



AS. No.460 & 531 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

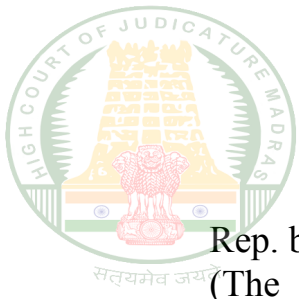
AS. Nos. 460 & 531 of 2019
& CMP No.13065 & 15492 of 2019

K.Natarajan (Died)
1. Meenakshi Natarajan
2. N.Baby
3.N.Vijayalakshmi
4. N.Sujatha
5. N.Sangeetha
6.N.Saranya
7. N.Priyanka
8.N.Raghulraj
9.Minor S. Sowjanya

(K.Natarajan who was the first defendant in the suit died and appellants 2 to 9 were impleaded as the legal representatives of the deceased K.Natarajan as per order passed in I.A No. 8341/2017 dated 08.09.2017. Minor 9th appellant represented by her mother and guardian the 1st appellant Smt. Meenakshi Natarajan)

... Appellant in A.S No. 460 of 2019
Vs.

1.S.Jayaprakash
(Minor plaintiff declared as Major as per passed in I.A No. 8304/2015 dated 08.07.2015 and his father guardian was discharged as per order in I.A 8303/2015 dated 08.07.2015)
2.M/s. Cera Gen Park Health Care Centre,



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Rep. by its prop. Selvi Jaisudha,

(The 2nd respondent above named who was the tenant of deceased K.Natarajan vacated the leased hold premises and is not possession. Therefore, the said party need not be arrayed as a respondent. Further, the address of the said party is not known to the appellants.)

...Respondents in AS No. 460 of 2019

1.S.Jayaprakash

... Appellant in AS No. 531 of 2019

Vs

K.Natarajan (Died)

1. Meenakshi Natarajan

2. 2.M/s. Cera Gen Park Health Care Centre,

Rep. by its prop. Selvi Jaisudha,

(The 2nd respondent above named who was the tenant of deceased K.Natarajan vacated the leased hold premises and is not possession. Therefore, the said party need not be arrayed as a respondent. Further, the address of the said party is not known to the appellants.)

3. N.Baby

4.N.Vijayalakshmi

5. N.Sujatha

6. N.Sangeetha

7.N.Saranya

8. N.Priyanka

9.N.Raghulraj

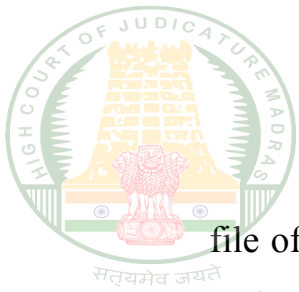
10.Minor S. Sowjanya

(10th Respondent a minor Rep. by her mother and natural guardian, Mrs. Meenakshmi Natarajan, the 1st Respondent herein)

4 to 10 are impleaded as legal heirs of K.Natarajan, the deceased 1 deft., As per the orders dated 08.09.2017 in I.A No. 8341 of 2017)

...Respondents in AS No. 425 of 2024

PRAYER in AS No.460 of 2019: The first appeal filed under Order 41 Rule 1 of Civil Procedure Code, to allow this appeal and set aside the judgment and decree dated 07.12.2018 made in OS No. 9063 of 2010 on the



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file of the VI Additional Judge, City Civil Court, Chennai, thereby granting a decree for declaration that the defendants are trespassers in the suit property and consequentially directing the defendants to quit the suit property to the plaintiff; and also granting a decree for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property in any manner whatsoever.

PRAYER in AS No.531 of 2019: The first appeal filed under Order 41 Rule 1 of Civil Procedure Code, to set aside the judgment and decree dated 07.12.2018 in O.S No. 9063 of 2010 on the file of the learned VI Additional Judge, City Civil Court, Chennai, in so far as dismissal of the suit in regard to damages vide clause No.4 in the decree and to grant such other reliefs.

