



CRP.PD.No.5319 of 2024

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD) No.5319 of 2024

&

CMP No.29593 of 2024

Mir Feroze Ali

S/o.Late.Askar Hussain

.. Petitioner

Versus

Sangeetha Thilak,

W/o.Harigovinda Thilak

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 15/11/2024 passed in I.A.No.5 of 2024 in O.S.No.1760 of 2019 on the file of the IV Assistant City Civil Judge, Chennai.

For Petitioner : Mr. P.Sidharthan

For Respondent : Mr.S.P.Sudalaiyandi

ORDER

The Civil Revision Petition arises against the order passed by the learned IV Assistant City Civil Court, Chennai.



CRP.PD.No.5319 of 2024

WEB COPY

2. The civil revision petitioner is the defendant in the suit. For the sake of convenience, the parties shall be referred to as plaintiff and defendant.

3. The suit in O.S.No.1760 of 2019 was presented by the plaintiff seeking for the following relief:

a) declaration, declaring that the plaintiff is the absolute owner of the suit schedule A and B properties.

4. The claim of the plaintiff is that she has been in continuous possession and enjoyment of the suit schedule property from the year 1993. The plaintiff pleaded that her unlettered mother had entered into an agreement of sale with one Singaraj, who had handed over possession of the property to her. The plaintiff further pleads that on 10.02.1995, her mother had purchased the property for valuable consideration. Subsequently, the mother of the plaintiff had put up a superstructure over

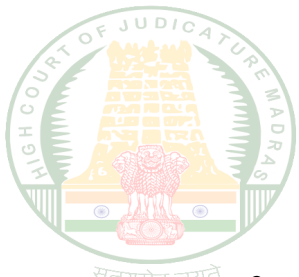


CRP.PD.No.5319 of 2024

WEB COPY

the said property and was residing therein. On 02.12.2001, the mother of the plaintiff is said to have sold the property to the plaintiff. On the strength of her possession, the plaintiff had obtained an address proof ID from the Postal Department on 08.04.2017. She pleaded she had opened a bank account with M/s.Indian Overseas Bank on 12.05.2017. She had also secured an Indane Gas Connection in her name. For the purpose of Electricity Connection, she filed W.P.No.27924 of 2018 and obtained an order. On the strength of the said order, she obtained electricity connection also. She pleaded that her possession was interfered with by the defendant, who claimed that he is the absolute owner of the property and attempted to dispossess her on 06.02.2019, when he came to the premises along with his henchmen. Hence, she filed a suit for the aforesaid relief.

5. Along with the plaint, the plaintiff produced three documents claiming title. They are three **unregistered sale deeds** dated 10.02.1995, 02.12.2001 and 30.09.2016. The remaining documents are the address



CRP.PD.No.5319 of 2024

WEB COPY

proof, the bank passbook, LPG receipt and Electricity Board Consumption Card together with deposit receipt.

6. On being served with the summons, the defendant took out an application for rejection of the plaint. He pleaded that between one P.P.R.Hariharan and his father, proceedings have been initiated before this Court in W.P.No.4112 of 1989. Another writ petition had also been filed in W.P.No.3823 of 1989. This Court clubbed W.P.No.3823 along with W.P.No.4112 of 1989 and pronounced a common order on 18.08.1989.

7. In that writ petition, the relief that had been sought for by the father of the civil revision petitioner, namely one Mir Askar Hussain, was police protection to remove the encroacher P.P.R.Hariharan. The writ petition was dismissed leaving it open for the writ petitioner to seek the same remedy through civil forum. The writ petition filed by Mr.P.P.R.Hariharan came to be dismissed as well. Subsequently, the



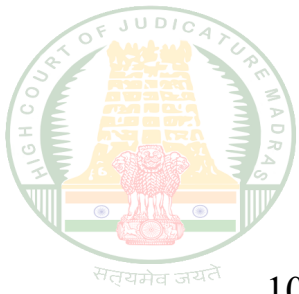
CRP.PD.No.5319 of 2024

WEB COPY

parties moved to the civil forum and filed O.S.No.500 of 1990 before the City Civil Court at Chennai. The said suit was dismissed on 19.07.1999.

