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SA No. 250 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-11-2025

CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA

SA No. 250 of 2009 and

M.P.No.1 of 2009

N.Vanaja
W/o Nagarajan,
Barur (Post),
Pochampalli Taluk,
Krishnagiri District.

..Appellant / Plaintiff

Vs

1. RUKMANI(died)
W/o M.Chandran,
No.1/49, Near Pillaiyar Koil St, Barur Post
Pochampalli Taluk Krishnagiri Dist.
2. C.Kannan
S/O M.CHANDRAN NO.1/49 NEAR
PILLAIYAR KOIL ST, BARUR POST
POCHAMPALLI TALUK KRISHNAGIRI
DIST.

(R1 died, R2 is legal representative of the deceased
R1 recorded vide court order dated 11/07/2025 made
in S.A.No.250 of 2009

..Respondents /

Defendants

PRAYER : Appeal filed under Section 100 of CPC., against the judgment and decree of the learned Principal Subordinate Judge of Krishnagiri dated 27.06.2008 in A.S.No.77 of 2006 confirming the judgment and decree of the learned District Munsif of Pochampalli dated 31.08.2006 in O.S.No.76 of 2005.



For Appellant(s): Mr.V.Nicholas

For Respondent(s): Mr.R.Vasudevan for R2
R1 - Died

JUDGMENT

The appellant is the plaintiff who has filed this Second Appeal against the judgment and decree of the learned Principal Subordinate Judge of Krishnagiri dated 27.06.2008 in A.S.No.77 of 2006 confirming the judgment and decree of the learned District Munsif of Pochampalli dated 31.08.2006 in O.S.No.76 of 2005.

2. Heard Mr.V.Nicholas, learned counsel for the appellant and Mr.R.Vasudevan, learned counsel for R2 and perused the materials available on record.

3.The short facts pleaded in the plaint are as follows:

One Ra.Pe.Muruga Chettiar had purchased the suit site through a registered sale deed dated 01.06.1967 from M.Dharmalingam and others. He has been in possession and enjoyment of the same. About 15 years ago, the said Ra.Pe.Muruga Chettiar removed the thatched house and had put a terraced house. The thatched house and terraced house form part of one and the same



house. About 10 years back, Ra.Pe.Muruga Chettiar permitted the defendants to occupy the portion of the said house property on the condition to vacate the same as and when asked to vacate. This is because of the situation of the first defendant who lost her husband before 10 years. The plaintiff purchased the suit property from Ra.Pe.Muruga Chettiar as per the registered sale deed dated 24.03.2005 for a valid consideration of Rs.90,000/- and took constructive possession of the same. As the plaintiff wanted to occupy the entire suit property, he called upon the defendants to vacate the suit property on 15.04.2005, but there was no response. The plaintiff issued notice dated 20.06.2005 and called upon the defendants to vacate the suit property within a month from the date of receipt of the notice. The first defendant received notice on 22.06.2005 and the second defendant evaded to receive the same and the same was returned to the counsel for the plaintiff. As the defendants have been in illegal occupation of the suit property, even after the demand to vacate, the plaintiff has filed the suit for recovery of possession.

4. The averments made in the written statement filed by the defendants are in brief:

The first defendant's husband Chandran is the elder son of Ra.Pe.Muruga Chettiar. The plaintiff's husband Nagarajan is the younger son of Ra.Pe.Muruga



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Chettiar. Ra.Pe.Muruga Chettiar had four daughters by names Vasantha, Maniammal, Indrani and Usha. Among the daughters, Vasantha died. After the daughters were married they were living along with their husbands. Ramar Chettiar who is the father of Ra.Pe.Muruga Chettiar had purchased the property from the joint family income in the name of Ra.Pe.Muruga Chettiar. Some other houses also were in the joint enjoyment of the joint family members which is inclusive of Ra.Pe.Muruga Chettiar and his two sons. The first defendant's husband wanted to do an independent business in the name of Royal Cycle Mart in the year 1960 and with the income he derived from the said business, he purchased the suit property from one Dharmalingam in the name of Ra.Pe.Muruga Chettiar. From the date of purchase, the first defendant's husband has been in enjoyment of the suit property and in which, a provisional shop has also been running in the name of his daughter. In respect of the suit property, patta has been issued in the name of Chandran who is the husband of the first defendant. The plaintiff is also aware of the same. The first defendant's husband Chandran has been paying the house tax and the Commercial tax for the shop run by him. The shop's name has been converted from Shanthi Malligai Store to Chandran Malligai and thereafter, it has been changed to Kannan Malligai in the name of the second defendant. The suit property has been enjoyed by the first defendant's husband and his family as a self acquired