For Appellants : Mr.T.Srinivasaraghavan
(in AS No. 460 of 2019)

For Appellant : Mr. G.B.Shiva Bharathy
(in AS No. 531 of 2019)

For R1 : Mr. Mr. G.B.Shiva Bharathy
(in A. S No. 460 of 2019)

R2 given up

For R1, R3 to R10 : Mr.T.Srinivasa Raghavan
(in A.S No. 531 of 2019)

R2 given up



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COMMON JUDGMENT

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The appeal in AS No. 460 of 2019 has been filed by the defendant to set aside the judgment and decree dated 07.12.2018 made in OS No. 9063 of 2010 on the file of the VI Additional Judge, City Civil Court, Chennai.

2. The appeal in AS No. 531 of 2019 has been filed by the plaintiff to set aside the judgment and decree dated 07.12.2018 in O.S No. 9063 of 2010 on the file of the learned VI Additional Judge, City Civil Court, Chennai, in so far as dismissal of the suit in regard to damages vide clause No.4 in the decree and to grant such other reliefs.

3. Challenging the entire findings of the Court below the legal heirs of the defendant/Natarajan filed the appeal in A.S No. 460 of 2019 on the other side, the plaintiff/Jayaprakash filed the appeal in AS No. 531 of 2019, against the findings of the Courts below in respect of dismissal of suit with regard to the claim of damages of Rs.2,000/- per day for the unauthorised occupation of the defendants in the suit property from 27.05.2007 to till the date of 01.11.2009 together with the interest of 21 % p.a. with future damages till handing over the delivery of possession.



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4. Before the Trial Court the appellant/Jayaprakash(then he was minor represented by his father/Swaminathan) filed the suit for the relief of declaration along with other relief of damages for unauthorised occupation of the suit property and for the relief of permanent injunction with other consequential relief, against one Natarajan (The said Natarajan was died his legal heirs were impleaded as respondent 4 to 7, along with one third party/tenant). Originally the suit was filed by the minor plaintiff Jayprakash represented by his father Saminathan and during the pendency of the suit proceedings he became major and contested the suit. Before the Trial Court, the plaintiff father Swaminathan gave a evidence since the plaintiff was minor. According to the plaintiff, his father Saminathan and his mother kanchana purchased 264 sq.ft and 240 sq.ft, respectively out of 5614 sq.ft through two sale deeds dated 05.10.2006. Thereafter, both of them constructed a flat on the basement floor of the same, bearing Flat No. 16-A, the suit property herein, and tax was also accessed in his parents name. Subsequently, his parents executed a settlement deed in his favour on 12.04.2007. Thereafter, in the month of May 2007 his father met with an accident and was unable to move from his bed. Taking advantages of this situation, the first defendant break open the suit property and unauthorisedly



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occupied the same from 27.05.2007. Hence, the plaintiff father issued the notice to the first defendants, despite receiving the notice, he replied for the same after lapse of about 50 days. Hence, the plaintiff filed the suit.

5. The first and second defendant contested the case stating that plaintiff's father/Swaminathan and Natarajan were partners of M/s. Royale Builders, who purchased the land in R.S No. 2447 in Pycrofts Road, Triplicane, Chennai and constructed 20 flats in the basement and two flats for commercial use were constructed. Out of the constructed flats, they sold the seven flats to third parties and thereafter first defendant and Swaminathan/ plaintiff's father decided to share the remaining flats, Accordingly, flats NO. 4,9,14 and shop No.B in the ground floor and Shop No. A in the basement were allotted to the share of the first defendant. and Flat Nos. 1,2,3,8,15,16,17 and 18 were allotted to the plaintiff's father, in which, suit flats were allotted to the first defendant as his share and the same was reduced into writing on 15.01.2006, in the sharing agreement both of them signed, but denied that the plaintiff's parents purchased the suit property. Thereby, the first defendant claiming absolute ownership over the suit flat as per the sharing agreement entered with the Swaminathan on 27.01.2011. Now, he let out the property to one I.Muhaideen. Hence, he



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prayed to dismiss the suit.

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6. Before the Trial Court both parties adduced their respective evidence and the plaintiff's father examined as P.W.1 and the defendant examined as D.W.1. On the side of the plaintiff, as many as 27 documents were marked as Ex.A1 to A27 and the defendant marked letter dated 15.01.2006 as Ex.B1.

