



S.A.No.928 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated : 01.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No.928 of 2009

and

M.P.No.1 of 2009

R.Sivapakkiam

... Plaintiff/Respondent/Appellant

Versus

Fifth George Arabic Madarasa Trust,
Namakkal represented
by its Secretary,
Majeed Street,
Namakkal Town & District.

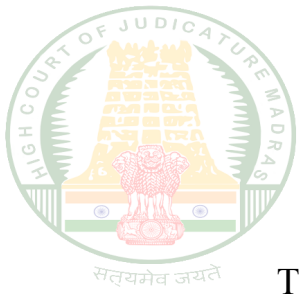
...Defendant/Appellant/Respondent

PRAYER Second Appeal filed under Section 100 of CPC, against the judgment and decree dated 16.04.2009 in A.S.No.149 of 2000 on the file of the Sub-Court, Namakkal, reversing the judgment and decree dated 25.11.1999 in O.S.No.51 of 1998 on the file of the learned Principal District Munsif, Namakkal.

For Appellant : Mr.I.Abrar Mohamed Abdullah

For Respondent : Mr.C.Prakasam

J U D G M E N T



S.A.No.928 of 2009

WEB COPY

This Second Appeal is filed to set aside the judgment and decree dated 16.04.2009 in A.S.No.149 of 2000 on the file of the Sub-Court, Namakkal, reversing the judgment and decree dated 25.11.1999 in O.S.No.51 of 1998 on the file of the learned Principal District Munsif, Namakkal.

2. The learned Counsel for the Appellant submitted that the Appellant is the Plaintiff in O.S.No.51 of 1998 on the file of the learned Principal District Munsif, Namakkal. The suit property is the premises in the occupation of the Plaintiff which is a shop bearing door No.127, Market Street, Namakkal.

3. It is the further submission of the learned Counsel for the Plaintiff that the suit property had been in occupation of the Plaintiff's father from the year 1962 onwards as a tenant. The father of the Plaintiff was running a flour Mill. The father of the Plaintiff died on 07.03.1995. From then onwards, it was the Plaintiff who was running the flour Mill in the leased out premises. The father of the Plaintiff is the original tenant with the Defendant. The father of the Plaintiff was running the flour mill in the name of Padma Flour Mill, Door No.127, Market Street, Namakkal viz., the demised premises which belong to the Defendant Trust, Fifth George Arabic Madarasa Trust.



S.A.No.928 of 2009

WEB COPY

4. It is the contention of the Plaintiff that the Defendant had filed a suit in O.S.No.1198 of 1988 in which neither the Plaintiff nor his father was a party. The Defendant had attempted to dispossess the Plaintiff from the shop viz., the tenanted premises bearing Door No.127, Market Street, Namakkal which was enjoyed by the Plaintiff as a flour Mill for grinding the food-grains as flour. Therefore, he had instituted the suit restraining the Defendant from evicting the Plaintiff from the suit property except by due process of law. The decree obtained by the Defendant was against one Navaladi for Door No.126, Market Street, Namakkal. On appearance of the Defendant, the Defendant filed written statement disputing the claim of the Plaintiff.

5. The Defendant claiming to have obtained decree regarding Door No.126 against one Navaladi is attempting to dispossess the Plaintiff under the pretext of the decree obtained in O.S.No.1198 of 1988 on the file of the learned District Munsif, Namakkal.

6. In the written statement, it is stated that the Plaintiff or his father was never a tenant under the Defendant. Actually, the premises in Door Nos.126 and 127 were leased out to one Navaladi and decree obtained by Defendant in the suit filed by the Defendant in O.S.No.1198 of 1988 was



S.A.No.928 of 2009

WEB COPY

decreed in favour of the Defendant based on which he had filed R.E.P.No.193/2009 seeking delivery of possession. The Plaintiff resisted the same and filed the suit. The Defendant claimed that there is no lease agreement between the Plaintiff and the Defendant. The Plaintiff and his father were in occupation of the premises as a sub-tenant under Navaladi. The said Navaladi was a tenant under the Defendant. Therefore, there was no attempt by the Defendant to forcibly evict the Plaintiff. There is no cause of action. The Plaintiff is not at all a tenant under the Defendant. The suit had been instituted at the instance of the said Navaladi through the Plaintiff. The suit itself is not maintainable, sought dismissal of the suit.