property and after the demise of the first defendant's husband, the defendants have inherited the same and in enjoyment of the same. After the demise of the first defendant's husband and the second defendant's marriage, the plaintiff had purchased the suit property without the knowledge of the defendants. So, it is false to state that the defendants have been permitted to reside in the suit property by the plaintiff. Hence, the suit should be dismissed.

5. On the basis of the above pleadings, the Trial Court has framed the following issues:

- “1..தாவா சொத்தை 24.03.2005ம் தேதியிட்ட கிரையப்பத்திரத்தின்படி வாதி வாங்கியது செல்லத்தக்கதா மற்றும் நடைமுறைப்படுத்தப்பட்டதா?
- 2..தாவா சொத்தில் பிரதிவாதிகள் அனுமதி சுவாதீனத்தில் இருந்து வருகிறார்களா?
3. சொத்து மாற்றும் சட்டம் பிரிவு 106 ன் கீழ் அறிவிப்பு தராததால் தாவா நிலைக்கத்தக்கதில்லையா?
- 4.வாதி தாவா சொத்தின் சுவாதீனம் பெற அருகதையுடையவரா?
- 5.வாதிக்கு கிடைக்கக்கூடிய பரிகாரம் என்ன?”

6. During the course of the trial, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and Exhibits A1 to A5 were marked. On the side of the defendants, five witnesses were examined as D.W.1 to D.W.5 and Exhibits B1 to B27 were marked along with Exhibits C1 and C2.



After the trial was concluded and on hearing the arguments of both sides, the suit was dismissed. The First Appeal preferred by the plaintiff was also dismissed. Aggrieved over that, the present Second Appeal has been filed. The Second Appeal has been admitted on the following substantial questions of law:

“Whether the Courts below have come to a correct conclusion that the appellant herein had to issue notice under Section 106 of the Transfer of Property Act, 1882, to seek eviction of the respondents from the suit property when the consistent stand taken is that the respondents were only in permissive occupation?”

7. The learned counsel for the appellant / plaintiff submitted that it was never the contention of the appellant that the respondents have been in possession of the suit property as tenants and he has been making contentions that the respondents were put into possession of the suit property as permissive tenants. Despite the Trial Court has framed an issue as to the title of the plaintiff, it has not answered the said issue. Even though the appellant has not contended that the respondents are the tenants in the suit property, it was wrong on the part of the First Appellate Court to dismiss the First Appeal for want of notice under Section 106 of Transfer of Property Act. Both the Courts below



without considering the evidence available on record as to the title of the appellant, had chosen to rely on the possessory documents of the defendants and dismissed the Suit and the First Appeal. The Courts below ought to have held that the respondents had been in possession of the suit property only out of permissive possession.

8. The learned counsel for the respondents / defendants submitted that having paid the Court Fee by deeming the defendants as tenants, the plaintiff ought to have issued notice under Section 106 of Transfer of Property Act for terminating the tenancy. The respondents had been in possession of the suit property as a joint family owner, right from the time when the property was purchased by Ra.Pe.Muruga Chettiar. The suit property was purchased by the second defendant's father Chandran in the name of his father Ra.Pe.Muruga Chettiar and Ra.Pe.Muruga Chettiar was residing in the suit property till his death. The second defendant's father was also running a malligai shop in the suit property. The Trial Court and the First Appellate Court have rightly dismissed the Suit and the First Appeal filed by the plaintiff.

9. The fact that the suit property was originally purchased by Ra.Pe.Muruga Chettiar by virtue of Ex.A1 sale deed dated 01.06.1967 is not in



dispute. The plaintiff is the subsequent purchaser from Ra.Pe.Muruga Chettiar and her sale deed is dated 24.03.2005. The contention of the appellant / plaintiff is that even during the life time of Ra.Pe.Muruga Chettiar, the defendants who are the daughter-in-law and grandson of Ra.Pe.Muruga Chettiar were allowed to reside there as the first defendant's husband who is the elder son of Ra.Pe.Muruga Chettiar had died. After the plaintiff had purchased the suit property *vide* Ex.A2 Sale deed dated 24.03.2005, the plaintiff is said to have revoked the permission and asked the respondents to vacate the suit property. As the respondents did not vacate the suit property, she has filed a suit for recovery of possession.

