



S.A.No.1068 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.05.2025

CORAM

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

S.A.No.1068 of 2012

Syed Ahamed (Died)

2)Rahman Beevi

3)Kamal Basha

4)Salim Basha

5)Hajiran Beevi

6)Safeena Banu

(appellants 2 to 6 are brought on record
as LR's of the deceased sole appellant
vide order of this Court dated 19/08/2024
made in CMP.Nos.10406, 10407 & 10414/2022
in S.A.No.1068 of 2012)

... Appellant/Plaintiff

Vs.

Shoukat Ali

... Respondent/Defendant

Prayer: This Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the learned Principal Subordinate Judge, Perambalur dated 31.07.2012 in A.S.No.2 of 2012 confirming the judgment and decree of the learned District Munsif, Perambalur dated 27.11.2011 in I.A.No.463 of 2009 in O.S.No.150 of 2009.



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For Appellants : Mr.T.M.Hariharan
For Respondent : Mr.Valliappan
Senior Counsel
for Mr.S.Shriram Narayanan

JUDGMENT

Aggrieved by the findings given in A.S.No.2 of 2012 on the file of the Subordinate Judge, Perambalur, dated 31.07.2012 the plaintiff has preferred the Second Appeal.

2. The parties are indicated herein as per their litigative status and ranking before the trial Court.

3. According to the plaintiff, Syed Ahamed, he is the sole and absolute owner of the suit property. The suit property originally comprised in S.F.No.364/2 of Pennakonam Village. The plaintiff purchased the said property through sale deed dated 19.09.1966 in Doc.No.2857 of 1966 to an extent of 0.66 cent in S.F.No.364/2. Then as per the sale deed dated 05.11.1966, in Doc.No.3224 of 1966, the plaintiff purchased another land to an extent of 2.82 cents and totally Acre 3.48 cents out of acre 5.80 cents. The plaintiff has been in possession of the lands from the date he purchased and he is cultivating the crops.



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3.1. The said lands were subsequently sub-divided by the U.D.R.Scheme after due notice and enquiry. S.F.No.364/2 sub-divided as S.F.No.163/2E measuring Hec.0.45.5, S.F.No.163/2B, measuring Hec.0.26.5 and S.F.No.163/2F Hec.0.40.5 are described here as suit property. The said patta was granted to the plaintiff in respect of the suit property and that other properties in Patta No.376. The plaintiff has been paying kist of the said land.

3.1.2. The defendant alleges that he has got land in the area. He is enemical to the plaintiff. The defendant threatens the plaintiff to disposes the plaintiff unlawfully. The plaintiff is an aged person and hence the suit for the relief of permanent injunction restraining the defendant, his men and agents and their associates from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff.

4. The case of the petitioner/ defendant is that the respondent/plaintiff had filed the suit for permanent injunction in respect of land to an extent of Acre 3.48 in S.F.No.364/2 lying in Pennakonam (south village). The alleged purchase of suit property with a larger extent by the respondent under two registered sale deeds is false. The alleged possession of the same by the respondent from 18.04.2009 onwards, is also incorrect.



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5. The plaintiff herein filed a suit in O.S.No.440 of 1991 against the petitioner in connection with the same suit property with the very same averments regarding alleged ownership, and his possession of the suit property. A detailed written statement was filed in that suit. The plaintiff wantonly avoided to conduct the trial of the suit and ultimately that suit was dismissed for default on 02.03.1993. In order to restore the above said suit, he took out an application in I.A.No.624 of 1993 and the said application was dismissed on merits and which was confirmed by this Court on 11.10.1993.

6. Aggrieved, the plaintiff filed Civil Miscellaneous Appeal in C.M.A.No.10 of 1994 before the Subordinate Court, Ariyalur and the same was transferred to Perambalur, Sub-Court, in C.M.A.No.4 of 2008 and on merits the said Civil Miscellaneous Appeal was dismissed by the Sub-Court, Perambalur, by an Order dated 05.01.2009 thereby confirming the Order passed in IA.No.624 of 1993 by the District Munsif, Perambalur.

7. Instead of filing the Civil Revision Petition before this Court against the order passed in CMA.No.4 of 2008, the plaintiff filed the suit in O.S.No.150 of 2009 before the District Munsif, Perambalur, against the defendant claiming very same relief in respect of very same property.



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8. It is the further case of the defendant that the present suit is a clear, wilful, wanton and deliberate misuse and abuse of process of law by the plaintiff. It amounts to subversion of judicial system. Launching re-litigation for issue which was already settled as against the very same party for the very same property in previous litigation has been deprecated by the Hon'ble Apex Court. There is a dispute between him and the plaintiff since 1991 for the very same suit property, and contending that the cause of action had started only on 18.04.2009 between him and the respondent on the face of it is utter false. Therefore, there is no cause of action for the suit and prayed to reject the plaint.