8. In the mean time, the defendant's predecessor in title had filed the suit on the Original Side of this Court in C.S.No.475 of 1991. That suit was for the relief of declaration of title, permanent injunction and for delivery of possession. The suit was transferred to the file of the City Civil Court at Chennai and re-numbered as O.S.No.7335 of 1996. The said suit was decreed declaring the title of the defendant's father.

9. The defendant herein pointed out that the decree holders had presented E.P.No.90 of 2007 to take delivery of possession. The judgment debtors therein had presented E.A.No.395 of 2008 seeking certain documents to be produced by the District Collector of Chennai. The said application was dismissed. A revision preferred to this Court in CRP. No.227 of 2009 also came to be dismissed.



CRP.PD.No.5319 of 2024

WEB COPY

10. The defendant added that against the decree in O.S.No.7335 of 1996, an appeal together with an application was preferred to this Court, to condone the delay in filing the appeal, in M.P.No.1 of 2009 in A.S.SR No.2193 of 2009. The said appeal was also dismissed by this Court on 15.03.2012. He pleaded that several other proceedings had taken place which all ended in his favour. Hence, he pleaded that the plaintiff has no cause of action and apart from that the suit is barred by *res judicata*. Hence, he sought for rejection of the plaint.

11. Notice was ordered in the application and the plaintiff filed a detailed counter. The plaintiff pleaded that the suit cannot be rejected on the ground of *res judicata*. However, she pleaded for the first time that she had prescribed title to the property by adverse possession. In addition, she pleaded that her predecessor-in-title had obtained patta from the Assistant Settlement Officer, Thiruvannamalai on 25.07.2000. Therefore, the plaintiff pleaded for dismissal of the petition.



CRP.PD.No.5319 of 2024

WEB COPY

12. The Learned trial Judge considered the affidavit and counter and came to a conclusion that since the predecessor in title of the plaintiff was benefited with a patta and as the plaintiff is not a party to the earlier litigations, the question of *res judicata* would not arise. Since the counter affidavit to the rejection of plaint disclosed a substantial defence, the learned trial Judge dismissed the petition filed for rejection of plaint. Hence this revision.

13. I heard Mr.P.Sidharthan for the revision petitioner and Mr.Sudalayandi for the respondent.

14. Mr.Sidharthan pleaded that the suit is barred by *res judicata* and this being a suit for title, the plaintiff cannot lay a suit on the basis of unregistered sale deeds. Per contra, Mr.Sudalaiyandi argued that by virtue of judgment in *Ravinder Kaur Grewal v. Manjir Kaur and Another*, [(2019) 8 SCC 729], the plaintiff is entitled to maintain a suit for title on



CRP.PD.No.5319 of 2024

WEB COPY

the basis of adverse possession. He adds the plea of *res judicata* cannot be a ground for rejection of the plaint.

15. I have carefully considered the submissions of both sides.

16. This is an unique case where on the first point of law, I have to agree with Mr.Sudalaiyandi and on the second point, I have to agree with Mr.Sidharthan.

17. Mr.Sudalaiyandi is absolutely right that a plaint cannot be dismissed as barred by *res judicata*. *Res judicata* is a mixed question of law and fact. For the purpose of applying *res judicata*, a Court must frame an issue specifically to that effect, the pleadings and judgment of the previous proceedings should have been filed before the Court and thereafter, the Court has to find whether the bar under Section 11 operates against it. Needless to add, when it requires evidence, it cannot be ground for rejection of the plaint.

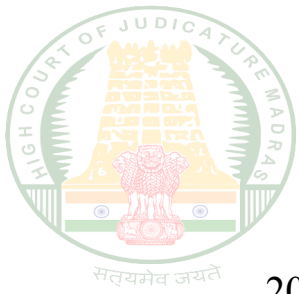


CRP.PD.No.5319 of 2024

WEB COPY

18. Insofar as the second point is concerned, Mr.Sudalaiyandi pleads that he is entitled for declaration by virtue of adverse possession. For the purpose of proving adverse possession, the plaintiff has to plead that he has been in open, hostile and continuous possession of the property to the knowledge of the true owner and the true owner must have kept quiet and must not have raised a little finger for more than a period of 12 years. This is by virtue of Article 64 and 65 of the Limitation Act. The extinguishment of the right of the owner to recover the property by virtue of Article 64 and 65 results in crystallization of the right on the person in occupation by virtue of Section 27 of the Limitation Act.