7. Before the Trial Court, the plaintiff marked two sale deeds as Ex.A1 and Ex.A2, which is in the name of the plaintiff's father Swaminathan and his mother Kanchana. Considering the oral and documentary evidence, the Trial Court held that Ex.B1 is in nature of letter, not a agreement. Even then the first defendant not entitle to claim ownership in the suit property based on the said letter/Ex.B1, if at all title and ownership was transferred, it requires valid registration. Therefore, based upon Ex.B1, the first defendant is not entitle to claim ownership. On the other hand, the plaintiff proved that his parents purchased the suit property through registered sale deeds. Thereafter, through settlement deed/Ex.A4 the suit property, which was conveyed to the plaintiff. Thereby, based on Ex.A1, Ex.A2 and Ex.A4, the plaintiff proved his right and title



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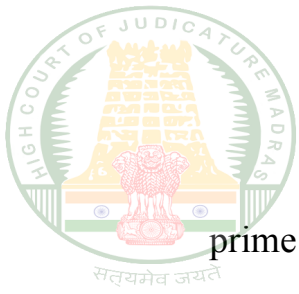
over the suit property, accordingly, declaration was granted in favour of the plaintiff. In respect of claim of damages, the suit was dismissed.

Accordingly, suit is partly decreed in respect of declaration and permanent injunction.

8. Challenging the findings of the Trial Court, both the plaintiff and the defendants filed these first appeals.

9. The parties are denoted as per the suit. The learned counsel for the appellant/plaintiff in AS No. 531 of 2019, submitted that the Trial Court ought to have decreed the suit entirely with relief of damages, since, the plaintiff is a lawful owner and the same was proved through the documentary evidence but the evidence not been appreciated to that effect by the Trial Court. Thereby, the said findings with regard to the relief of damages is liable to be set aside. Further, he would submitted that the Trial Court failed to take note of the fact that the defendant 1 & 2 were in unlawful occupation of the suit property without any right and title, though it was considered while granting relief of declaration but not appreciated for granting relief of damages as such is unjust and liable to be set aside.

10. The learned counsel for the defendantsappellants in A.S No. 460 of 2019, prayed to set aside the findings of the Trial Court on the following



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prime grounds.

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i. The court below failed to note that the first relief prayed by the plaintiff seeks the granting of a declaration declaring that the defendants are trespassers in the suit property and for consequential relief of recovery of possession of the suit property cannot be granted. The suit property is a flat constructed in the basement of the suit premises. The above declaratory relief is based on the allegation that the defendants are trespassers. That again means that the plaintiff is out of possession of the suit property.

ii. The lower court failed to note that the third relief prayed for by the plaintiff is for a permanent injunction to restrain the defendants from interfering with plaintiff's peaceful possession and enjoyment of the suit property. While the first relief is on the basis that the defendants are the trespassers of the suit property and that the plaintiff is out of possession, the third relief wants a decree of injunction to protect the plaintiff's possession while as a matter of admission, the plaintiff was out of possession of the suit property, Therefore, relief No.1 and relief No.3 are mutually conflicting and destructive of each other. If the plaintiff is in possession seeking a preventive order of injunction, then, the defendants cannot be declared as trespassers. If on the other hand, the plaintiff is not in possession, then, an



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injunction will not lie. The law is settled that a decree for a injunction to restrain the defendants from interfering with the plaintiff's possession will not lie if the plaintiff is not in possession.

