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A.S.No.785 of 2025
and
C.M.P.No.17110 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :22.07.2025

Pronounced on :31.07.2025

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.785 of 2025

and

C.M.P.No.17110 of 2025

K.Myilsamy,
S/o Late Kumarasamy Gounder,
Residing at "Madathu Thottam".
Malaipalayam, Sulur Taluk,
Coimbatore District.

.. Appellant/Defendant

/versus/

R.Velumani,
S/o Late Ramasamy Pillai,
No.10, Dr.Rajarathinammal Road,
Coimbatore 641 009.

.. Respondent/Plaintiff

Prayer: Appeal Suit has been filed under Section 96 of Civil Procedure Code, against the judgment and decree in O.S.No.246 of 2017 on the file of the III Additional District Judge, Coimbatore dated 30.04.2025.

For Appellant :Mr.R.Srinivas, Senior Counsel for
Mr.S.Sithirai Anandan

For Respondents :Mr.B.Kumarasamy

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A.S.No.785 of 2025
and
C.M.P.No.17110 of 2025

Appeal against the judgement and decree passed in O.S.No.246 of 2017, dated 30.04.2025, by the III Additional District Judge, Coimbatore in the suit filed for delivery of vacant possession within a time fixed by the court.

2. The defendant who suffers a decree to vacate the suit schedule property and hand over vacant possession of the property, within two months, from the date of the judgement, has preferred the above appeal for consideration.

3. The parties are referred as per their ranking and status in the plaint.

4. The case of the plaintiff is that, Tmt. Samathal purchased a larger extent of land inclusive of the suit schedule property on 28.11.1986 under a registered sale deed. She settled the said suit property to her daughter Rajalakshmi, by way of a settlement deed, dated 04.02.2005. The said



A.S.No.785 of 2025

and

C.M.P.No.17110 of 2025

WEB COPY

Rajalakshmi sold the suit schedule property to the plaintiff Myilsamy on 01.02.2007. The plaintiff as absolute owner of the property, had mutated the revenue records in his name.

5. The plaintiff approached the defendant to vacate the suit property and hand over a vacant possession. The defendant refused to vacate claiming right of possession based on a forged lease deed alleged to have been executed by Samathal on 30.03.2004 for a period of 10 years. Neither Samathal nor her daughter the vendor of the plaintiff had executed any lease deed in favour of the defendant. If there is any deed, then it must be a forged document.

6.The defendant is a trespasser. Without any legal right, he is occupying the suit property. Hence, he is liable to be vacated. In spite of repeated request to vacate the suit premises, instead of vacating, the defendant had filed a suit for permanent injunction against the plaintiff in O.S.No.10 of 2017, on the file of the District Munsif Court, Sulur and had



A.S.No.785 of 2025

and

C.M.P.No.17110 of 2025

WEB COPY

obtained ad interim injunction against this plaintiff. Hence, the suit for recovery of possession.

7. The case of the defendant is that, the plaintiff had not come to Court with full facts. He had suppressed the earlier suit filed by him in O.S.No.222 of 2007 on the file of the District Munsif Court, Palladam and its dismissal on 23.10.2009. In the earlier suit, the plaintiff pleaded that he was in possession of the suit property. However, in the cross examination, he and his vendor Rajalakshmi admitted that the defendant is in possession of the suit property. This admission is recorded in the common judgment, while dismissing the suits O.S.No.222 of 2007 and O.S.No.223 of 2007 filed for bare injunction. No appeal preferred by the plaintiff against the judgement and decree passed in the earlier suits. In the said suits though issues regarding the validity of the sale deed in favour of the plaintiff and the settlement deed in favour of his vendor, were framed nonetheless, the Court below left those issues open to be agitated separately, and confined its finding only in respect of possession.



WEB COPY



A.S.No.785 of 2025
and
C.M.P.No.17110 of 2025

8. On 21.04.2017, the plaintiff in order to dispossess the defendant attempted to vacate the defendant forcible with the help of his henchmen. The neighbours dialed '100' and called the police and prevented forcible eviction. However, no FIR registered against the plaintiff and his men. The suit O.S.No.10 of 2017, for permanent injunction filed to prevent from disturbance to the peaceful possession. Ad-interim Injunction was granted by the Court.

