



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 13.08.2025

Pronounced on : 29.08.2025

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No. 1254 of 2009

And

M.P.No. 1 of 2009

1. Goriyambi
2. Abdul Muthalif
3. Sardar
4. Shakila
5. Zarina
6. Refufy

... 3rd party in the suit/Respondents/Appellants

Vs.

1. Boyot Virappin (died)
2. Boyot Krishnammal (died)
wife of Boyot Virappin
Rep. by her power agent
Boyot Virappin
3. Jancy



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4. Gracy
Respondents 3 and 4 are
legal heirs of Balu
5. Kavitha Amarnath
6. Suriya Krishnamurthy

[RR 5 7 6 are impleaded third party vide order of Court dated 16.10.2020 made in C.M.P.No. 15620/2017 in S.A.No. 1254/2009]

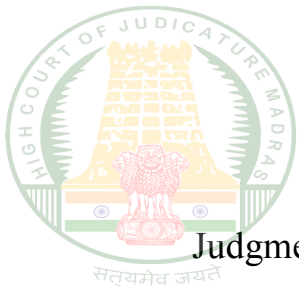
... 3rd party in the suit/ respondents 8 and 9 respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree in A.S.No. 319 of 2006 on the file of II Additional District Judge, Pondicherry and dated 12.08.2009 in reversing the judgment and decree in O.S.No. 315 of 1986 on the file of Principal Sub-Judge, Puducherry and dated 17.04.1989.

For Appellants	: Ms.V.Srimathi
For RR 3 and 4	: Mr. Raj Kumar
For RR 5 and 6	: Mr. T.V.Ramanujun Senior Counsel for Mr.T.Sai Krishnan

JUDGMENT

The Second Appeal had been filed by third parties to O.S.No. 315 of 1986 on the file of the Principal Sub Court at Puducherry questioning the

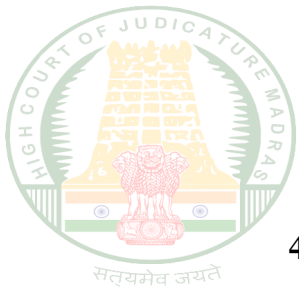


Judgment dated 12.08.2009 in A.S.No. 319 of 2006 passed by the II

Additional District Court at Pondicherry.

2. O.S.No. 315 of 1986 had been filed by the first and second respondents in the Second Appeal, Boyot Virappin and his wife Boyot Krishnammal against one defendant Batcha Sahib seeking a Judgment and Decree for delivering of vacant possession of the property described in schedule -C of the plaint and for recovery of arrears of rent at the rate of Rs.3/- per month for the period from 01.01.1963 till 31.12.1985 to a total sum of Rs.828/- and for recovery of mesne profits in future at Rs.30/- per month from January 1986 till March 1986 to a total sum of Rs.90/- and also future mesne profits till date of delivery of possession and for costs of the suit.

3. In the plaint, the property which had been described in A schedule of the plaint was land and building measuring 3950 sq.ft., at Vadavandai Pulvar Road, Muthiyalpet, Pondicherry. The B schedule property is practically the same as A schedule property but adjacent to A schedule property with a house and land measuring 3950 sq.ft. The C schedule for which delivery of vacant possession had been sought in the plaint is house and land in A and B schedule property.



4. The suit came up for consideration before the Principal Sub Court along with O.S.No. 680 of 1985 which had already been filed by the same plaintiffs against the same defendant but seeking permanent injunction restraining the defendant from putting up any further construction. By Judgment dated 17.04.1989 both the suits were dismissed with costs.

5. The plaintiffs then filed an appeal against the dismissal of O.S.No. 315 of 1986 alone. They did not file an appeal against the dismissal of O.S.686 of 1985. During the pendency of the First Appeal, the sole defendant Batcha Sahib died and his legal representatives were then brought on record. They are the appellants herein.

6. The First Appeal came up for consideration before the III Additional District Court at Pondicherry. By Judgment dated 12.08.2009, the appeal was allowed and the Judgment and Decree dated 17.04.1989 in O.S.No. 315 of 1986 passed by the learned Principal Special Judge, Pondicherry was set aside and O.S.No. 315 of 1986 was decreed. This necessitated the appellants herein, legal representatives of the defendant in the suit, to file the present Second Appeal.



WEB COPY 7. The Second Appeal had been admitted on the following four substantial questions of law:-

“1. Whether the lower appellate court is not in error in decreeing the suit when it is barred under the Principles of res judicata?;

*2. Whether the order of the lower appellate Court is not against the Judgment of the Madras High Court in **Vediammal Vs. K.Kandasamay, CDJ 1997 MCH 847, AIR 1971 SC 442, Amarendra Komalam Vs. Usha Sinha, 2009 SC 1890, Perumal Samy Vs. Kandasamy, CDJ 2001 MHC 172?**;*

3. Whether the lower appellate Court is justified in decreeing the suit when a specific finding had been rendered under Ex.B5 that Babu Sahib is not the sub tenant of plaintiff therein?; and

4. Whether the lower appellate Court is justified in decreeing the suit when the plaintiffs had miserably failed to establish title?”