10. Even though the plaintiff has pleaded all along that the respondents are permissive occupants under the predecessor in title Ra.Pe.Muruga Chettiar, the Court Fee has been paid in the plaint by alleging that the defendants are deemed to be the tenants. So, the Trial Court and the First Appellate Court had given more significance to the above Court Fee valuation in order to arrive at a conclusion that the respondents are tenants under the plaintiff. The Courts below ought to have read the pleadings of the plaint in a comprehensive manner without giving an isolated meaning to one particular paragraph where the appellant has stated that the defendants are deemed to be tenants. The above



averments appears to have been made by the appellant in the plaint for the purpose of Court Fee only. However, her continuous contention is that the respondents were in permissive possession of the suit property and they are liable to be vacated whenever they were asked to do so.

11. It is exactly for this reason the plaintiff had purchased the suit property from Ra.Pe.Muruga Chettiar and issued the notice. The Trial Court has constructed the relationship of landlord and the tenant between the appellant and the respondents and had found fault with the appellant for not issuing notice under Section 106 of Transfer of Property Act. Even though the suit came to be dismissed for failure to issue notice under Section 106 of Transfer of Property Act, it has also been observed by the First Appellate Court that the relationship between the appellant and the respondents is that of landlord and tenant has not been established. So, the First Appellate Court has not convinced about the status of the respondents in the suit property whether they are permissive occupants or the tenants. At one stretch, the First Appellate Court has observed that notice under Section 106 of Transfer of Property Act is mandatory before evicting the respondents and at another stretch, it recorded that there was no relationship of landlord and tenant.



12. As per Section 91 of the Evidence Act, whenever any terms of contract has been reduced into writing, if a party to the written instrument intends to prove the transaction, he can prove it only by producing the original instrument. The appellant has produced Ex.A2 sale deed to show that the property has been sold by the original owner Ra.Pe.Muruga Chettiar in favour of the appellant. So, when such a primary evidence in the form of written instrument is produced, that will exclude the oral evidence unless any party to the transaction intends to prove contrary to the averments made therein.

13. In the instant case, the respondents are not parties to the sale deed Ex.A2. So, it is claimed by the respondents that the above sale deed will not bind their interest as the purchaser namely the appellant did not get any valid title passed in her favour. As the plaintiff has filed a suit, it is her burden to prove that she is the owner of the suit property and she is entitled to get the recovery of possession. As observed earlier, the appellant can prove her ownership or title in respect of the suit property by production of her title deeds which was marked as Ex.A2. If the respondents take a different stand that the title deeds in favour of the appellant does not confer title, then, the burden would shift upon the respondents to prove before the Court that Ex.A2 is sham and nominal and it will not bind the respondents. Neither the respondents have



let in any evidence to show the same nor they have come out with any suit to get the relief of declaration that Ex.A2 sale deed is null and void.

14. The possession of the respondents over the suit property is not in dispute and it is exactly for this reason the appellant has filed the suit for recovery of possession. So, the First Appellate Court need not have fretted much to prove who is in possession of the suit property when the pleadings themselves are clear and assertive as to the possession of the respondents over the suit property. The contention of the appellant is that the respondents have been inducted into possession by way of permission granted by his predecessor in title Ra.Pe.Muruga Chettiar and subject to the permissive occupation of the respondents, the plaintiff had purchased the property subsequently in the year 2005 from Ra.Pe.Muruga Chettiar vide Ex.A2.

15. In the pre-litigation notice sent by the appellant, she has not stated that it was the notice under Section 106 of Transfer of Property Act. It is obviously for the reason that the appellant has considered the possession of the respondents over the suit property only as permissive occupants and not as tenants. The specific contention that the respondents who had been in permissive occupation have continued to be so under the plaintiff also after she



had purchased the property from the original owner Ra.Pe.Muruga Chettiar. So it is not appropriate on the part of the Trial Court and the First Appellate Court to give much significance to the documents evidencing possession of the respondents over the suit property and arrived at a conclusion that they are tenants.