9. In the plaint, the date of handing over possession by the vendor or the date on which, he demanded possession from the defendant is not mentioned. Before filing suit for possession, the provision of Transfer of Property Act not followed by the plaintiff. No cause of action arose in the manner and dates mentioned in the plaint. Hence, the suit is liable to be dismissed with exemplary costs.

10. Based on the pleadings, the Trial Court has framed the following



A.S.No.785 of 2025
and
C.M.P.No.17110 of 2025

WEB COPY

Issues:-

1. Whether the plaintiff is entitled to recover possession of the suit property from the defendant ?

2. What other reliefs and costs the plaintiff is entitled to ?

11. Velumani, the plaintiff, examined as PW-1. In his chief examination, Ex.A-1 to Ex.A-8 marked. In the cross examination, Ex.B-1 to Ex.B-3 marked. On the side of the defendant, two witnesses examined. The defendant as DW-1 and one Ramesh as DW-2 were examined. Ex.B-4 to Ex.B-12 marked through DW-1 and Ex.B-13 marked through DW-2.

12. The trial Court, taking into consideration the plea of the defendant in the previous suits O.S.No.222 of 2007 and O.S.No.223 of 2007, wherein he had pleaded that he came into possession of the suit property as a lessee under his mother, Samathal. The occupation of the defendant in the suit property is not legal after the expiry of the lease period and after having due knowledge of the transfer of property by his mother Samathal. Therefore, he



A.S.No.785 of 2025

and

C.M.P.No.17110 of 2025

WEB COPY

is liable to vacate the suit property and hand over it to the plaintiff within two months.

13. The learned Senior Counsel for the appellant, submitted that, the Trial Court failed to consider the fact that the plaintiff to prove, he is bonafide purchaser ought to have mentioned in the suit when he was given possession of the suit property. In the earlier suit the plaintiff pleaded that he was given possession of the suit property by his vendor. Whereas, in the later suit, his plaint is silent about the delivery of possession of the suit property or the handing over of the original title document. This creates a grave doubt about his bonafide regarding the sale transaction under Ex.A-3. The title of plaintiff is under cloud of suspicion. Without relief for declaration of the title, suit for possession is not maintainable.

14. Particularly, in the prior suit O.S.No.223 of 2007, the plaintiff specifically pleaded that possession of the property given to him and his peaceful possession of the suit property should be protected by a permanent



A.S.No.785 of 2025
and
C.M.P.No.17110 of 2025

WEB COPY

injunction. After full trial, the Court below held that the plaintiff has not proved his possession. The plaintiff did not file any appeal against the dismissal of his suit for permanent injunction. While so, the trial Court ought to have taken note of the long possession of the defendant in the suit property being the son of Samathal.

15. The plaintiff who had purchased the property knowing well about the long possession of the defendant cannot plead contrarily about possession and take advantage of the suppression of facts.

16. Rajalakshmi, who is the vendor of the plaintiff not examined. The original of the settlement deed in favour of Rajalakshmi not produced to test its genuinity. The settlement deed by Samathal, in favour of Rajalakshmi is surrounded with suspicion. The Court below overlooked these facts and erred in allowing the suit for delivery of possession. Unmindful of the long possession of the defendant the Court below erred in allowing the suit which deserved to be dismissed.



WEB COPY



A.S.No.785 of 2025
and
C.M.P.No.17110 of 2025

17. Per contra, the learned counsel for the respondent submitted that, this is a case by person holding valid title against person in long possession on permission. The trial Court, after weighing the facts and law, had held that the defendant possession is admitted as lessee under his mother. In the earlier suit O.S.No.222 of 2007 and O.S.No.223 of 2007, the appellant herein produced documents to show that he was put in possession of the property on lease for 10 years on payment of Rs.35,000/- to his mother. Therefore, the suit filed by the respondent herein for bare injunction was dismissed to workout the remedy separately. Rightly, the respondent herein had filed the suit O.S.No.246 of 2017 for possession, which is the subject matter of this appeal. The appellant by pleading that his possession of the property is on permission by the respondent's predecessor-in-title, who is none other than his own mother, is estopped from enlarging his claim in the property. The possession of the appellant however long, he being in possession as a permissive occupant, his possession becomes illegal once the permission is withdrawn.