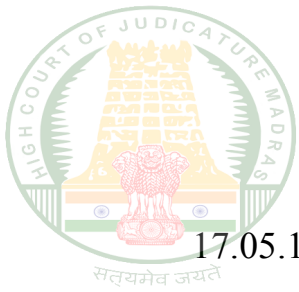
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O.S.No. 315 of 1986 – Principal Sub Court, Pondicherry:

8. The plaintiffs Boyot Virappin and his wife Boyot Krishnammal stated in their plaint that the properties described as A, B and C schedule along with some more adjoining area comprised in a vast stretch of land bearing Cadastre No. 159 and 159 bis initially belonged to one Ponnurangam Pillai.

9. Ponnurangam Pillai had purchased the property by way of a Sale Deed executed by one Manickathammal. Ponnurangam Pillai continued to enjoy the property till his death in the year 1955. He left behind him three sons and one daughter-in-law (widow of his son Sundaramoorthy Pillai). The three sons were Rangasamy Pillai, Narasingham Pillai and Pandurangam Pillai. The widowed daughter-in-law was Rajathi Ammal. During his life time Ponnurangam Pillai had executed a Will dated 29.08.1940 bequeathing the property to his wife Manoranjitham Ammal and his three sons and daughter-in-law.

10. The plaintiffs further submitted that by a Partition Deed dated



17.05.1979, the properties left behind by Ponnurangam Pillai were divided among the legatees and their surviving heirs. The suit A, B and C schedule properties also formed part of the said partition and were allotted to Pandurangam Pillai and his sons Deivanayagam Pilla and Palanisamy Pillai.

11. The plaintiffs further submitted that even during the life time of Ponnurangam Pillai, one Dhanusu Pillai and his sons, Varadharasu Pillai, Govindarasu Pillai and Muthukrishna Pillai became tenants with respect to the entire property. The plaintiffs further submitted that during the period of lease, one Babu Sahib had entered into a further lease with Govindarasu Pillai and his brother Muthukrishna Pillai. The two lease deeds were dated 01.01.1956 and 01.03.1959 respectively. The defendant Batcha Sahib was the son of Babu Sahib. The father of the defendant Babu Sahib was a tenant under the chief tenant of the plaintiffs' vendors and had raised one hut with mud walls over the area mentioned in B and C schedule properties.

12. Babu Sahib also obtained permission from the chief tenant, Muthukrishna Pillai to obtain sanction from the Municipality Pondicherry



to raise a hut. Babu Sahib died in and around 1962. The other defendants were her legal heirs. It had been contended that the defendants were in peaceful possession of the C schedule property right from the time of the death of his father.

13. The plaintiffs submitted that the first plaintiff Boyot Virappin purchased the A schedule property on 20.10.1982. The second plaintiff purchased the B schedule property also on 20.10.1982. The two properties were purchased by two separate sale deeds. After the purchase, they demanded the defendant to vacate the C schedule property but the same was not complied with. It had been contended that the father of the defendant had entered into the suit property only as a sub-tenant of the tenant of the plaintiffs' vendors and therefore, cannot claim better title than what the defendant's father himself had.

14. The plaintiffs further submitted that on 05.11.1985 the defendant removed the existing temporary hut and began putting up a permanent structure. The plaintiffs therefore filed O.S.No. 680 of 1985 seeking an order of injunction restraining him from putting up further construction. In that particular suit, the defendant filed a written statement



denying the title of the plaintiffs and also of their vendors and further denied his tenancy even under Muthukrishna Pillai, Govindarasu Pillai and Varadharasu Pillai, sons of Dhanarasu Pillai. The defendant claimed right over the suit property by enjoyment. It had been contended that the defendant had also asserted his title before the French Court at Pondicherry as well as the Madras High Court. It had been stated that this denial of title forfeited his tenancy and the plaintiffs are entitled to evict him without further notice.

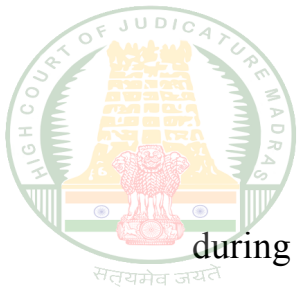
15. The plaintiffs stated that the defendant was also liable to pay arrears of rent from January 1963 at the rate of Rs.3/- per month till December 1985 and thereafter to pay damages till he vacates and handover vacant possession. The plaintiffs had also issued a notice on 01.01.1986. The defendant had replied on 27.01.1986 claiming right over the property by adverse possession by enjoyment of land to an extent of 2 ares and 2 centiares from time immemorial for over 100 years.

16. The plaintiffs further contended that an Advocate Commissioner had been appointed in O.S.No. 680 of 1985 and he had measured the property and had given the area which was under the



occupation of the defendant. It was under those circumstances that the suit had been filed seeking recovery of possession and for rents and mense profits and also costs of the suit.

17. In the written statement, the allegation that the property originally belonged to Ponnurangam Pillai, had been denied. The averment that Ponnurangam Pillai, executed a testament on 29.08.1940 bequeathing the property to his sons and others had also been denied. The further contention that a partition was effected on 17.05.1979 among the legatees and that the A and B schedule properties were allotted to Pandurangam Pillai and Deivanayagam Pillai and Palanisamy Pillai was also denied. It had been further stated that the averment that Dhanusu Pillai, Govindarasu and Muthukrishna Pillai had entered into a lease agreement with Ponnurangam Pillai is false and such statement was denied. The defendant also denied that his father Babu Sahib entered into a lease agreement with Govindarasu Pillai and Muthukrishna Pillai under the lease deeds dated 01.01.1956 and 01.01.1959 respectively regarding the C schedule property. It had been contended that the said lease deeds are not true and valid. It was very specifically stated that the father of the defendant Babu Sahib, who died on 1965 never executed any lease deed



during his lifetime.

