

C.S.No.353 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
03.02.2025

PRONOUNCED ON
23.06.2025

CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

C.S.No.353 of 2018

G.Gandhimathi

... Plaintiff

vs.

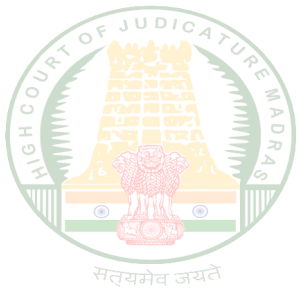
K.Elambaram

... Defendant

Prayer : Civil Suit filed under Order IV Rule 1 & 2 of Madras High Court Original Side Rules read with Order VII Rule 1 of CPC to pass decree and Judgment against the defendant as hereunder:-

a)Declaring that the plaintiff is the absolute owner of the landed property described in the schedule-A annexed to the plaint and delineated in the topo sketch annexed to the plaint;

b) Directing the defendant to vacate and hand over the portion of the property described in the Schedule 'B' annexed to the plaint and distinctly marked in red colour in the topo sketch annexed to the plaint;



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c) Directing the defendant to pay the plaintiff a sum of Rs.1,00,000/- by way of damages along with interest at 18% p.a. that could be accrued from the date of the plaint till his actual payment;

d) Cost of the suit; and

e) Granting such further or other reliefs, as this Court may deem fit and proper in the circumstances.

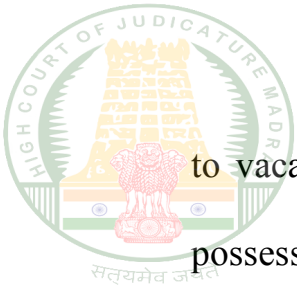
For Plaintiff : Ms.R.K.Sekina Reshma
for Mr.O.R.Abdul Kallam
For defendant : Mr.G.Thangavel

J U D G M E N T

This suit has been filed seeking a declaration of ownership of the Schedule A property and a direction to vacate and hand over possession of the Schedule B property, along with damages for usage.

2) The case of the plaintiff is that the plaintiff acquired the suit schedule property, measuring 2064 sq.ft. The plaintiff constructed a cattle shed covering 100 sq.ft. in the southeastern part of the property. The cattle shed was leased on a leave and license basis to the defendant. However, the defendant refused

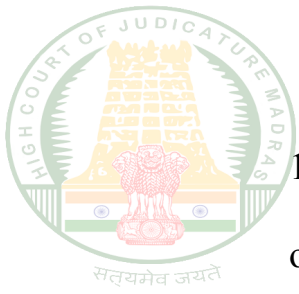
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to vacate the premises, prompting the plaintiff to file a suit for recovery of possession, which was decreed in favor of the plaintiff. The plaintiff regained possession of the property on February 12, 2013, through execution proceedings. Later, on January 27, 2018, the defendant trespassed into the property and encroached on it. Therefore, the plaintiff has filed the present suit seeking declaration of title and recovery of possession.

3) The case of the defendant is that the plaintiff holds the right only to the cattle shed and has failed to establish a valid title to the entire suit schedule property. The defendant further contends that the property was undervalued, and an insufficient court fee was paid. Additionally, the defendant argues that a plaintiff without a valid title to the suit schedule property cannot claim damages for its usage. The defendant also points out that the suit schedule property lacks a proper description, which is mandatory for claiming ownership of immovable property. Consequently, the defendant prays for dismissal of the suit as being devoid of merit.

4) Upon hearing the counsel and on perusing the pleadings, the following issues are framed for determination in the suit:



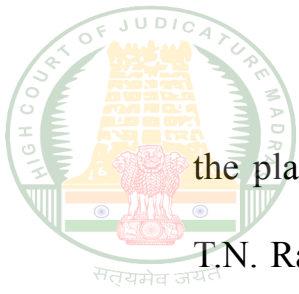
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1. Whether the plaintiff is entitled to a declaration that she is the absolute owner of the suit schedule property?
2. Whether the property in occupation of the defendant is different from the suit schedule property?
3. Whether the defendant is liable to pay a sum of Rs. 1 Lakhs with 18% interest as damages for use and occupation?
4. To what other reliefs the parties are entitled?

