal, the defendant started interfering with the possession of the plaintiffs. The defendant issued a



S.A.No.529 of 2000

notice to the plaintiffs calling upon them to desist from interfering with the suit property. It was suitably replied. Despite the same, the defendant continued with his actions. Being left with no other option, the plaintiffs came forth with the aforesaid suit. Summon was served on the defendant and he filed a detailed written statement.

5.According to the defendant, there was no cause of action for the suit. He pleaded that the suit is bad for non-joinder of necessary parties. He denied that he was in unauthorized occupation and that the said matter can be determined in S.A.No.29 of 1989. He denied that on 22.04.1993, he attempted to disturb the plaintiffs' peaceful possession and enjoyment of the suit property. He stated that the suit property and the property purchased by one, Seethalakshmi, were two different properties. He pointed out that, originally he was occupied in Plot No.44 in Cad.No.14 in Mariamman Nagar Oulgaret Commune. The plaintiffs had filed a suit for possession in O.S.No.374 of 1977, before the Principal District Munsif Court, Pondicherry. The same was dismissed. Aggrieved by the same, they preferred an appeal, which came to be allowed. Against which, the second appeal is pending. He alleged that the plaintiffs have a habit of interfering with his possession. He pleaded that it is only the 3rd plaintiff, who interferes with the possession and enjoyment of the suit



S.A.No.529 of 2000

property.

WEB COPY

6. Pending the suit, the plaintiffs amended the schedule of the property to which the defendant filed an additional written statement. He denied that the suit schedule property situated in Plot No.44, as per the sale deed, was purchased by his mother. He denied the title of Seethalakshmi, as well as that of the plaintiffs to the same.

7. On the basis of these pleadings, the learned Trial Judge framed the following issues:-

- “1. Whether the suit is bad for want of cause of action?*
- 2. Whether the suit is bad for non-joinder of necessary parties?*
- 3. Whether it is true that the plaintiffs do not own or possess the suit property?*
- 4. Whether it is true that the defendant is not in unauthorised possession of the house adjacent to the suit property?*
- 5. Whether it is true that the defendant attempted to disturb the peaceful possession and enjoyment of the suit property by the plaintiff on 22.04.1993 and on 18.03.1994.*



WEB COPY



S.A.No.529 of 2000

*6. Whether the plaintiff are entitled to judgment
and decree as prayed for?*

7. To what relief are the parties entitled?

8. In support of their case, the 3rd plaintiff was examined as P.W.1 and he marked Exs.A1 to A6. On the side of the defendant, he examined himself as D.W.1 and marked Exs.B1 to B3. The Settlement Officer during the course of the proceedings was examined as C.W.1 and he marked Exs.X1 & X2.

9. The learned Judge took up each of the issues separately and answered that, insofar as issue No.1 is concerned, there is no cause of action for the suit. She found the contention of the defendant with respect to the plea of non-joinder of necessary parties as untenable. Insofar as issue No.3 is concerned, she rendered a finding that since the plaintiffs' claim over the suit property is on the basis of the sale deed executed in favour of Seethalakshmi, the predecessor in title, and since this suit is not one for title, but one for permanent injunction, the Court will not get into the issue of title. Finally, she dismissed the suit. This was done so on the basis of the conclusion that, there was no cause of action for the suit and because the plaintiffs have failed to prove their possession over the suit property. Insofar as issue No.4 is concerned, she concluded that the



S.A.No.529 of 2000

plaintiffs had not given enough evidence in support of their claim, and Exs.A1 to A6 did not support the plea of the plaintiffs. She concluded that the plaintiffs had failed to prove that the defendant is in unauthorized occupation of the adjacent property. As the plaintiffs did not prove their cause of action, she came to a conclusion that the defendant did not interfere with the possession of the plaintiffs. Consequently, she dismissed the suit without costs.