11. On the above grounds, the learned counsel for the defendants submitted that the lower Court misinterpreted EX.B1 document, which is sharing agreement between the plaintiff's father/Swaminathan and the first defendant and also admitted his signature, but the same was not appreciated by the Court below as such is totally illegal and liable to be set aside. Further, the Trial Court failed to taken note of the fact that the plaintiff's parents purchased only common share and there is no proof that they are entitle for superstructure, the same was constructed only by the partnership firm, but the lower Court failed to take note of Ex.B1, and it was not challenged by the plaintiff and failed to take note of the fact that plaintiff's father P.W.1/Swaminathan admitted his signature in EX.B1. Thereby, he admits the validity of the document which has not been properly appreciated by the Trial Court. Further, it failed to take note of the fact that intention of Ex.B1 is to share the alleged flats constructed by the partnership firm to its individual partners. Thereby, he prayed to set aside the findings of the Trial



WEB COPY 12. The points to be decided is

- i. Whether the findings of the Trial Court is liable to be set aside ?
- ii. Whether the Trial Court misinterpreted the Ex.B1/letter of agreement?
- iii. Whether the plaintiff is entitle for declaration as they prayed for ?
- iv. Whether the possession deemed to be lawful as per Ex.B1?

13. Admittedly, at the time of filing the suit the plaintiff is minor hence his father/Swamnithan represented on behalf of the plaintiff/Jayaprakash. Thereafter, while pending suit the plaintiff attained majority and contested the suit. The case of the plaintiff is that the plaintiff's property in Door No.16-A was originally purchased by his parents Swaminathan and Kanchanas as vacant land, through two sale deeds/Ex.A1 and Ex.A2 of the year 2006. They purchased the undivided share of 264 sq.ft and 240 sq.ft., respectively out of 5614 sq.ft. through the above said sale deeds. The plaintiff contended that after purchasing the said property his parents constructed the flat bearing Door No. 16-A in the basement. Subsequently, they settled the property in favour of the plaintiff in the



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basement together with undivided share of the land through settlement deed of the year 2007. Thereafter, while plaintiff's father was bed ridden, the first defendant trespassed into his property and occupied the same unlawfully.

14. The defendants denied all the allegations stating that the first defendant and the plaintiff's father/Swaminathan were partners of firm under the name and style of M/s.Royale Builders, who purchased the land in RS No. 2447 and constructed 20 flats is the basement, two flats for commercial use. They sold seven flats to third parties and decided share the remaining flats accordingly Flat No. 4,9,14 and shop No. B in ground floor and shop No. A in the basement were allotted to the first defendant and flat No. 1, 2, 3, 8,15,1,6,17 and 18 were allotted to the plaintiff's father/Swaminathan. Thereby, the first defendant claimed that suit flat No.16-A was allotted to his share and the share agreement entered between them which was reduced into writings and the same was marked as Ex.B1 before the Trial Court. To prove the right and title the plaintiff produced two sale deeds which was marked as Ex.A1 and Ex.A2 and settlement deed marked as Ex.A4. On the side of the first defendant, sharing letter/Ex.B1 alone was marked. Based on the sharing letter/Ex.B1 the first defendant



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claiming absolute right over the suit property. Admittedly, as claimed by the first defendant EX.B1 is a sharing agreement, which said to be executed between the Swaminathan and the first defendant but the first defendant has not stated anything about the said letter/EX.B1 in his reply notice dated 15.09.2007. Even during the Trial P.W.1/Swaminathan admits the signature in the letter but not the contents in the letter.

15. It is an undisputed fact that Ex.B1/letter is unregistered one but based on the Ex.B1 the first defendant claiming absolute right over the suit property. The first defendant claimed the suit property based on Ex.B1. If the claim is based on Ex.B1, it requires valid registration because he has claiming right and title over the suit property. Furthermore, if it is agreement, the plaintiff's father failed to comply the terms the first defendant should have taken steps to get the relief under specific relief act. But, the first defendant failed to do so and nor any reason was assigned on his side. Therefore, Ex.B1 cannot be construed as document for right and title over the suit property in favour of the first defendant. Thereby, Ex.B1 would not confer any absolute right in favour of the first defendant, which was rightly appreciated by the Trial Court and declined to accept the claim of the first defendant which needs no interference. Accordingly issue No.1



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is answered.