5) On the side of the plaintiff, the plaintiff has examined herself as PW1 and marked Ex.P1 to Ex.P17 and on the side of the defendant, Mr.E.Venkatesan, who is the son of the defendant, has been examined as DW1 and marked as Ex.D1 to Ex.D9.

6) Heard Ms.R.K.Sekina Reshma, learned counsel appearing for Mr.O.R.Abdul Kallam, learned counsel appearing for the plaintiff and Mr.G.Thangavel, learned counsel appearing on behalf of the defendant.

7) Ms. R.K. Sekina Reshma, learned counsel for the plaintiff, submits that



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the plaintiff acquired the suit schedule property, measuring 2064 sq.ft., from T.N. Radhakrishnan Pillai and Parthasarathy Pillai, sons of Navaneetha Pillai, through Sale Deed Document No. 544 of 1973, dated 07.05.1973. She submits that the suit schedule property was under the supervision of Sri. Vadivelu Chettiar, the plaintiff's father, during his lifetime. Thereafter, the plaintiff took charge of managing the property. She further submits that the plaintiff constructed a cattle shed on the southern side of the suit schedule property, measuring 100 sq.ft., with a tin sheet roof. This cattle shed was licensed to the defendant to enable him to look after and tether her cattle. In 1995, the plaintiff, finding no need for the defendant's services, revoked the leave and license and requested the defendant to vacate and hand over the vacant possession of the cattle shed.

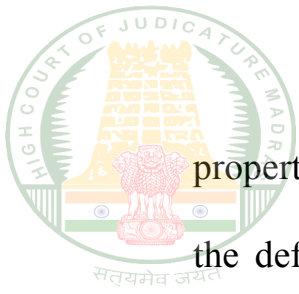
8) The learned counsel further submits that the defendant filed a suit for permanent injunction in O.S. No. 4449 of 1995 against the plaintiff concerning the cattle shed, and the same was decreed in favor of the defendant, subject to the outcome of the ejection suit filed by the plaintiff. She further submits that the defendant trespassed and occupied the southeastern side of the suit schedule property, which is adjacent to the cattle shed, and refused to vacate. Consequently, the plaintiff filed O.S. No. 1208 of 1996 seeking ejectment of



the defendant and recovery of possession, which was decreed in favor of the plaintiff. The plaintiff then filed E.P. No. 4411 of 2012 for execution of the decree, resulting in an order to take possession of the cattle shed.

9) Furthermore, she submits that the defendant filed O.S. No. 6620 of 2012 for permanent injunction concerning a 500 sq.ft. house, but the suit was dismissed as unproven. The defendant pursued several rounds of litigation, including Second Appeal No. 420 of 2016, which was also dismissed on 21.09.2023. Despite this, the defendant suppressed material facts and obtained an order for police protection from this Hon'ble Court. She argues that the defendant's continued invasion of the plaintiff's property, even after an order to vacate, is unjustifiable. She submits that the defendant's interference with the plaintiff's land and prolonged legal disputes have significantly diminished the property's value. Moreover, the defendant's illegal occupation has caused mental anguish to the plaintiff and damaged the property, justifying the claim for damages.

10) She further contends that the defendant has presented contradictory statements in the written statement regarding the 100 sq.ft. cattle shed. At one point, the defendant claims that the cattle shed is part of the suit schedule



property, while at another, he asserts it is adjacent to the property. Similarly, the defendant inconsistently claims that the plaintiff is entitled to the cattle shed alone, while elsewhere, he denies her entitlement altogether. These contradictions establish the plaintiff's right to the relief claimed. Therefore, she prays for the decree of the suit as prayed for.