10. Aggrieved by the same, the plaintiffs preferred a regular appeal in A.S.No.57 of 1998. The learned III Additional District Judge, Pondicherry, after perusal of the evidence of P.W.1 and D.W.1, came to a conclusion that there is indeed a cause of action for the suit and that the learned Trial Judge had ignored the oral evidence of P.W.1 regarding the same. He also pointed out that the plaintiffs had pleaded that they are the owners of the property, and the property being a vacant land at the time of filing of the suit and the construction of the hut having been made subsequently, they are entitled to enjoy the property in their own right. Having come to this conclusion, he reversed the judgment and decree of the learned II Additional District Munsif, Pondicherry, and decreed the suit as prayed for with costs.



S.A.No.529 of 2000

11. Aggrieved by the said judgment and decree dated 30.04.1999 in

A.S.No.57 of 1998, the sole defendant is on appeal before this Court.

WEB COPY

12. This Court had not entertained the second appeal. It had issued notice regarding admission on 12.04.2000. The matter was listed before me for hearing.

13. I heard Mr. Mohammed Arshadullah Sheriff for Mr. R. Kamalesh Kannan, representing the appellant and Ms. Sumithra representing the respondents.

14. Mr. Mohammed Arshadullah Sheriff suggested the following substantial questions of law as arising in the present appeal:-

“(i) Has not the First Appellate Court erred in allowing the Appeal and decreeing the suit in the absence of any cause of action.

(ii) Has not the First Appellate Court erred in allowing the appeal and decreeing the suit which accepting that the rights of the parties are subjudice in S.A.No.29 of 1989 on the file of the Honourable High Court, Chennai.”



S.A.No.529 of 2000

WEB COPY

15.He urged that the First Appellate Court ought to have held that, since the second appeal in S.A.No.29 of 1989 had been pending from the date of presentation of the plaint, a fresh suit is not maintainable. He pointed out that there is no cause of action for the suit and that the plaintiffs had miserably failed to prove their possession over the suit schedule property. He urged that the well considered judgment of the Trial Court had been erroneously reversed by the Lower Appellate Court and hence, it requires interference at the hands of this Court.

16.Per contra, Ms.Sumithra urged that the plaintiffs have filed their original sale deeds which had been executed in favour the wife of the first plaintiff and the mother of plaintiffs 2 & 3, namely, Seethalakshmi. She pointed out that Seethalakshmi had passed away on 24.11.1973, and since the police did not take any action, as evidenced under Ex.A6, they were constrained to approach the Court. She urged that the suit property concerned in O.S.No.874 of 1982 is a different one than the suit property, which is the subject matter of present appeal. She urged that the Lower Appellate Court had analyzed the entire facts properly and it does not require any re-appreciation by this Court.



S.A.No.529 of 2000

WEB COPY

17.I have carefully considered the submissions of both sides and I have gone through the records in detail.

18.The case of the plaintiffs is that, the suit schedule mentioned property was a vacant site at the time of presentation of the plaint. Insofar as vacant sites are concerned, possession follows title. In other words, if the person proves that she / he is the owner of the vacant site, the Court has to presume that she / he is in possession of that property, unless and until the defendant lets in evidence to thwart this presumption. It is on this account, that the principle of law is settled with respect to matters of vacant lands, that possession follows title.

19.It is the case of the defendant, that as long as a second appeal is pending before this Court, the learned Trial Judge ought not to have entertained the fresh suit. There is no bar for a party to approach the Court for a remedy, with respect to, two separate properties. For a better understanding, the schedule of the property involved in O.S.No.1175 of 1983, is placed in a tabular column alongside the suit schedule mentioned property in the present case, as follows:-



S.A.No.529 of 2000

<i>Schedule of property in O.S.No.1175 of 1983</i>	<i>Schedule of property in O.S.No.352 of 1994</i>
The hut situated at Mariamman Nagar, Karamanikuppam Village, Pondicherry, to the South of Kudusaalai, to the North and West of the land of Seethalakshmi. Extent: East to west – 20 feet South to North – 15 feet	Property situated in Cadestre No.15 Pt., 14 bis pt., Resurvey No.180/1, measuring East to West – 30 feet, South to North – 60 feet of Karamanikuppam Village, Oulgaret Commune, Oulgaret Sub Registration District, Pondicherry Registration District. Boundaries: House of Plaintiffs (East); House of Rajam (West); Hut of the defendant (North), and Vacant site of plaintiffs (South)