7. Based on the pleadings, issues were framed. During trial, the Plaintiff examined herself as P.W-1 and marked documents in support of the claim of the Plaintiff as Ex.A-1 to Ex.A-14. Ex.A-1 to Ex.A-6 are the receipts paid by the father of the Plaintiff towards the professional tax to the Namakkal Municipality for the Flour Mill. Ex.A-7 to Ex.A-10 are the license fee receipt paid to the Namakkal Municipality by the Plaintiff and her father. Ex.A-11 to Ex.A-14 are the rental receipts for the period from 1967 to 1970 paid by the father of the Plaintiff to the Defendant. The Secretary of the Fifth George Arabic Madarasa Trust, Namakkal, M.A. Kadhar had examined himself as D.W-1, and marked document in support of his claim, the decree in



S.A.No.928 of 2009

WEB COPY

O.S.No.1198 of 1988 as Ex.B-1. During the trial, the Advocate Commissioner was appointed on behalf of the Plaintiff and the Advocate Commissioner's Report and plan were marked as Ex.C-1 and Ex.C-2. On appreciation of evidence, after hearing the arguments of the learned Counsel for the Plaintiff and Defendant, the learned Principal District Munsif, Namakkal, by judgment in O.S.No.51 of 1998, dated 25.11.1999, decreed the suit in favour of the Plaintiff. Aggrieved, the Defendant filed Appeal before the learned Sub Judge, Namakkal. After hearing the arguments of the learned Counsel for the Defendant as Appellant and the Plaintiff as Respondent, the learned Sub Judge, Namakkal, by judgment in Appeal in A.S.No.149 of 2000 had reversed the finding recorded by the learned Principal District Munsif, Namakkal and thereby dismissed the suit.

8. Aggrieved, the Plaintiff had preferred this Second Appeal seeking to set aside the judgment in A.S.No.149 of 2000 and to restore the judgment in O.S.No.51 of 1998.

9. The learned Counsel for the Appellant submitted that pending Second Appeal, this Second Appeal was dismissed on 01.12.2020 and was restored as per the order in C.M.P.No.21021 of 2024 in S.A.No.928 of 2009. Subsequently, the petition to condone the delay of 1343 days in filing petition



S.A.No.928 of 2009

to restore the Second Appeal was filed in C.M.P.No.21021 of 2024 in S.A.No.928 of 2009. This Court by order dated 13.02.2025 allowed the petition to condone delay in filing to restore the Second Appeal on 27.02.2024.

10. It is the contention of the learned Counsel for the Appellant that she is not at all a party and Door No.127 is not the subject matter of the decree in O.S.No.1198 of 1988. Also the learned Counsel for the Appellant submitted that at the time of institution of the suit, interim injunction was granted and it continued till the date of the decree. In the Appeal, interim stay was granted and had continued till the date of filing of the Second Appeal. However, during the period between dismissal of the Second Appeal and the period during which the Second Appeal was restored the Defendant attempted to dispossess the Plaintiff from the suit property.

11. The learned Counsel for the Appellant invited the attention of this Court to the discussion of evidence by the learned Principal District Munsif, Namakkal, in judgment in O.S.No.51 of 1998 while granting the decree for injunction against the Defendant regarding the premises in Door No.127, Market Street, Namakkal. In the Appeal, the learned Sub Judge, Namakkal, in the course of discussion of evidence had observed that the suit filed by the Plaintiff is not maintainable against the Decree for eviction in favour of the



S.A.No.928 of 2009

WEB COPY

Defendant in O.S.No.1198 of 1988. Aggrieved party, the Plaintiff in O.S.No.51 of 1998 cannot maintain the suit independently against the decree already granted in favour of the Defendant as Plaintiff in earlier suit in O.S.No.1198 of 1988. Aggrieved party, the Plaintiff ought to have filed a petition under Order 21, Rule 97 or under Rule 101 of C.P.C and ought to have agitated his rights in R.E.P. filed by the decree holder in O.S.No.1198 of 1988. Thereby the learned Sub Judge, Namakkal, set aside the judgment of the learned Principal District Munsif, Namakkal granting decree in favour of the Plaintiff and thereby the suit was dismissed.