11) Mr. G. Thangavel, learned counsel for the defendant, submits that the sale deed property and the suit schedule property are different, and the plaintiff is misleading this Hon'ble Court. He contends that there is no cause of action in the suit, rendering it not maintainable in the eyes of the law and liable to be rejected. He further submits that the plaintiff, who seeks a declaration of ownership over the suit schedule property, has not demonstrated a valid title. He contends that the cattle shed was entrusted to the defendant, who had exclusive possession and enjoyment of the 100 sq.ft. cattle shed during his lifetime. The defendant has been in continuous use and enjoyment of 2300 sq.ft., including a 500 sq.ft. house adjacent to the cattle shed. He contends that the plaintiff, who holds rights only over the cattle shed, is attempting to disturb the possession of the other portion of the property. He submits that the defendant filed a suit for permanent injunction concerning the licensed property against the plaintiff in O.S. No. 4449 of 1995, and the suit was



decreed in favor of the defendant on 29.01.2004. The plaintiff challenged the decree in A.S. No. 457 of 2004, but the appeal was dismissed, and the trial court's decree was upheld.

12) He further contends that the plaintiff filed O.S. No. 1208 of 1996 for vacant possession of the 100 sq.ft. cattle shed and obtained an ex parte decree dated 03.09.1997. However, during the execution proceeding, the plaintiff claimed the entire extent of the suit schedule property, which the defendant has been possessing and enjoying since 1985. The Execution Petition (EP) court issued a decreetal order on 28.02.2013, allegedly violating the basic principles of natural justice. A civil revision petition was filed against this EP order, but it was dismissed on 21.09.2023. He further submits that the defendant lodged a police complaint on 03.01.2013 against the plaintiff and his associates for unlawfully assembling on the defendant's property. He contends that the plaintiff unlawfully locked the defendant's house (measuring 500 sq.ft.), situated within the suit schedule property. Consequently, the defendant issued a contempt notice on 20.02.2013 for non-compliance with the decree dated 03.09.1997 and filed a representation to the Commissioner of Police on the same day, highlighting the plaintiff's unlawful actions.



13) He further submits that the defendant filed O.S. No. 6620 of 2012 for permanent injunction concerning the 500 sq.ft. house, but the suit was dismissed. The matter is currently pending in a second appeal. Additionally, the defendant filed Crl.O.P. No. 13656 of 2013, where police protection was granted on 07.02.2014. Summing up his arguments, he asserts that the plaintiff has rights only over the cattle shed and has failed to establish a valid title to the suit schedule property. He argues that the property was undervalued, and the court fee paid is insufficient. Furthermore, the plaintiff, lacking valid title, cannot claim damages for property usage. He also submits that the suit schedule property lacks a clear description, which is mandatory for declaring ownership of immovable property. Therefore, he prays for the dismissal of the suit as devoid of merits.

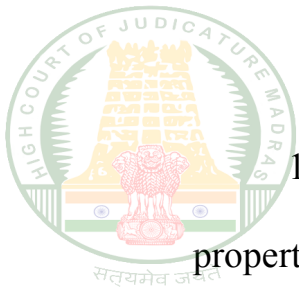
14) I have considered the submissions made by the learned counsels appearing for their respective parties and perused the materials available on record.

15) Issue Nos.1 & 2

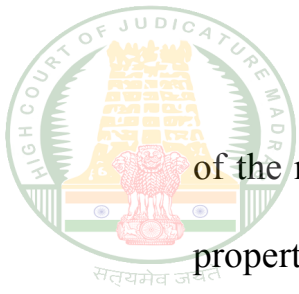


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It is the case of the plaintiff that the suit Schedule - A property had been purchased by her and in that a portion, the defendant was granted license to take care of the cattle belonging to her. Since, there was no necessity for continuation, such license was revoked. The defendant had filed a suit in O.S.No.4449 of 1995 seeking for an injunction restraining the defendant from evicting him without following the due process of law. The plaintiff had also filed a suit in O.S.No.1208 of 1996 in which an order of ejectment was passed ex-parte and the said judgment and decree was also executed in E.P.No.4461 of 2011 and recording the delivery of possession, the E.P. was terminated on 18.09.2012 under Ex.P6. Thereafter, the defendant had filed a suit in O.S.No.6620 of 2012 seeking for an injunction restraining the plaintiff from interfering with the possession of his land which came to be dismissed by judgment and decree dated 17.04.2015 which has been filed as Exs.P12 and P13. The defendant seems to have filed an Appeal in A.S.No.178 of 2015 which also came to be dismissed by a judgment and decree under Exs.P14 & P15 dated 09.03.2016. The judgment and decree made in O.S.No.4449 of 1995 dated 29.01.2004 has also been marked as Ex.P3.