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18. It had been further stated that the alleged sale deeds dated 20.10.1982 under which the plaintiffs claimed to have purchased A and B schedule properties from Ponnurangam Pillai and his sons are not valid documents and are sham and nominal. It had also been stated that the extent of property given in the C schedule is not correct. The defendant claimed that he has been in possession and enjoyment of 2 ares and 20 centiares in which a house had been constructed and was also using the vacant site on the back side as a garden. It had been stated that the defendant and his forefathers have been in an enjoyment for over 100 years every from the time of the French regime in Pondicherry. It had been contended that the defendant had perfected his title to the suit C schedule property measuring 2 ares and 20 centiares by adverse possession. It had been further stated that the vendors of the plaintiffs, Pandurangam Pillai and others had attempted to evict the defendant's father Babu Sahib and 32 similar occupants for the entire area in Cadaste 159 bis including the property described in the suit schedule. It had been further stated that the superior Appeal Court, Pondicherry in A.S.No. 723 of 1965 by Judgment dated 07.01.1966 and also the Madras High Court in

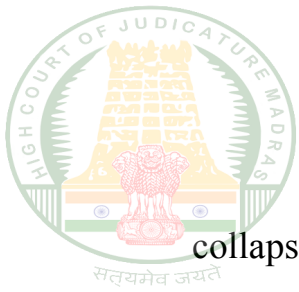


Special Appeal (Civil Number) 526 of 1966, by Judgment dated

15.02.1973 had held that this defendant and the 32 occupants and their predecessors have been living in the property for over 100 years prescribing their title by adverse possession and therefore they cannot be evicted.

19. It had been further contended that some of the occupants had alienated their portions of the property to third parties and a huge theatre and Kalyana Mandapam has now been constructed by the purchaser. It had been further stated that the vendor of the plaintiffs had not taken any legal action regarding the property. It had been stated that the defendant and his father Babu Sahib continue to enjoy the property peacefully as absolute owners paying house tax. Electricity service has also been obtained and the charges have been paid.

20. It had been further stated that on 05.12.1973 considering the long and continuous occupation, the Government of Pondicherry had also granted patta in favour of the father of the defendant, thereby confirming the title of the defendant to the C schedule property. It had been further stated that the said property had been incorrectly described in the schedule to the plaint. It had been further stated that the house of the defendant



collapsed during the heavy rains in November 1985 and therefore, the defendant had attempted to put up superstructure.

21. It had been further stated that the plaintiffs should have filed the suit for declaration of title over the suit property as the defendant had already denied the title of the vendors of the plaintiffs themselves in the earlier legal proceedings. It had been further contended that the plaintiffs are also not entitled for recovery of any rent or any mesne profits. It had been stated that the suit is barred by limitation under the French Code Civil as well as the Indian Limitation Act, 1963. It had been stated that therefore, the suit should be dismissed.

22. The Principal Sub Judge, Pondicherry had framed issues on the basis of the pleadings. It must be stated that the trial in O.S.No. 315 of 1986 was conducted jointly with O.S.No. 680 of 1985.

23. O.S.No. 680 of 1985 had been filed by the same plaintiffs against the same defendant seeking a restraint from putting up any further construction over the suit schedule properties.

24. Since the issues in both the suits overlapped, it was only



prudent that both the suits were taken up for trial together. The learned Principal Sub Judge initially framed the issues in O.S.Nos. 680 of 1985 and then in O.S.No.315 of 1986 and thereafter, merged the issues and renumbered the issues as follows:-

“(i) Whether the lease agreements dated 01.01.1956 and 01.03.1959 relating to C schedule property are true and valid?

(ii) Whether the plaintiff is entitled to recovery of possession of suit property?

(iii) Whether the sale deed in favour of the plaintiffs is not valid for want of consideration and cannot be acted upon?

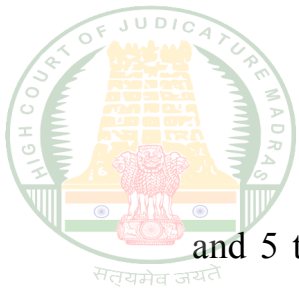
(iv) Whether the plaintiff is entitled to recovery of arrears of rent and future mesne profits as claimed if so what amount?

(v) Whether the plaintiff is entitled for a declaration and injunction as prayed for?;

(vi) Whether the defendant had acquired title by long continuous exhaustive possession as per law? And

(vii) To what reliefs are the parties entitled to?”

25. The learned Principal Sub Judge then took up issue Nos. 3, 4



and 5 together namely, whether the sale deeds in favour of the plaintiffs are not valid and whether the plaintiffs is entitled to recover the arrears of rent and future mesne profits and whether the plaintiffs are entitled for a declaration and injunction as prayed for.

26. During trial, the first plaintiff examined himself as PW-1 and examined three other witnesses as PW-2 to PW-4. The defendant examined himself as DW-1 and examined one further witness as DW-2.