19. Title by prescription requires a specific plea. I have gone through the plaint. Even the regular mantra of adverse possession has not been taken in the plaint. It has been pleaded for the first time in the counter affidavit.



CRP.PD.No.5319 of 2024

WEB COPY

20. For the purpose of rejection of the plaint, I am not concerned with the counter that has been filed by the plaintiff in the application. At the stage of consideration of a rejection of plaint, a Court has to read the plaint and consider the plaint documents and thereafter come to a conclusion whether the plaint discloses the cause of action at all.

21. A perusal of the plaint reveals that the claim of the plaintiff is based upon title. She traces title through one Singaraj. Previously, Singaraj had transferred the property to her mother and from her mother to herself. All these sale deeds are unregistered documents. In terms of Section 54 of the Transfer of Property Act, a sale can be made only through a registered instrument for a property which has value of more than Rs.100/-. Section 17 of the Registration Act demands that if there is a transfer of any right, title or interest in a property, the sale deed must be registered. If the document is not registered, then under Section 49 of the Registration Act, the document cannot be utilised for the purposes of proving title. Under Section 49(c) of the Registration Act, it cannot be



CRP.PD.No.5319 of 2024

WEB COPY

used as evidence of any transaction affecting an immovable property or conferring any such power.

22. There is a saving clause under proviso to Section 49, which does not prevent an unregistered document, which ought to be registered in terms of Section 17 or in terms of the Transfer of Property Act 1882, from being received as evidence for “collateral purposes”.

23. Reading of the present suit shows that the plaintiff is basing her right on the basis of unregistered sale deeds. It is her claim that Singaraj sold the property by way of unregistered sale deed to her mother and her mother had transferred the property, by way of another unregistered sale deed in her favour. That being the position, the plaintiff is not utilizing the unregistered sale deeds for any collateral purpose, but for the main purpose of proving title. A combined reading of Section 54 of the Transfer of Property Act, Sections 17 and 49 of the Registration Act shows that the plaintiff cannot continue the present proceedings on the

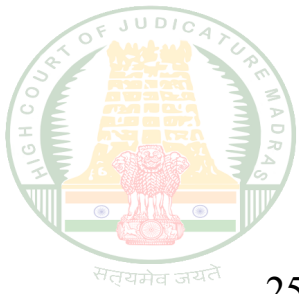


CRP.PD.No.5319 of 2024

WEB COPY

basis of the unregistered sale deeds. The suit does not disclose a cause of action.

24. In addition to the aforesaid facts and circumstances, I also refer to proviso to Section 34 of the Specific Relief Act. A perusal of paragraph No.7 of the plaint shows that the plaintiff feared that the defendant would dispossess her when he came to the property along with the henchman on 06.02.2019. Therefore, the plaintiff ought to have sought for a consequential relief of injunction or a separate relief of injunction. The plaintiff's prayer extracted above shows that it is a suit for mere declaration. Under Section 34 proviso of the Specific Relief Act, no Court can grant declaration when the plaintiff being able to seek for further relief, omits to do so. As the plaintiff has not sought for any other relief other for mere declaration, the suit is barred by virtue of Section 34 of the Specific Relief Act also.



CRP.PD.No.5319 of 2024

WEB COPY

25. In the light of the above discussion, as the suit for title is based on unregistered sale deeds and since there is a bar under Section 34 of the Specific Relief Act, I constrained to interfere with the order passed by the learned trial Judge. The learned trial Judge had committed an error in referring to the pleas which had not been raised in the plaint at all. She had referred to proceeding before the Assistant Settlement Officer of the year 2000, which is conspicuously absent in the plaint.

26. In the light of the above discussion, the Civil Revision Petition succeeds. The order passed by the learned trial Judge in I.A.No.5 of 2024 in O.S.No.1760 of 2019 dated 15.11.2024 is set aside. The suit in O.S.No.1760 of 2019 shall stand rejected. Consequently, connected miscellaneous petition is closed. No costs.

21.01.2025

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
Speaking /Non-Speaking order: Yes/No



WEB COPY



CRP.PD.No.5319 of 2024



CRP.PD.No.5319 of 2024

WEB COPY

To

The IV Assistant City Civil Judge,
Chennai.



WEB COPY



CRP.PD.No.5319 of 2024

V.LAKSHMINARAYANAN J.

kal

C.R.P.(PD) No.5319 of 2024
&
CMP No.29593 of 2024

21.01.2025