15) The claim of the defendant is that the plaintiff had purchased the property bearing Door.No.14, Dharmaraj Pillai Street and not the suit scheduled property. It is his claim that he had been in possession of the suit schedule property for the past 60 years and in support of his contention he had marked Ex.D4 the gas bill standing in the name of his wife; Ex.D6 family card; Ex.D7 voter ID; and Ex.D8 electricity card reflecting the said address. He had not placed on record either by oral or any documentary evidence with regard to the payment of the statutory dues such as Corporation tax or water tax with regard to the said property. Further, from Exs.P3, P4, P6 & P7, it could be noted that the said judgment and decrees dealt particularly with the property situated at Door No.16, Dharmaraj Pillai Street which is the Schedule-A property. Further, a reading of the plaint in O.S.No.6620 of 2012 which has been marked as Ex.P7 would indicate that the defendant had claimed a permanent injunction on the strength that he has been in occupation of the property for nearly 60 years. The Trial Court as well as the Appellate Court had given a categorical finding that the defendant has not proved his title to the property and that an injunction cannot be granted against the true owner of the property. Hence, the issue as regards to the claim of the defendant had already been decided against him and his present claim is barred by principles of res-judicata. In such view



of the matter, this Court comes to the conclusion that the schedule mentioned property to the suit had been validly purchased by the plaintiff under Ex.P1 and that she is the lawful owner of the property.

16) **Issue No.3**

The plaintiff had sought for damages of use and occupation of the property under Schedule-B. It is an admitted case that the Schedule-B property is within the precincts of the Schedule-A property.

17) The defendant had filed a suit in O.S.No.6620 of 2012 seeking for a permanent injunction restraining the plaintiff herein from interfering with his peaceful possession of the property morefully described in the schedule therein. The said suit came to be dismissed by the Trial Court as well as the Appellate Court under Ex.Nos.P12 to P15. The plaintiff had also been benefitted with a judgment and decree of ejectment which came to be effected by delivery of the possession in the E.P. filed by the plaintiff under Ex.P6.

18) It is the case of the plaintiff that the defendant had trespassed again and entered upon the possession of the property. Even in the suit filed by the



defendant in O.S.No.4449 of 1995, he had admitted that he had been in possession of 100 Sq.Ft of land in the Schedule-A property as a lessee only. He had not whispered his occupation of the Schedule-A property or a portion thereof in his own right. Similarly, a perusal of Ex.P7 filed by him with respect to a portion of the Schedule-A property which is the Schedule-B property to the suit. He had only made a claim of being in possession of 500 Sq.ft of land in Schedule-A property. He had not made any claim to the entire Schedule-A property even in the suit plaint.

19) It is to be noted that the suit came to be dismissed and affirmed in appeal under Ex.P12 to P15. When be that so, this Court is of the view that the defendant has been in unlawful possession of the Schedule-B property. It is further to be noted that the defendant had authorised his son to give evidence on his behalf. The defendant being in occupation of the property for more than 60 years, he should have been aware of the extent of the property by its metes and bounds. But, however, DW1 had in clear terms indicated that he is not aware of the extent of the properties as seen to the suggestion to question No.35 to 38. Even though, the plaintiff had quantified a sum of Rs.1,00,000/- as damages, no evidence had been let to substantiate the quantification of the



damages. But, considering the fact that in spite of order of ejectment have been passed against him in O.S.No.1208 of 1996 which had culminated in E.P.No.4411 of 2012, wherein delivery of possession was recorded in Ex.P6 and that the suit filed by the defendant for permanent injunction in the year 2012 had been dismissed by the Trial Court and affirmed by the Appellate Court under Exs.P.12 to P16 and considering the fact the property being within the City of Chennai, this Court fixes damages for use and occupation at Rs.50,000/- per month which is payable from the date of plaint together with interest at the rate of 9% per annum till the date of payment.

20) In fine, the suit is decreed on the following terms:-

a)The plaintiff is declared to be the absolute owner of the Schedule-A property.

b)The defendant is directed to vacate and handover the possession of Schedule-B property as indicated in the plaint to the plaintiff within a period of eight (8) weeks from today.