27. The plaintiffs marked Exs. A-1 to A-19 and the defendant marked Exs. B-1 to B-7. Exs. A-1 and A-2 both dated 20.10.1982 were copies of the sale deed executed by Pandurangam Pillai and others in favour of the plaintiffs. Ex.A-3 was a donation deed and Ex.A-4 was a partition deed between Deivanayagm Odayar and Kandasamy Odayar. Ex.A-5 dated 29.08.1940 was a Will executed by Ponnurangam in favour of Narasimha Pillai and others. Ex.A6 dated 17.05.1979 was the copy of the partition deed between Kaliamurthy Rajathiammal and others Ex.A7 and A9 were the settlement deeds executed by Govindaraja Pillai. Exs. A-10 and A-11 were copies of Advocate's notice and reply notice. Ex.A-13 was a copy of the patta, Exs. A-14 and 15 were tax receipts issued by



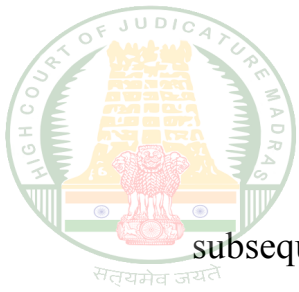
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28. On the side of the defendants, Exs. B-1 to B-7 were marked. Ex.B-1 was the notice issued by the Land Settlement Officer. Ex.B-5 was a certified copy of the Judgment in A.S.No. 723 of 1965 issued by the Superior Court of Appeal in Pondicherry.

29. During the trial two further documents as Exs. X-1 and X-2 were marked. Ex. X1 was the true copy of the settlement register for the lands pertaining to the A schedule property. Ex.X2 was the true copy of a settlement register for the lands pertaining to the plaint B schedule property.

30. On the basis of the above evidence adduced, the learned Principal Sub Judge was of the opinion that the defendant and his father had been in continuous and hostile possession of the C schedule property right from 1950 onwards. He observed that this fact had been corroborated by PW-2. With respect to the lease deeds, Exs. A-8 and A-9 dated 01.01.1956 and 01.03.1959 it had been contended that the documents had not been proved at all. It had been further observed that



subsequent to Ex.B-5, it was not known what steps were contemplated by the landlord against the so called chief tenants.

31. It was observed that the defendant claimed that he was in peaceful and uninterrupted possession of the suit property to an extent of 2 ares and 20 centiares. The learned Principal Sub Judge also held that the defendant was paying tax to the property as well as electricity tariff. It was further held that the lease deed Exs.B-8 and B-9 are concocted documents for the purpose of the suit. It had thus been held that the defendant was in uninterrupted peaceful possession for well over 30 years.

32. The learned Sub Judge however held with respect to Issue No.1, namely with respect to the sale deeds that they have to be presumed as authenticated documents but however it had been held that the defendant had perfected title by adverse possession and therefore it was in feasible for the plaintiffs to seek recovery of possession. Both the suits were thus dismissed with costs.

A.S.No. 319 of 2006 – II Additional District Court, Pondicherry:



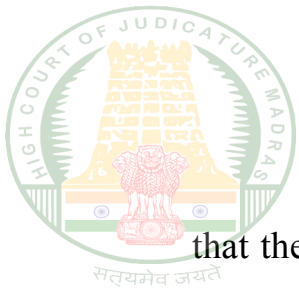
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33. The plaintiffs then filed an Appeal only against the dismissal of O.S.No. 315 of 1986. The Appeal Suit came up for consideration before the II Additional District Court at Pondicherry. By Judgment dated 12.08.2009, the Appeal Suit was allowed. The First Appellate Court had framed the following points for consideration:-

“(i) Whether the defendant perfected title over the suit C schedule property by way of adverse possession or whether he was a tenant under the plaintiffs' predecessor in title?”

“(ii) Whether the Judgment and decree of the trial Court is liable to be set aside?”

34. The First Appellate Court held that the suit was filed in the year 1986 and that Ex.A-8 lease deed said to have been executed between Babu Sahib and Govindarasu Pillai dated 01.01.1956 and Ex.A-9 also a lease deed between Babu Sahib and Govindarasu Pillai should be presumed to be true, since they are more than 30 years old. With respect to the issue of adverse possession, it had been contended that the defendant must prove that possession was peaceful, continuous and hostile to the knowledge of the real owner. It had been stated that the defendants had claimed that they are in possession to an extent of 2 ares and 20 centiares of land and



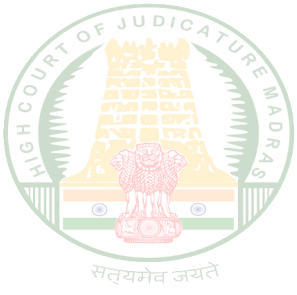
that they had not in possession of the entire suit property as mentioned in the plaint. It has been further observed that the defendant had not stated, who was the true owner of the property. It had been further held that the appellant/ plaintiffs had clearly proved their title of C schedule property. It had been further held that the respondent/defendant had not established their plea of adverse possession. It had been stated that the trial Court had failed to consider the above factors and had pronounced the Judgement hurriedly. In view of these reasons, the Appeal Suit was allowed.

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35. Questioning that particular Judgement, the legal representatives of the defendant who had been brought on record in the First Appeal filed the Second Appeal.