20.A perusal of the schedule of properties show that both the properties are totally different. Hence, the plea of Mr.Mohammed Arshadullah Sheriff that as long as the second appeal in S.A.No.29 of 1989 is pending, the learned Trial Judge ought not to have entertained the suit, is untenable. The learned Trial Judge had dismissed the suit saying that no issue arises for consideration insofar as cause of action is concerned.

21.The “cause of action” is a bundle of facts, which constrains a



S.A.No.529 of 2000

party to approach the Court seeking remedy. Ex.A5 shows that the plaintiffs had lodged a complaint against the defendant, and only a non-cognizable report had been given, which was marked as Ex.A6. A perusal of Exs.A1 & A2 shows that the plaintiffs' predecessor in title, namely Seethalakshmi, had purchased the property by way of two registered sale deeds dated 25.01.1973 and 30.10.1972.

22.The learned Trial Judge had not appreciated the aforesaid discussion with respect to vacant land and title, and had dismissed the suit saying that the plaintiffs had produced any evidence to prove their title, nor did they let in any evidence to prove possession. This aspect of the judgment had been rightly interfered with by the Lower Appellate Court. The Lower Appellate Court held that possession follows title. The evidence of P.W.1 would show that he had categorically stated on 07.12.1992, the sole defendant had attempted to dispossess the plaintiffs from the suit property. He had also pointed out that he had given a complaint to the police on 07.12.1992. Yet again, P.W.1 deposed that on 22.04.1993, the defendant once again attempted to dispossess the plaintiffs. These cumulatively point out that there is a cause of action for the suit and the finding of the Trial Judge that there is no cause of action required to be interfered with by the Lower Appellate Court, and it had



S.A.No.529 of 2000

been interfered with rightly.

WEB COPY

23.As pointed out in the discussion of the schedules of properties set forth above, the claim of the defendant is only to an extent of 20 ft. X 15 ft. When the defendant states that the suit property and his property are not different from each other, the burden of proof heavily lies on him to demonstrate the same. The defendant filed a photocopy of the judgment and decree in O.S.No.874 of 1982 on the file of the Principal District Munsif, Pondicherry, and a copy of the deposition of R.W.2, who was examined as P.W.1 in the present case, in that suit. The defendant had not brought forth before the Court that the judgment and decree relied upon by him had been interfered with by the II Additional District Judge at Pondicherry in A.S.No.29 of 1986, and the suit had been decreed on 04.08.1988. Placing reliance upon a decree, which had been reversed, does not advance the case of the defendant.

24.As the plaintiffs have let in evidence to prove their title and since the property is a vacant land, applying the principle of possession follows title to the facts of the present case, I am not in a position to accept the plea of Mr.Mohammed Arshadullah Sheriff. The substantial questions of law framed by Mr.Mohammed Arshadullah Sheriff do not



S.A.No.529 of 2000

arise for consideration in the present appeal.

WEB COPY

25.In the result, this Second Appeal stands dismissed. The judgment and decree passed in A.S.No.57 of 1998, dated 30.04.1999 on the file of the III Additional District Judge, Pondicherry, confirming the decree and judgment passed in O.S.No.352 of 1994 dated 30.06.1998, on the file of the II Additional District Munsif, Pondicherry, stands confirmed. No costs.

17.10.2025
(2/2)

krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The III Additional District Judge,
III Additional District Court,
Pondicherry.

2.The II Additional District Munsif,
II Additional District Munsif Court,
Pondicherry.



WEB COPY



S.A.No.529 of 2000

V.LAKSHMINARAYANAN, J.

krk

S.A.No.529 of 2000

17.10.2025
(2/2)