WEB COPY



A.S.No.785 of 2025
and
C.M.P.No.17110 of 2025

18. Point for determination

Whether the suit O.S.No.246 of 2017, filed for delivery of possession without a prayer for declaration of title, suffers none inclusion of whole claim ?

19. The suit property originally held by Samathal and settled in favour of her daughter Rajalakshmi is a fact stands undisputed. The plaintiff in the suit under consideration, had purchased the property on 01.02.2007. The issue regarding possession already came for consideration in the earlier suits O.S.No.222 of 2007 and O.S.No.223 of 2007, which were filed for bare injunction. In the common judgment rendered in that suit, the Court has left open the issues of title for decision separately. Thereafter, the appellant herein nearly after 8 years filed O.S.No.393 of 2017, for bare injunction and allowed that suit to be dismissed for default. Later, he had not questioned the validity of the documents Ex.A-2 and Ex.A-3. In the said circumstances of the fact, the respondent herein had filed O.S.No.246 of 2017, for delivery of



A.S.No.785 of 2025
and
C.M.P.No.17110 of 2025

WEB COPY

possession.

20. Some crucial facts in this case were not pleaded by the parties, but brought to the notice of the Court through oral and documentary evidence during the course of trial. Few facts were pleaded by one party and not whispered by the other party. The one fact admitted by both the parties is that the title of property vested with Samathal under the sale deed dated 28.11.1986 (Ex.A-1). The defendant in the cross examination, after earlier denial about the knowledge of the settlement deed of Samathal to his sister Rajalakshmi on 04.02.2005 (Ex.A-2) and Rajalakshmi sale to the plaintiff dated 01.02.2007 (Ex.A-3), he later admitted that he came to know about these two documents when he received summons in O.S.No.222 of 2007 and O.S.No.223 of 2007.

21. In the common judgment passed in O.S.No.222 of 2007 and O.S.No. 223 of 2007 dated 23.10.2009 (Ex.B-1), the Court held that the appellant herein had pleaded that the suit property was purchased in the



A.S.No.785 of 2025

and

C.M.P.No.17110 of 2025

WEB COPY

name of his mother, Samathal, from the ancestral nucleus. Samathal, who was old enough and unable to maintain the property, delivered the possession of the suit property for a lease of 10 years from January 2004. He gave Rs.35,000/- to his mother on 30.03.2004 to meet her personal medical expenses and the same acknowledged by Samathal on 30.03.2004. The plaintiff along with his sister Rajalakshmi had joined together to dispossess the defendant. However, Rajalakshmi examined as PW-1 in that suit had denied those averments, except accepting the possession of the suit property with her brother- the appellant herein.

22. Thus, the own admission of the appellant herein that he was put into possession by his mother, Samathal, under an oral lease for a period of 10 years from January 2004, gives quietus to the issue of title and the nature of possession. If at all the appellant herein had any right or claim in the suit property, he should have sought for declaration and share in the property. Samathal died only on 06.02.2007. Two years prior to her death she had settled the property in favour of his daughter Rajalakshmi. During the life



A.S.No.785 of 2025

and

C.M.P.No.17110 of 2025

WEB COPY

time of Samathal, the settlee Rajalakshmi had sold the property to the respondent herein. The appellant had never objected these transactions.

23. Though the prior suit O.S.No.223 of 2007, instituted by the respondent herein was dismissed, it was a dismissal with an observation that the parties to work out the other issues separately. It permitted filing of subsequent suit for recovery of possession. Since the appellant herein had not challenged the title of the respondent herein, the suit without a prayer for declaration of title is maintainable. In the earlier proceedings, or in the present suit, the case of the appellant is not that he has share in the property, he claims right in the property only on the strength of long possession. He had raised a vague doubts above Ex.A-2 the settlement deed of his mother in favour of his sister and the sale deed Ex.A-3 executed by his sister in favour of the respondent herein, but he had not challenged those documents in any form, till date.