36. The Second Appeal has been admitted on the following substantial questions of law:-

“1. Whether the lower appellate court is not in error in decreeing the suit when it is barred under the Principles of res judicata?;



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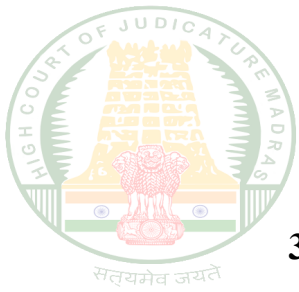
2. *Whether the order of the lower appellate Court is not against the Judgment of the Madras High Court in **Vediammal Vs. K.Kandasamy, CDJ 1997 MCH 847, AIR 1971 SC 442, Amarendra Komalam Vs. Usha Sinha, 2009 SC 1890, Perumal Samy Vs. Kandasamy, CDJ 2001 MHC 172?**;*

3. *Whether the lower appellate Court is justified in decreeing the suit when a specific finding had been rendered under Ex.B5 that Babu Sahib is not the sub tenant of plaintiff therein?; and*

4. *Whether the lower appellate Court is justified in decreeing the suit when the plaintiffs had miserably failed to establish title?"*

37. Heard arguments advanced by Ms.V.Srimathi, learned counsel for the appellants and Mr.T.V.Ramanujun, learned Senior Counsel for the respondent Nos. 5 and 6.

Substantial questions of law No.1:



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38. This question surrounds whether the First Appellate Court was in error in decreeing the suit when it was barred under the principles of resjudicata. The issue of resjudicata had arisen since there were earlier proceedings initiated by the legal heirs of Ponnurangam Pillai, namely his widowed daughter-in-law Manoranjitham and also his sons Rangasamy Pillai, Narasingham Pillai and Pandurangam Pillai, against their erstwhile tenants, Govindarasu Pillai, Varadharasu Pillai and Muthukrishna Pillai, who along with their father Dhanusupillai had been lessees in the entire property or cadastre 159 and 159 bis which was a vacant site also containing coconut grove. The lessees had sub let the property to 33 others. Eviction proceedings were initiated before the Refere Court Eviction was directed. Questioning that particular order, the lessees and the sub lessees had filed a further Appeal before the Superior Court at Pondicherry. The Appeal had been allowed by Judgment dated 07.01.1966.

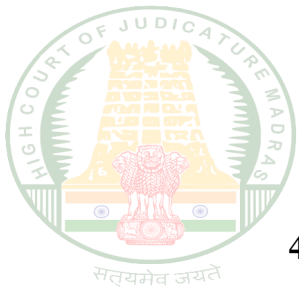
39. It is contended that this Judgement was confirmed also by the Madras High Court in further appeal. It is thus contended that since the earlier proceedings to evict the tenants had failed, the present suit by the purchasers of the property against the lessees of Danusupillai and his sons



also has to fail. The lessee was, according to the plaintiffs, Babu Sahib, the father of the defendant.

40. The copy of the Judgment of the Superior Court had been marked as Ex.B-5. A careful reading of the said Judgment shows that the Judges of the Superior Court had actually stated that they had heard arguments for *“further four hours and the matters were so intricate and so complicated that it would be wrong on the part of the Refere Court to go into these intricate questions and pass orders which might have far reaching consequences.”*

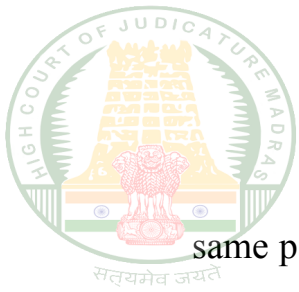
41. Thus, the competency and jurisdiction of the Refere Court to order eviction of a sub lessee was examined by the Superior Court at Pondicherry. The sub lease was neither proved nor admitted. It was also observed that the appellants denied the sub lease and went to the extent of claiming title to the disputed huts in open hostility to the claim of the respondents. It was therefore contended that the Refere Court had no jurisdiction to pass the order which it did.



42. It had also been observed that the appellants had actually changed their stands. They initially stated that they were not in possession of cadasre No. 159 and 159 bis, but were in possession of the lands in Paimash No. 679 which according to them was poromboke land belonging to the Government. The Refere Court therefore appointed the Head of the Survey Department to take measurements to determine whether the huts were in Paimash No. 679 or in cadastre 159 and 159 bis. The Head of the Survey Department after taking the required measurements had stated that the huts were not situated in Government poromboke but in cadastre No.159 and 159 bis. After getting this report, the Refere Court had directed eviction.

43. The issue before the Superior Court was not whether that order was correct or not but whether the Refere Court had jurisdiction or not to direct eviction. I hold that the order of the Superior Court, Ex.B-5, did not examine the rights of the parties but examined only the jurisdiction of the Refere Court. The said order would therefore not act as resjudicata.

44. Section 11 of the Code of Civil Procedure applies to a matter which was directly and specifically in issue in a former suit between the



same parties or between the parties at lis leading under the same title. The same issue should have been heard and finally decided.

45. In the instant case, the only decision which the Superior Court at Pondicherry had taken under Ex.B-5 was that the Refere Court had no jurisdiction to pass an order of eviction. That opinion is not a final adjudication of the issues. The Superior Court had further directed that the parties must approach the Civil Court to agitate their issues. Therefore, the claim by the respondents before the Superior Court seeking eviction of the appellants therein had not been finally decided by the Superior Court. The Superior Court had only deflected the issue without answering it. They had first stated that the Refere Court from whose order the appeal had emanated had no jurisdiction. They then, instead of taking up the burden to decide the issue, directed the parties to approach the Civil Court.

46. In view of this reasoning, I hold that the suit was not barred by the principles of resjudicata. The first substantial question of law is answered accordingly.