16. The plaintiff who had filed a suit for recovery of possession ought to have paid the Court Fee as to the market value of the suit property. But for the reasons best known to her, she had paid the Court Fee by giving the rental value of the suit property by deeming the respondents as tenants and that had back fired her own suit. The Trial Court before admitting the plaint ought to have raised the question of correctness of the Court Fee without allowing the respondents at a later stage to take advantage of the valuation paragraph to claim that they were considered as tenants by the appellant.

17. So far as the question of permissive occupation is concerned, it goes without saying that any one who had been inducted into possession of any property by permission, the person who is authorised to grant permission is at liberty to revoke the same at any point of time. So, permissive occupation cannot be equated with that of tenancy agreement between the parties. Though



the respondents have produced documents to show their possession, they did not produce any documents to show that they have been paying rent to Ra.Pe.Muruga Chettiar or the plaintiff at any point of time. Neither had they filed any suit to declare their alleged title over the suit property. So, the absence of evidence to show that the respondents had been paying the rent at any point of time would prove that the respondents have been inducted into the suit property only as permissive occupants and not as tenants. Unfortunately, the Courts below did not appreciate the evidence in a proper perspective before giving undue significance to Section 106 of Transfer of Property Act which is related to the tenancy agreement.

18. As the appellant did not have the necessity to terminate the tenancy which is not in existence, she had chosen to issue notice for revoking the permission granted for occupation and demanding the respondents to vacate the property and hand over possession. All these have occurred only because the Registry of the Trial Court also had not given the check slip for payment of wrong Court Fees which is contrary to the pleadings of the plaintiff in the suit. Had it been the case, that would have been rectified by the appellant by valuing the suit on the basis of the market value of the suit property and paying the required Court Fee. The Courts have unnecessarily gone into the *bonafide*



reasons of the appellant requiring possession of the property. The Courts have valued the suit as though it is the suit for ejecting the tenant whose possession is guarded by either by expressive or by implied tenancy agreement.

19. The person who had permitted the another person to be in possession of the suit property, can have liberty to revoke it at any time and claim to hand over possession without assigning any reasons for the requirement of the property. Only in the eviction proceedings, the landlord has to establish whether he has any grounds available to get eviction. The First Appellate Court has misled itself and rendered two mutually contradictory findings. Having rendered a finding that there was no landlord and tenant relationship established between the appellant and the respondents, the Court ought not to have attached any significance for the issuance of notice under Section 106 of Transfer of Property Act.

20. The Courts below ought not to have arrived at a conclusion of mandatory notice under Section 106 of Transfer of Property Act, when there is no pleadings made by the appellant that there is a tenant-landlord relationship between himself and the respondents. It is still worse to hold so when the findings has been rendered that there was no landlord-tenant relationship



established between the appellant and the respondents. So when the plaintiff has established that the respondents have been in possession of the suit property only as permissive occupants, it is wrong to hold that the appellant is not entitled to the relief for want of pre-litigation notice under Section 106 of Transfer of Property Act. Thus, the substantial question of law is answered.

21. In the result, this Second Appeal is **allowed** and the judgment and decree of the learned Principal Subordinate Judge of Krishnagiri dated 27.06.2008 in A.S.No.77 of 2006 is set aside and the suit is decreed and the relief of recovery of possession is granted as prayed for provided, the appellant pays the right Court Fee after the check slip is issued by the Registry by valuing the suit on the basis of the market value. This exercise should be completed within a period of four weeks from the date of receipt of a copy of this order. Time for eviction one month and that shall be reckoned from the date after the deficit Court Fee that needs to be assessed as ordered is paid. No costs. Consequently, connected miscellaneous petition is also closed.

05-11-2025

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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DR.R.N.MANJULA, J.

GSK

To

- 1.The Principal Subordinate Judge, Krishnagiri.
- 2.The District Munsif, Pochampalli.
- 3.C.Kannan
S/O M.CHANDRAN NO.1/49 NEAR PILLAIYAR
KOIL ST BARUR POST POCHAMPALLI TALUK
KRISHNAGIRI DIST.

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