24. His pleading in the earlier suit as well as in the present suit is the



A.S.No.785 of 2025

and

C.M.P.No.17110 of 2025

WEB COPY

long possession and right of protection from dispossession without due process of law. In fact, his earlier suit O.S.No.10 of 2017, which later dismissed for default, is also not based on title but only on long possession under the oral lease deed. In such circumstances, on applying the dictum laid by the Hon'ble Supreme Court in *Anathula Sudhakar –vs- Buchibabu* reported in *[(2008)4 SCC 594]*, this Court holds that the plaintiff need not seek for any declaration of title, when no serious cloud of suspicion over his title in the property is pleaded.

25. As per the pleadings of the appellant herein, in the earlier suit as well as in the present suit, he claims possession through on oral lease deed from the year 2004. In the cross examination, he admits that he knew about the settlement deed executed by his mother to his sister and also admits that he came to know about the sale deed Ex.A-3, executed in favour of the plaintiff/appellant herein when he received summons in O.S.No.222 of 2007 and O.S.No.223 of 2007. He had participated in those suit by adducing evidence and had satisfactorily proved his possession. Later alleging that his



A.S.No.785 of 2025

and

C.M.P.No.17110 of 2025

WEB COPY

possession is disturbed by the plaintiff/respondent herein and his men on 21.04.2017. He had filed a suit in O.S.No.10 of 2017 against the plaintiff for injunction alone based on long possession and not based on title. After obtaining an order of ad interim injunction, the appellant had later allowed this suit to be dismissed for default. Thus, the appellant herein had candidly accepted the title of the plaintiff in the earlier round of litigation. Having admitted the title of the respondent herein by own conduct and pleadings, the cloud over the title raised at this stage is only an illusory and not real.

26. His long possession is by virtue of being the son of the original title holder Samathal, and being the brother of Rajalakshmi who is the vendor of the respondent herein. The appellant's possession been recognised by the court in the common judgment passed in O.S.No.222 of 2007 and O.S.No. 223 of 2007. However, such recognition was based on his plea that he was given possession by his mother Samathal through oral lease. Therefore, on the expiry of the lease period (assuming it is valid and proved) and on the date of her settlement in favour of her daughter Rajalakshmi and



A.S.No.785 of 2025
and
C.M.P.No.17110 of 2025

WEB COPY

on the death of Samathal, the permission to occupy the suit property got terminated, the appellant had become a lessee holding over. The respondent herein who is the purchaser of the property from Rajalakshmi, had treated the appellantas a trespasser and agitating for recovery of the property on the strength of the sale deed Ex.A-3.

27.The validity of the settlement deed Ex.A-2 and the sale deed Ex.A-3 not tested in the earlier proceedings. Even in the present suit the appellant has not raised any doubt about these two documents in his written statement. If really, he had any doubt about these documents he should have challenged it during the life time of Samathal who died only on 06.02.2007. If his admission in the cross examination is true that he came to know about these documents only after receipt of notice in O.S.No.223 of 2007, at least at that time he should have challenged these documents and sought for a declaration to nullify these documents. The defendant after candidly admitting the title of the plaintiff, cannot continue to be in possession of the suit property based on his long possession, which is only in the nature of



A.S.No.785 of 2025
and
C.M.P.No.17110 of 2025

WEB COPY

permissive occupation and terminated implicitly by instituting the suit.

28. On the termination of the permission by conduct, the defendant is liable to vacate. The trial Court has rightly allowed the suit by fixing two months time to vacate and hand over the vacant possession. Since this court finds no merit in the appeal, the trial Court judgment and decree is confirmed.

29. As a result, **this Appeal Suit stands dismissed with costs.** Two months from today is granted for the appellant to vacate and hand over the vacant possession. Consequently, connected Miscellaneous Petition is closed.

31.07.2025

Index:yes
Internet:yes
Neutral citation:yes/no
Speaking/non-speaking order

1719



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A.S.No.785 of 2025
and
C.M.P.No.17110 of 2025

To

1.III Additional District Court, Coimbatore.

2.The Section Officer, V.R.Section, High Court, Madras.



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A.S.No.785 of 2025
and
C.M.P.No.17110 of 2025

Dr. G.JAYACHANDRAN, J.,

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delivery Judgment made in
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and
C.M.P.No.17110 of 2025

31.07.2025