Substantial questions of law No.2:

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47. The second substantial question of law was whether the Judgment of the Lower Appellate Court was against earlier Judgments of a string of cases mentioned in the substantial question of law itself, namely,

- (i) *CDJ 1997 MCH 847 [Vediammal Vs. K.Kandasmay]*,
- (ii) *AIR 1971 SC 442, [Gangappa Gurupadappa Gugwad Gulbarga Vs. Rachawwa, Widow of Lochanappa Gugwad and others]*
- (iii) *AIR 2009 SC 1890 [Amarendra Komalam Vs. Usha Sinha]*
- and (iv) *CDJ 2001 MHC 172 [Perumal Samy Vs. Kandasamy]*

(i) *Vediammal Vs. K.Kandasmay*, reported in *1997 (1) MLJ 529 :: CDJ 1997 MCH 847*, was a suit for declaration of title by the plaintiffs, who claimed that they had purchased the property by a sale deed dated 29.04.1974. It had been further contended that though the sale deed referred to only one acre of land, they had obtained possession of 1.17 acres. It had been further stated that the land had been sub divided and one acre had been given a separate sub division number and 17 cents had been given a separate sub division number. It had been contended that the



second to fourth defendants who were the previous owners had instigated the first defendant to trespass into the portion of the land.

47(1). In the written statement filed by the second to fourth defendants, it was contended that the sale deed in favour of the plaintiff was only for one acre and that the averment that the sale covered one acre and 17 cents was not correct. They contended that the 17 cents belonged to their property and that the plaintiff had attempted to trespass into the same. They further contended that they had sold 4 cents of land to the first defendant out of the 17 cents.

47(2). In view of these facts, the trial Court held that the plaintiff had obtained title for only one acre and that the first defendant was entitled to four cents and therefore, the plaintiff was directed to handover possession of four cents and declaration was granted for one acre. The suit was dismissed with respect to the remainder of the disputed portion of land.

47(3). The first Appellate Court confirmed the findings of the trial Court.



WEB COPY 47(4). It was under those circumstances, that the Second Appeal was filed and since caveat was filed, it was taken up for final disposal on merits. One of the contentions raised by the respondents was that the Second Appeal was not maintainable and was barred by resjudicata. It had been contended that the counter claim for four cents had been allowed and that order had not been appealed and therefore, the Second Appeal was not maintainable. A learned Single Judge of this Court (*S.S.Subramani, J*) examined Section 11 of the Code of Civil Procedure and Explanation (i) relating to former suit and examined whether the counter claim could be brought under the definition of a suit.

47(5). It was held that a counter claim is really a suit though the same is taken in the written statement. Just as a suit is filed by the plaintiff, a counter claim is raised by the defendant seeking a relief against the plaintiff on a cause of action which he has against the plaintiff. It was held that it was an independent cause of action which could also be agitated in a separate suit. To avoid multiplicity of proceedings, the defendant is given the liberty to file a counter claim and get an adjudication. Holding as above, it had been held that the principles of



resjudicata will have to be applied. It was therefore held that the Second Appeal has no merits and both the Courts below had held that the plaintiff had title only to one acre of land and therefore, the Second Appeal was dismissed.

47(6). The said facts in the Judgement are distinguishable and the ratio held therein is not applicable to the facts in the present Appeal.

47(7). The Superior Court at Pondicherry had not delivered a Judgement finally adjudicating the rights of the parties. It had only stated that the Refere Court has no jurisdiction and had directed the parties to go before the Civil Court and agitate the issues.

(ii) AIR 1971 SC 442, [Gangappa Gurupadappa Gugwad Gulbarga Vs. Rachawwa, Widow of Lochanappa Gugwad and others]:

47(8). The facts in that case were that one Rudrappa Murugoppa Gugwad died leaving behind a Will dated 02.02.1919. It was stated that he also left a codicil dated 10.08.1919. He had brought up Lochanappa Gugwad and though he wished to take him in adoption, he did not do so.

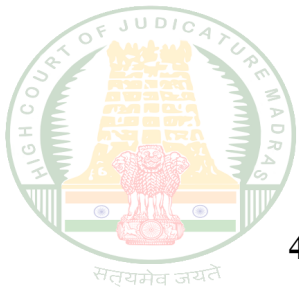


But however he bequeathed the property to him. He also created a trust and stated that if Lochanappa died without leaving male issues, the trustee must transfer the ownership of movable and immovable properties to the son of Gurupadapa Gagappa Gudwad.

47(9) A suit was filed against Lochanappa for a declaration that Lochanappa had only a life interest in the properties. The Sub Judge, who heard the suit held that Lochanappa had inherited the properties.

47(10) The High Court then examined the Will and also the codicil and held that Lochanappa was the absolute owner of the property. The matter travelled further and finally came up before the Supreme Court. It was held that the decision that Lochanappa had obtained absolute estate would bind the appellant in every subsequent litigation.

47(11) It is to be noted that a definite finding had been rendered and that final decision was held to act as resjudicata in subsequent proceedings. Lochanappa was held to be entitled as absolute owner of the properties. A final decision had thus been rendered. This decision would act as resjudicata in subsequent proceedings.



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47(12) In the instant case, as repeatedly pointed out, the Superior Court had not given any final decision but had only examined the jurisdiction of the Refere Court and had directed the parties to approach the Civil Court for adjudication of all issues.

47(13) I hold that the Judgment referred would not come to the assistance of the appellants.

(iii) 2009 SC 1890 [Amarendra Komalam Vs. Usha Sinha]

47(14). The main issue before the Supreme Court was whether an issue already settled in a suit between the same parties in respect of a certain subject matter can be allowed to be raised again between the very same parties in regard to the same subject matter but in a different suit. The issue was with respect to allegation of forgery in a lease deed between the parties dated 02.09.1978. The High Court had held that the respondent could not raise that issue as she had given it up subsequently. This finding had been affirmed by the Supreme Court when the



respondent challenged the order of the High Court in SLP (c) No. 16513

of 2001 dated 13.09.2002.