WEB COPY 16. Based on the Ex.A1 & Ex.A2 the plaintiff claiming that their parents purchased the undivided share in the suit property in the year of 2006. Those sale deeds prove that their parents purchased the undivided share in the suit property and thereafter building was constructed. The learned counsel relied the judgment of the Supreme Court in the case of Neelakantan Damodaran Namboori and anothers Vs Velyudhan Pillai Narayana Pillai and another reported in AIR 1958 SC 832:

"17. It is then contended that even if the marriage was not in sarvaswadanam form, the last surviving member of the family conveyed the suit properties to the appellants under exhibit A. There are two obstacles in the way of sustaining the appellants' claim on the basis of exhibit A. If the marriage of the appellants did not take place in sarvaswadanam form, Nangayya Antharjanam had acted within her rights in settling her properties on the respondent under exhibit XXIX. Unless exhibit XXIX is displaced, exhibit A will not have any legal effect. The more insurmountable obstacle is that Nangayya Antharjanam did not create any interest in favour of the appellants under exhibit A. It is stated in exhibit A that, by reason of sarvaswadanam marriage, the appellants were entitled to all moveable and immovable properties belonging to Kopprathu Illom and therefore she was executing the release deed conferring all the rights and claims they have obtained over the Illom properties by the sarvaswadanam form of marriage. The document, therefore, in terms confirms the pre-existing rights of the appellants and as we hold that they had no pre-existing rights, the document did not convey any interest to them. In the result, the appeals fail and are dismissed with costs."

17. Even as per Ex.B1, flat No. 16-A, 840 sq.ft was allotted to plaintiff's father/Swaminathan, as on date, Ex.A1 and Ex.A2 proves that the



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plaintiff perfected his title better than the first defendant. Subsequently, through settlement deed/Ex.A4 plaintiff's parents/Swaminathan and Kanchana settled the property in favour of the plaintiff. Thus, the plaintiff became the absolute owner of the suit property there is no proof that the defendant constructed the flat in the suit property. As per Ex.A1 and Ex.A2/sale deeds the plaintiff's parents are the absolute owners. Now, the flat was constructed by them. According to the plaintiff as there is no contra evidence from the defendants to disprove the said fact. The Trial Court rightly held that the plaintiff is the owner of the suit property based on title deeds, which needs no interference of this Court. Accordingly, issued No.3 is answered.

18. As per the contention of the plaintiff, the first defendant occupied the suit property unauthorisedly. Hence, the notice was issued. Thereafter, present suit was filed. The contention of the defendant is that said flat was allotted to him through share agreement and he let out the same to the tenant. As on date, the claim of the plaintiff is that the defendants in unlawful possession of the suit property but the same was negated by the Trial Court stating that there was construction agreement between the parties. But for the claim of damages, the Trial Court held that there is no

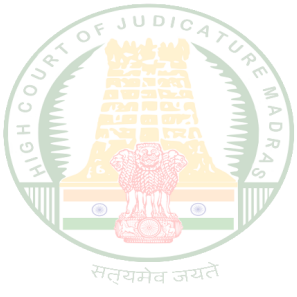


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specific pleading in the plaint disclosed that the defendant let out the building to the third parties. However, in his written statement, the defendants admitted that he let out the property to the tenant as true owner. Furthermore, the first defendant has no right to occupy or let out the property to the tenant as he is not a owner. On the other hand, plaintiff proved that he is lawful owner of the suit property hence he entitle for damages. But the Trial Court though granting relief of declaration, failed to award damages. Accordingly, findings in respect of the damages given by the Trial Court is set aside and other issues are answered.

19. Though the plaintiff claiming Rs.2,000/- per day, this Court is inclined to award damages of Rs.300/- per day, from the date of suit till the date of realisation. Appeal filed by the first defendant in AS No. 460 of 2019 is dismissed. The first defendant is directed to hand over the possession of the property to the plaintiff within a period of twelve weeks from the date of receipt of a copy of this judgment.



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20. In the result, Appeal filed by the defendants in A.S No. 460 of 2019 is dismissed and other appeal filed by the plaintiff in A.S No. 531 of 2019 is allowed. Thus suit is allowed. No Costs. Consequentially, pending petition, if any, is/are closed.

21.01.2025

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To

1. The VI Additional Judge, City Civil Court, Chennai
2. The Section Officer,
V.R Section, High Court, Madras.



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T.V.THAMILSELVI,J.

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