12. The learned Counsel for the Appellant in the Second Appeal relied on the reported ruling of this Court in **2014 (2) CTC 690 (Donna Rossi Kitchen Line rep. by its Sole Proprietress, Remani S.Kumar, No.C2, III Floor, Olivia Apartments, No.34, Ramappa Nagar Main Road, Perungudi, Chennai-96 Vs. D.Harikrishnan, 2.Farwood Industries, rep. by its Managing Director, M.P.Farook, No.4/65, Old Mahabalipuram Road, Perungudi, Chennai -96)** wherein it is held as under:

“Code of Civil Procedure, 1908 (5 of 1908), Order 21, Rule 97 – Execution – Obstruction – Resistance or obstruction to possession of immovable property – decree for recovery of possession of immovable property – third party/obstructor filed application challenging execution laid by Decree-holder – Contention of Third party that he is in possession of the suit property as lawful Tenant, hence Decree obtained by Decree-holder cannot be enforced against him – Maintainability of Obstruction Petition – Decree-holder alone can



WEB COPY



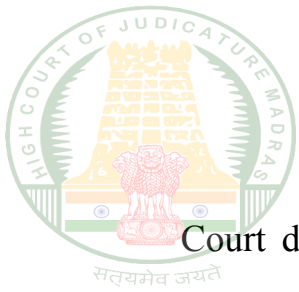
S.A.No.928 of 2009

maintain Application under Order 21, Rule 97, CPC by claiming himself as an Obstructor – Person other than Judgment-debtor, who is removed from Suit property, can approach Court under Order 21, Rule 99 of CPC for adjudication of his rights – Obstruction Petition filed by Third party is not maintainable.

By which it is stated that the 3rd party to the decree cannot maintain an application under Order XXI Rule 97 of CPC. Under Order XXI, Rule 97 of CPC, Obstruction petition filed by the third party is not maintainable. The petition under Order XXI Rule 97 of CPC can be filed by the Decree Holder. Therefore, in the light of the reported ruling, the judgment of the learned Sub Judge, Namakkal in A.S.No.149 of 2000 is perverse and is to be set aside.

13. The learned Counsel for the Respondent/Decree holder in O.S.No.1198 of 1988 submitted that the Second Appeal itself is not maintainable as it had been filed against the judgment of the learned Sub Judge, Namakkal and the decree in favour of the Plaintiff in O.S.No.51 of 1998 was already set aside.

14. The Second Appeal in S.A.No.928 of 2009 was dismissed on 01.12.2020 and was restored only on 13.02.2025. However, before the Second Appeal was restored, the decree in O.S.No.1198 of 1988 was executed and possession handed over to the Defendant in the suit in O.S.No.51 of 1998 and the decree holder in O.S.No.1198 of 1988 as per the order of the Executing



S.A.No.928 of 2009

Court dated 10.08.2024 in R.E.P.No. 193 of 2009 in O.S.No.1198 of 1988.

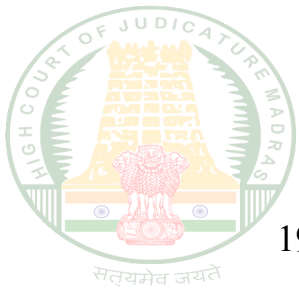
WEB COPY Therefore, nothing survives.

15. Registry was directed to call for remarks from the learned District Munsif, Namakkal regarding recording of delivery receipt in R.E.P.No. 193 of 2009 in O.S.No.1198 of 1988 regarding the property in Door No.127 Market Street, Namakkal.

16. The learned Counsel for the Appellant submitted that even if the E.P is disposed, the Plaintiff in O.S.No.51 of 1998 can seek relief under Section 144 of C.P.C.