47(15). The respondent No.1 again sought to reagitate the very same issue in another suit between the same parties. The appellant raised the issue of resjudicata. In those circumstances the Hon'ble Supreme Court answered all the questions in favour of the appellant and held that the first respondent was precluded from raising the very same issue relating to interpolation or forgery in the agreement dated 02.09.1978.

47(16). It must be again pointed out that the principle of resjudicata would apply only when an issue raised between the parties had been finally decided in a former suit.

47(17). In the present case, there has not been final adjudication by the Superior Court at Pondicherry. It had only decided the jurisdiction of the Refere Court and had directed the parties to approach the Civil Court.

47(18). This Judgment referred would therefore not come to the assistance of the appellants.



WEB COPY (iv) **CDJ 2001 MHC 172 [Perumal Samy Vs. Kandasamy]**

47(19). The plaintiff had filed a suit for declaration and recovery of possession and for past and future mesne profits. The properties originally belonged to Meenatchi Estate. One Abirami Enterprises had purchased the entire property by a registered document dated 17.03.1986. The plaintiff had purchased the said properties from Abirami Enterprise for Rs.80,000/- by a registered document dated 09.10.1987. The second defendant was the son of the first defendant. They were in possession of the properties and agreed to deliver possession. They delivered possession of other two items which had been rented out by the plaintiff to one Sivanandam. The first defendant attempted to get Electricity connection and filed O.S.No. 1135 of 1988 on the file of the District Munsif Court, Dindugal for permanent injunction. The defendants in that suit resisted the claim and admitted the title of Meenatchi Estate. They claimed that the plaintiff therein had trespassed into the properties. He had been appointed only as manager of Meenatchi Estate. The trial Court dismissed two of the suits and decreed O.S.No. 388 of 1988 and granted two months time to deliver vacant possession. An appeal was filed in



A.S.No. 131 of 1994 before the District Court at Dindigul which also dismissed the appeal.

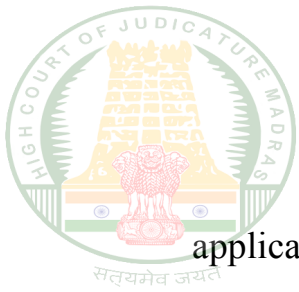
47(20). The matter then came up before the High Court in Second Appeal. It was held that the issue covered was also part of the issues in the two other connected suits and therefore the High Court applied the principles of resjudicata. The Second Appeal was dismissed.

47(21). Again the principle of resjudicata was applied only when there had been a final adjudication of a particular issue in a former suit.

47(22). In the instant case, as repeatedly pointed out, the Superior Court had not adjudicated the issues finally but had only directed the parties to go before the Civil Court for adjudication.

47(23). This Judgment would also not come to the help of the appellants.

47(24). In view of the detailed examination of all the judgments cited in the substantial questions of law and the finding that they are not

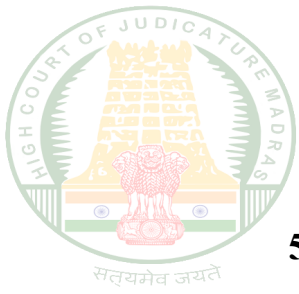


applicable to the facts of this Second Appeal, I hold that the second substantial question of law must be answered against the appellants.

Substantial questions of law No.3:

48. This question to whether a specific finding had been rendered in Ex.B-5 that Babu Sahib was not a sub tenant under the plaintiff. Ex.B-5 was the Judgement dated 07.01.1966 in A.S.No. 723 of 1965 by the Superior Court of Appeal at Pondicherry. That particular Judgment had been examined in detail. The Superior Court of Appeal had only examined the issue of jurisdiction of the Refere Court and had held that owing to the intricate issues, the Refere Court had no jurisdiction to direct eviction and had directed the parties to go before the Civil Court.

49. The matter had not been finally decided by the Superior Court. They had left the issues open to be decided by the Civil Court. Any observation made about the nature of intricacies involved would only be a passing remark and not a ratio decidendi. The issues raised had not been decided in entirety for finality.



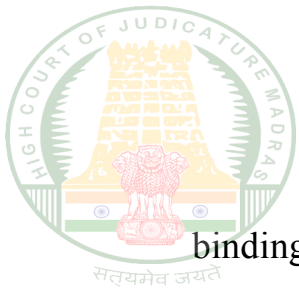
50. In Ex.B5, the Judgment, the Superior Court was more concerned about the complexity of the issues and therefore had directed the parties to go before the Civil Court.

51. I hold that this substantial question of law must be answered against the appellants. No final decision had been rendered.

Substantial questions of law No.4:

52. This substantial question of law relates to the decreeing of the suit by the Lower Appellate Court when the plaintiffs had according to the appellants miserably failed to establish title.

53. The appellants had filed Exs. A-1 and A-2 the sale deeds in their favour. The defendants by filing the written statements have claimed prescription of title by adverse possession. If they are to claim adverse possession, they will have to admit to the title of the appellants. If they are to admit the title of the appellants then they will have to further claim that the sale deeds on the basis of which the appellants claim title is not



binding on them. They should have asked a relief by way of a counter

claim that the sale deeds relied on by the plaintiffs are sham, nominal and would not bind them. Unfortunately, they have not done so.