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c)The defendant shall pay a sum of Rs.50,000/- per month together with interest at the rate of 9% per annum from the date of the plaint till date of realisation.

d)The defendant shall pay the above within a period of twelve (12) weeks from the date of receipt of copy of this judgment and decree.

However, there shall be no order as to costs.

23.06.2025

Index : Yes / No
Internet :Yes / No
Gba

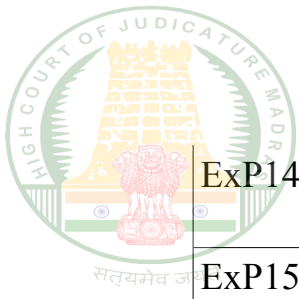


List of witnesses examined on the side of the plaintiff:

PW1- Mrs.G.Gandhimathi

List of documents marked on the side of the plaintiff:

Exp1	The photocopy and certified copy of the Sale Deed in favour of plaintiff	07.05.1973
Exp2	The certified copy of extract from the town survey land register along with copy of the survey plan.	12.08.1987
Exp3	The photocopy of judgment in O.S.No.4449 of 1995	29.01.2004
Exp4	The photocopy of order by the executing court in E.A.No.853 of 2013	28.02.2013
Exp5	The photocopy of order in E.A.No.940 of 2013	28.02.2013
Exp6	The photocopy of order in E.P.No.4411 of 2011 delivery of possession recorded E.P. terminated	18.09.2012
Exp7	The certified copy of plaint in O.S.No.6620 of 2012	18.10.2012
Exp8	The photocopy of written statement filed by the defendant in O.S.No.6620 of 2012	02.04.2014
Exp9	The photocopy of proof affidavit of plaintiff in O.S.No.6620 of 2012	07.10.2014
Exp10	The photocopy of proof affidavit of defendant in O.S.No.6620 of 2012	02.12.2014
Exp11	The certified copy of order passed in I.A.No.16025 of 2012 in O.S.No.6620 of 2012	14.12.2012
Exp12	The certified copy of judgment in O.S.No.6620 of 2012	17.04.2015
Exp13	The certified copy of decree in O.S.No.6620 of 2012	17.04.2015



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Exp14	The certified copy of judgment in A.S.No.178 of 2015	09.03.2016
Exp15	The certified copy of decree in A.S.No.178 of 2015	09.03.2016
Exp16	The photocopy of order for police protection Crl.O.P.No.13656 of 2013	07.02.2014
Exp17	The photocopy of order in M.P.No.1 of 2015 in Crl.O.P.No.13656 of 2013	19.06.2017

List of witnesses examined on the side of the defendant:

DW1- Mr.E.Venkatesan

List of documents marked on the side of the defendant:

ExD1	The certified copy of the final order passed by the Hon'ble High Court of Madras in Crl.O.P.No.13656 of 2013	07.02.2014
ExD2	The office copy of the grounds of second appeal in S.A.No.420 of 2016	07.04.2016
ExD3	The original letter issued by the Sub Registrar, Periamet vide Lr.No.7/2023	10.01.2023
ExD4	The original gas bill in the name of the defendant	11.01.2023
ExD5	The photocopy of the Aadhar card of the defendant	
ExD6	The photocopy of the family card of the defendant	
ExD7	The photocopy of the voter ID card of the defendant	
ExD8	The original EB card	
ExD9	The authorization letter issued by the defendant	25.03.2023

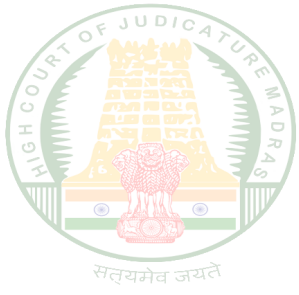
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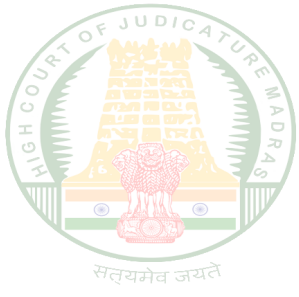
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K.KUMARESH BABU.J.,

Gba

Pre-delivery Order in
C.S.No.353 of 2018



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