9. An application was taken out under Order 7 Rule 11 r/w Section 151 of CPC by the defendant herein. The contents of the said petition was countenanced by filing counter by the respondent/plaintiff as follows:

10. The plaintiff is the sole and absolute owner of the property punja land to an extent of 3.48 Acre, comprised in S.F.No.364/2. The old S.F.No.364/2 was sub-divided and allotted new S.F.Nos. i.e., 163/2E measuring Hec.0.45.5, S.F.No.163/2B, measuring Hec.0.26.5 and



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S.F.No.163/2F Hec.0.40.5. Amongst the said properties, the land described in S.F.No.163/2E measuring Hectare 0.45.5 is the suit property. The plaintiff purchased the said property in the year 1966 by way of two sale deeds, one sale deed dated 19.08.1966 in Doc.No.2857/66, purchased an extent of 0.66 cents of land and by another sale deed dated 05.11.1966, bearing document No.3224/1966, purchased an extent of Acre 2.82 from and out of 5.80 cents of land. Therefore, the petitioner/plaintiff is the sole and absolute owner of the Punja land to an extent of Acre 3.48 (0.66 cents + 2.82 Acre= Acre 3.48 cents). After issuance of notice and enquiry, patta for the said property was granted in Patta No.376 by the Revenue Authority. He has been paying kist to the said property and he is in possession and enjoyment of the land for the past more than four decades.

11. It is further contended by the respondent/plaintiff that one Abdul Samad Sahib and others attempted to dispossess him from the said property alleging that they purchased the above said property as per the sale deed dated 16.02.1972 in Doc.No.323/73. In the said sale deed, survey number of the property is mentioned as S.F.No.367/3 in Pennakonam Village. Still the above said persons claimed rights in his land which is contrary to law and facts. Therefore, he filed a suit in O.S.No.440 of 1991 for the relief of permanent injunction. In an application for interim injunction, an order of



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interim injunction was also granted. When the suit was posted in the list on 02.03.1999, he was not well and he could not attend the Court and it resulted in dismissal of the suit for default.

12. He took out an application under Order 9 Rule 9 of C.P.C for restoration of the said suit in I.A.No.624 of 1993 and it was dismissed by the trial Court. He preferred C.M.A No.4 of 2008 and the same was also dismissed. Neither the suit nor the C.M.A was heard and finally decided. The dismissal was only on technical ground, and not on merits. Therefore, he filed O.S.No.150 of 2009 before the District Munsif Court, Ariyalur and a fresh suit against the present defendant i.e., the plaintiff herein on another cause of action which arose on 18.04.2009. The present suit is against the defendant who is the owner of the suit property as per sale deed dated 13.08.1991 and Doc.No.1467/1991.

13. Earlier suit in O.S.No.440 of 1991 was filed against Abdul Samad Sahib, who claimed that he is the owner of the suit property on the basis of sale deed dated 16.02.1973 in Doc.No.323/1973. There is no bar under Section 11 of C.P.C. It was not tried and decided finally.

14. At trial, Ex.P1 to Ex.P4 were marked on the petitioner's side. On



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the respondent's side neither oral evidence was let in nor documentary evidence was marked. The trial Court upon consideration of the case records and the arguments advanced, allowed the petition in I.A. No. 463 of 2009 and rejected the plaint.

15. Aggrieved, the plaintiff preferred an appeal in A.S.No.2 of 2012 before the Sub-Court, Perambalur. Upon consideration of the case records and after hearing the arguments advanced by both sides, the First Appellate Court confirmed the order of the trial Court and the appeal filed by the plaintiff was dismissed by the judgment dated 31.07.2012. Aggrieved by the above said judgment passed by the trial Court as well as the First Appellate Court, the plaintiff herein has preferred this Second Appeal.

16. The learned counsel for the plaintiff/appellant Mr.T.M.Hariharan, would strenuously argue that the earlier suit was filed on a different cause of action and the present suit is based on a different cause of action namely attempted to trespass on 18.04.2009. As the cause of action is different in the present suit, the order passed in the interim application in I.A.No.463 of 2009 is not sustainable in law.

17. It is his further argument that even assuming that the plaintiff does



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not make good cause of action at the trial, the same would be a ground to dismiss the suit after trial and it is no ground to reject the plaint on the reasoning that no cause of action is disclosed. He would contend that the sufficiency or the likelihood of establishing the cause of action at the trial is beyond the pale of consideration and in an application taken out to reject the plaint on the ground that the plaint does not disclose a cause of action is erroneous and unsustainable.

18. The below said judgments were referred to by the learned counsel for the appellants;

1) ***Gunwantbhai Mulchand Shah and others Vs. Anton Elis Farel and others***, reported in ***(2006) 3 SCC 634***.