54. In the sale deed, the vendors have referred to the partition deed dated 17.05.1979 registered as Document No. 807 in the office of the Sub Registrar, Puducherry. They have also stated about the consideration for the conveyance of the property. It is thus seen that their title had been traced and asserted and the sale was for consideration. The property had also been identified. The title of the vendors was based on allotment of the property conveyed under a partition deed.

55. In Ex.A-2 which is yet another sale deed, the vendors again referred to an earlier partition deed dated 17.05.1979 registered as document No. 807 in the office of the Sub Registrar, Pondicherry on 19.05.1979. Again their title had been traced.

56. The defendant had not chosen to question the said sale deeds or the partition deeds and had not filed any suit and had not also filed any counter claim seeking a relief to set aside the said documents. If the



defendants were to contend that they had perfected title through adverse possession, then they will have to establish continuous possession, hostile to the true owner. Even in the earlier proceedings, the father of the defendant was stated to be a lessee. The parties were then directed to approach the Civil Court by the Judgment delivered in Ex.P-5.

57. In *2019 8 SCC 729 [Ravinder Kaur Grewal and others Vs. Manjit Kau and others]*, the Hon'ble Supreme Court had examined the issue of adverse possession and the limitation within which proceedings could be initiated as against the person claiming adverse possession.

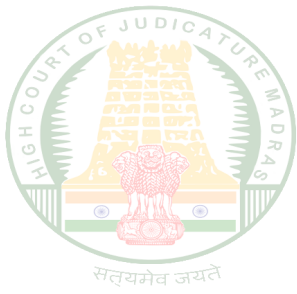
58. The suit in the instant case had been filed on 07.04.1986. Article 65 of the Limitation Act 1963 prescribes a limitation period of 12 years for instituting suits based on title for recovery of immovable property from the date when the possession of the defendant become adverse. The plaintiff had purchased the property in the instant case by sale deeds dated 20.10.1982. The defendant's possession had become adverse to the plaintiff only on and from that date. The suit had been filed within a period of five years.



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59. In the Judgment referred *supra* in **2019 8 SCC 729 [Ravinder Kaur Grewal and others Vs. Manjit Kau and others]**, it had been held as follows in paragraph No. 60:-

“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 colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the 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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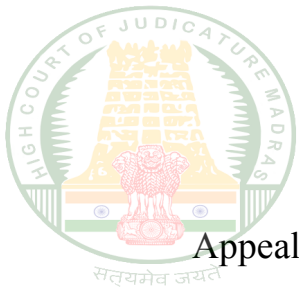
[Emphasis Supplied]

60. It is thus seen that mere possession is not sufficient. It should be hostile against the owner.

61. In the instant case, the plaintiffs had initiated action within a period of five years from the date of their purchase. The earlier possession of the defendant cannot be put against the plaintiff. Even in the earlier proceedings, the father of the defendant had only been categorised as sub tenant which itself means that he was only in possession under an agreement and this possession cannot be categorised as hostile to the landlord.

62. In view of that reason, I hold that the substantial question of law has to be answered against the appellants since the plaintiff had actually established title by producing Exs.A-1 and A-2 sale deeds, which have not been challenged or questioned.

63. I am deeply conscious of the fact that this decision in this Second



Appeal had been rendered on analysis of the facts and the documents strictly in accordance with the substantial questions which had been framed.

64. The first substantial question primarily revolved around the issue of resjudicata with specific reference to the Judgment of the Supreme Court at Pondicherry in Ex.B-5. That Judgment had not finally decided the issues among the parties. It had only held that the Refere Court did not have jurisdiction to pass an order of eviction and had directed the parties to go before the Civil Court.

65. In the Second substantial question of law a string of Judgments had been listed which have been discussed during the course of this Judgement. The facts therein are distinguishable and the ratio laid therein are not applicable to the facts in this appeal.

66. The third substantial question of law also revolved around Ex.B-5 the Judgment of the Superior Court at Pondicherry about which repeated discussion had been done.

67. The fourth substantial question of law was about the title of the



plaintiffs and not about the claim of adverse possession of the defendant.

The title of the plaintiff is evident from Exs. A-1 and A-2 sale deeds in their favour.

68. The arguments by the learned counsel for the appellants had gone far and wide but the remit of this court in the Second Appeal is to examine the substantial questions of law as framed when this Appeal had been admitted.

69. The Second Appeal therefore has to fail and is accordingly dismissed with costs of the 5th and 6th respondents. Consequently, connected Civil Miscellaneous Petition stands closed.

Vsg

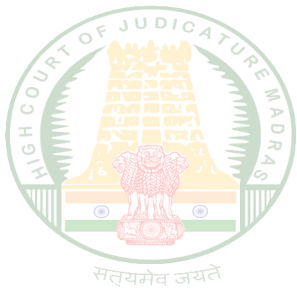
29.08.2025

Index :Yes/No

Internet:Yes/No

To

1. Principal Sub-Court, Pondicherry.
2. II Additional District Court at Pondicherry.



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C.V.KARTHIKEYAN, J.

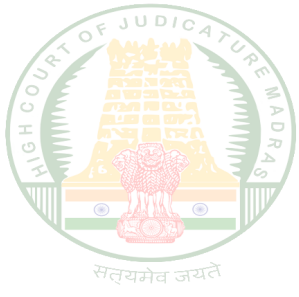
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Pre-Delivery Judgment made in

S.A.No. 1254 of 2009

And

M.P.No. 1 of 2009



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