17. The Second Appeal is coming for admission after delivery of possession is recorded by the learned Additional District Munsif, as per the Status uploaded in the website of the Court.

18. If the Appellant was diligent, he ought to have agitated his right in the year 2009 itself instead of 2025, after delivery of possession was recorded by the learned Additional District Munsif, as per decree in O.S.No.1198 of 1988.



S.A.No.928 of 2009

19. From the records, it is found that as per the judgment of the learned Sub Court, Namakkal, the suit cannot be filed, the suit itself is not maintainable. The claim of the Appellant is that the learned Sub Court has misdirected himself will not hold good in the light of the materials available before the learned Principal District Munsif, Namakkal.

20. On perusal of the records, it is found that the judgment of the learned Sub Court, Namakkal, is based on ruling of the Hon'ble Supreme Court. The claim of the Plaintiff seeking injunction from eviction by the landlord is found to be vexatious claim particularly in the light of the earlier Court proceeding. The Court had granted decree for eviction in favour of the Defendant. The claim made by the Plaintiff in this Second Appeal is found against the ruling of the Hon'ble Supreme Court that an independent suit is not maintainable and any right ought to be agitated only under Order XXI, Rule 97 CPC. The judgment of the learned Principal District Munsif, Namakkal, is erroneous and the judgment of the learned Sub Court, Namakkal, is found proper in the light of the three reported rulings.

21. Therefore, the substantial questions of law raised by this Plaintiff in Grounds of Appeal :

(1) Whether the bar contained in Order 21 Rule 101 of Civil



WEB COPY



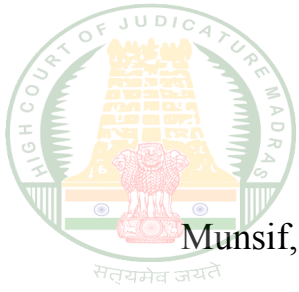
S.A.No.928 of 2009

Procedure Code applies to the present case to hold that the suit is not maintainable?

- (2) It is not that the Tenant is entitled for a decree for injunction in order to protect his possession except under due process of law?
- (3) Whether the bar contained in Rule 101 of Order 21 of CPC has over riding effect to Rule 104 of Order-21, in order to declare that the separate suit filed by the Appellant even before the delivery is taken pursuant to the earlier decree passed in O.S.No.1198 of 1998 in respect of the suit property in which Appellant is not a party?

are answered against the Plaintiff in O.S.No.51 of 1998 in the light of the three reported rulings in *2014 (2) CTC 690 [Donna Rossi Kitchen Line rep. by its Sole Proprietress, Remani S.Kumar, No.C2, III Floor, Olivia Apartments, No.34, Ramappa Nagar Main Road, Perungudi, Chennai-96 Vs. D.Harikrishnan, 2.Farwood Industries, rep. by its Managing Director, M.P.Farook, No.4/65, Old Mahabalipuram Road, Perungudi, Chennai -96]*, *(1997) 3 SCC 233 [Bharat Ram Meena Vs. Rajasthan High Court at Jodhpur and Others and (1998) 4 SCC 543 [Shreenath and Another Vs. Rajesh and Others]*. Since the property had already been delivered to the Defendant in accordance with law, nothing survives in this Second Appeal.

In the result, **this Second Appeal is dismissed at admission stage.** The judgment and decree dated 16.04.2009 passed in A.S.No.149 of 2000 by the learned Sub-Judge, Namakkal, reversing the judgment and decree dated 25.11.1999 passed in O.S.No.51 of 1998 by the learned Principal District



S.A.No.928 of 2009

Munsif, Namakkal is confirmed. No costs. Consequently, connected

WEB COPY Miscellaneous Petition is closed.

01.07.2025

cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



S.A.No.928 of 2009

WEB COPY

To

- 1.The Sub-Court,
Namakkal.
- 2.The Principal District Munsif,
Namakkal.
- 3.The Section Officer,
VR Section, High Court,
Chennai.



WEB COPY



S.A.No.928 of 2009

SATHI KUMAR SUKUMARA KURUP, J.,

cda

Judgment in
S.A.No.928 of 2009

01.07.2025