2) ***State of Uttar Pradesh and another Vs. Jagdish Sharan Agrawal and others***, reported in ***(2009) 1 SCC 689***.

3) ***Bengal Waterproof Limited Vs. Bombay Waterproof Manufacturing Company and another***, reported in ***(1997) 1SCC 99***.

19. Per contra, Mr.Valliappan, learned Senior Counsel appearing for the defendant/petitioner would vehemently contend that in fact the respondent filed a suit in O.S.No.440 of 1991 before the trial Court for the same cause of action against the defendant and it was dismissed for default



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on 02.03.1993 and the restoration petition filed by the plaintiff was dismissed on merits. He would further contend that the said order of dismissal was challenged before the Ariyalur Sub-Court in C.M.A.No.10 of 1994 and it was also dismissed on merits.

20. Without preferring a revision before this Court against the order passed and CMA.No.10 of 1994, the plaintiff filed a suit afresh in respect of the very same property claiming same relief and the application Order 7 Rule 11 was allowed by the trial Court and the same was confirmed by the first Appellate Court is sustainable in law.

21. The following substantial of questions of law arises for consideration in the Second Appeal order dated **20.11.2021** as follows:

“1. Whether the suit in O.S.No.150 of 2009 for permanent injunction on a cause of action that arose on 18.04.2009 can be rejected as not disclosing cause of action or as barred under law?

2. Whether the Courts below have not grievously erred in relying on the pleadings and documents produced by the defendant in deciding the application under Order 7, Rule 11 CPC?



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3. When the cause of action for seeking permanent injunction is continuous arising whenever threat to possession arises, can the latter plaint be rejected as devoid of cause of action or as barred under law when the earlier suit on a different cause of action has been dismissed for non-prosecution?"

22. The plaintiff/Syed Ahamed had filed a suit in O.S.No.150 of 2009 before the District Munsif, Perambalur, against Shoukat Ali, S/o.Abdul Samad Sahib for the relief of permanent injunction in respect of S.F.No.163/2E, to an extent of 0.45.5 (Pennakonam Village, Gunnam Taluk), in Patta No.376 and based on the cause of action that on 18.04.2009, the defendant threatened and attempted to dispossess the plaintiff who is an aged person. Hence the suit for permanent injunction was laid.

23. For a better understanding Order 7 Rule 11 of CPC is extracted hereunder:

11. Rejection of plaint— *The plaint shall be rejected in the following cases:—*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to



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correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law :

[144] [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper , as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

24. The following amendments were made by the Tamil Nadu Act other details. For Clause-c substitute the following; (c) “where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped and the plaintiff does not make good deficiency within the time, if any granted by the Court.”

25. The well settled position, while considering the application Order 7 Rule 11 of C.P.C is that the Court is not required to take into consideration, the defence set up by the defendant in his written statement or other documents. The question as to whether the plaint discloses any cause of



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action and whether it is barred by law is to be decided, by looking into the averments contained in the plaint.

26. On a careful perusal of the petition averments it is seen that the plaintiff filed already suit for the same relief in respect of the same property. But it was dismissed for default and the said order was confirmed in appeal. Therefore, the plaintiff filed a suit afresh.

27. In this regard, the plaint in O.S.No.440 of 1991 needs to be gone into. O.S.No.440 of 1991 was filed by one Syed Ahamed against Abdul Samad Sahib, Pakurnisha, Sahoul ali and sabiulla in respect of the same property as mentioned (supra) for the relief of permanent injunction based on the cause of action that arose on 16.08.1991. Whereas in O.S.No.150 of 2009, the plaintiff/Syed Ahamed has filed a suit against Shoukat Ali, alone. For the relief of permanent injunction in respect of the same property based on cause of action that is said to have arisen on 18.04.2009. Proceeding further, as per Order 7 Rule 11(A) when the plaint does not disclose a cause of action a plaint can be rejected. Whereas in the present plaint, cause of action details have been mentioned and based on the same, suit has been filed. Therefore, the impugned judgment has to be necessarily with



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interfered. In such view of the matter, the substantial questions of law are answered in favour of the plaintiff.

28. Based on the aforesaid discussions and observations, the Second Appeal stands allowed. The judgment and decree passed in A.S.No.2 of 2012 by the Sub-Court, Perambalur stands set aside. The suit was laid in the year 2009. Hence, this Second appeal stands allowed with a direction to dispose of the case preferably within a period of 8 months from the date of receipt of copy of this judgment. There is no order as to costs.

28.05.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
dna

To

- 1.The Principal Subordinate Court, Perambalur.
- 2.The District Munsif Court, Perambalur.



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R.KALAIMATHI, J.

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