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Civil Revision Petition No. 1619 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.PD.No.1619 of 2025
and C.M.P.No.9362 of 2025

Kousal @ Sridharsekar

... Petitioner

Vs

Rathinam

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 18.02.2025 passed in I.A.No.2 of 2022 in O.S.No.496 of 2021 on the file of the II Additional District Judge, Salem by allowing this Civil Revision Petition.

For Petitioner : Mr.S.Sivakumar

ORDER

The defendant has filed the above Civil Revision Petition challenging the dismissal of his application filed under Order VII Rule 11 of C.P.C to reject the plaint in I.A.No.2 of 2022 in O.S.No.496 of 2021 on the file of the II Additional District Court, Salem.



2. The parties are referred to in the same ranking as before the trial

Court.

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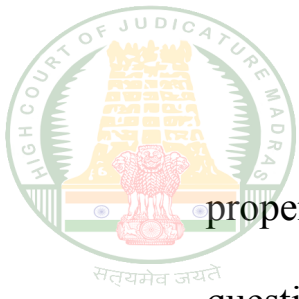
3. The suit O.S.No.496 of 2021 was filed by the respondent herein/plaintiff for declaration of his title to the suit property by adverse possession and for permanent injunction from alienating or encumbering the suit property and from interfering with or dispossessing him from the suit property.

4. The case of the plaintiff is that the suit property which is a vacant land belonged to one Sekar. Sekar is the elder brother of the plaintiff and the property was purchased by the said Sekar on 08.06.1995 under a Sale Deed registered as Document No.645 of 1995. Sekar had given the property to the plaintiff from the date of the purchase and he has been in possession and enjoyment of the same since then. The plaintiff would submit that he has also a property adjacent to the suit property which he had purchased under a registered Sale Deed dated 08.12.1991. The plaintiff had constructed a mud house in the suit property in the year 2001 and the same has been assessed to tax, electricity etc. He would further



submit that out of love and affection that Sekar had for the plaintiff he had executed a registered Will dated 03.09.2010 bequeathing all his properties except the suit property in favour of his son. This would clearly go to show that Sekar had acknowledged that he had handed over the property to the plaintiff. The said Sekar passed away on 31.07.2011 and before him, his wife, Danam had died on 03.03.2005.

5. It is the contention of the plaintiff that he has been in enjoyment of the property uninterruptedly for the past 25 years and his enjoyment has been open and continuous. Therefore, he would submit that he has perfected title to the suit property. The defendant is none else than the son of the said Sekar, who was very much aware of the fact that his father had handed over the property to the plaintiff. The defendant has been attempting to interfere in the plaintiff's peaceful enjoyment of the suit property and on 15.11.2021, he has made an overt step to take possession which was successfully prevented by the plaintiff. The plaintiff had thereafter given a complaint to the Edapadi Police Station and he was advised to seek appropriate legal remedy from the Court of law. Once again, an attempt was made on 03.12.2021 to trespass into the suit



property. Therefore, the plaintiff had come forward with the suit in question.

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6. On entering appearance in the said suit, the defendant has come forward with an application to reject the plaint. He had denied the various statements made in the plaint and he would submit that the plaintiff has not been able to prove that he has been in possession of the property over the statutory period. The defendant would further submit that all the original documents pertaining to the suit property continued to remain with his father, Sekar. Thereafter, they were with the defendant. However, on 27.09.2021, he had lost the original Sale Deed along with other documents like patta etc which were stolen from his two wheeler. A complaint was lodged with the Edapadi Police Station and they had registered a case and thereafter, the defendant had issued a paper publication. The original documents appear to have been fraudulently taken away from the plaintiff who is none else than his paternal uncle.

7. The only ground on which the application for rejecting the plaint is that there is no cause of action.



8. The plaintiff has filed a detailed counter refuting the contentions set out in the plaint.

9. The learned II Additional District Judge, Salem after hearing the parties had proceeded to dismiss the said application stating that the plaintiff has come to Court claiming title by way of adverse possession which has to be proved by him and can be decided only at the time of trial. Challenging the same, the defendant is before this Court.

10. Heard the learned counsel for the petitioner and perused the materials available on record.

11. The plaintiff has come to Court seeking a declaration of his title. He claims title to the property on the basis of adverse possession and it is for the plaintiff to prove the same. Therefore, the plaintiff cannot be non-suited at the threshold. The only ground on which the application for rejecting the plaint has been filed is that there is no cause of action. While considering this application, the Court is only guided by the plaint and the documents filed along with the plaint where the plaintiff brings out a cause



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of action, then it cannot be rejected. In the instant case, the plaintiff has in detail described his right to the suit property as to whether he would ultimately succeed is something that has to await the final judgment after trial. The trial Court has rightly rejected the said application and I see no reason to interfere with the same to hold otherwise. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.04.2025

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn

To,

The II Additional District Judge, Salem



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P.T.ASHA, J.,

srn

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