



A.S.(MD)No.157 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.01.2025

PRONOUNCED ON:09.04..2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**A.S.(MD)No.157 of 2022
and
C.M.P.(MD)No.5253 of 2023**

V.Durai(died) :Appellant/Defendant

2.D.Valarmathi
3.D.Ashok Chakravarthy
4.D.Arivazhagan : Appellants 2 to 4
(Appellants 2 to 4 are brought
on record as LR's of the deceased
sole appellant vide Court order
dated 02.12.2024 made in
C.M.P.(MD)No.10572 of 2024)

Vs.

V.Kannappan : Respondent/Plaintiff

PRAYER:- Appeal Suit filed under Section 96 r/w Order 41 Rule 1 and 2 of the Code of Civil Procedure against the Judgment and Decree made in O.S.No.113 of 2019, dated 24.02.2022, on the file of the District Court, Karur.



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For Appellants : Mr.S.Rajasekar

For Respondent :Mr.V.Balaji
for Mr.M.Saravanakumar

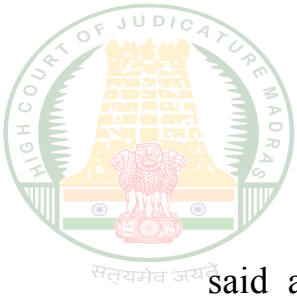
JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.113 of 2019, dated 24.02.2022, on the file of the District Court, Karur.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

3. The case of the plaintiff in short is as follows:

(a) The suit property originally belonged to Tamil Nadu Housing Board. As per the order dated 01.03.1989, the suit property was allotted to the plaintiff. The plaintiff and the Executive Engineer/ Administrative Officer, Trichy Housing Unit, Tamil Nadu Housing Board entered into a lease-cum-sale agreement dated 15.07.1999 and as per the terms of the



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said agreement, the plaintiff – purchaser has already been placed in possession of the suit property and the Head Surveyor, Trichy Housing Unit and the plaintiff have jointly executed Possession Transfer Certificate on 21.01.1991.

(b) Subsequent to the allotment and handing over the possession of the suit property to the plaintiff, the plaintiff's parents were residing in it. The defendant who is the brother of the plaintiff got married in the year 1996 and at that time, he requested the plaintiff to permit him to reside in the suit property from the year 1996 and on that basis, the defendant has been residing in the suit property with the permission of the plaintiff.

(c) The Executive Engineer and the Administrative Officer, Trichy Housing Unit, has executed a registered sale deed dated 02.09.2011 in favour of the plaintiff and as such, the plaintiff has become the absolute and exclusive owner of the suit property. The suit property has been assessed with the property tax in the name of the plaintiff and he has been paying the property tax. The plaintiff has also obtained electricity service connection and has been paying the electricity consumption charges. The plaintiff applied and obtained patta in his favour.



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(d) The defendant, taking advantage that he has been residing in the suit property demanded the plaintiff to sell the suit property to him and since the plaintiff was not amenable for the same, the defendant has been acting against the interest of the plaintiff in respect of the suit property. The plaintiff is now residing at his son's house at Chennai and he has decided to return Karur and live in the suit property. Hence, the plaintiff requested the defendant to vacate the suit property, but the defendant has been evading to do so under one reason or the other and finally, refused to vacate the suit property. The plaintiff has then sent a legal notice dated 01.05.2019 calling upon the defendant to vacate the suit property and deliver the possession of the same on or before the end of June 2019. The defendant having received the notice, sent a reply notice dated 22.06.2019 with false and untenable allegations. Since the permission given by the plaintiff is withdrawn, revoked and terminated, the defendant is not entitled to continue in the suit property and his possession has become illegal and unlawful. Hence, the plaintiff was constrained to file the above suit for recovery of possession of the suit property.



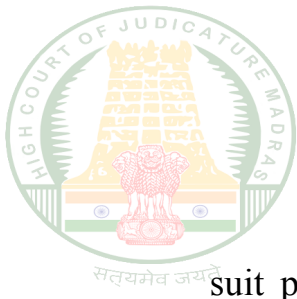
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4. The defence of the defendant in short is as follows:

(a) The property purchased as per order dated 01.03.1989 was allotted to the defendant on 15.07.1999. The defendant, the Executive Engineer/Administrative Officer, Trichy Housing Unit entered into a Lease-cum-Sale Agreement and as per the terms of which the the defendant/purchaser has already been placed in possession of the suit property. The plaintiff was not placed in the possession of the suit property. As per the family arrangement, the defendant alone has paid all the sale consideration to the Trichy Housing Unit. But the plaintiff has never come forward to transfer the suit property in favour of the defendant. The defendant also handed over 30 sovereigns of gold for purchasing the suit property. The plaintiff has never been in possession and enjoyment of the suit property.

(b) The defendant has been living in the suit property with all exclusive rights for the same. The defendant alone has been paying the house tax, water consumption and electricity consumption charges to the



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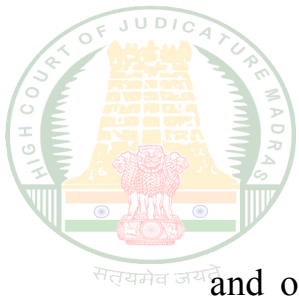
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suit property. There is no oral permission as alleged by the plaintiff. Since the defendant has been in possession and enjoyment of the suit property for more than statutory period, he has perfected his title by adverse possession and also by ouster. The plaintiff had no necessary means to pay the sale consideration. Since the plaintiff being the elder member of the family, the sale deed and patta stand in the name of the plaintiff. There is no question of withdrawing or revoking or terminating the permission as alleged by the plaintiff. Hence, the suit is liable to be dismissed.

5. The learned trial Judge, upon considering the pleadings of both parties, has framed the following issues:

- (1) Whether the plaintiff is entitled for recovery of possession?
- (2) What other relief?

6. During trial, the plaintiff examined himself as P.W.1 and an official from Tamil Nadu Housing Board as P.W.2 and exhibited 6 documents as Exs.A.1 to A.6. The defendant examined himself as D.W.1 and exhibited 10 documents as Exs.B.1 to B.10. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary



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and on hearing the arguments of both sides, has passed the impugned judgment and decree dated 24.02.2022, granting the relief of recovery of possession as prayed for. Aggrieved by the impugned judgment and decree, the defendant has preferred the present appeal.

7. Pending appeal, the sole appellant died and his L.Rs., have got themselves impleaded as the appellants 2 to 4.

8. The points for determination:

(1) Whether the trial Court erred in decreeing the suit when the defendant has produced the receipts for payment of monthly instalments to the Housing Board and receipts for payment of electricity and water consumption charges and more particularly, the plaintiff himself had admitted the continuous possession of the defendant in the suit property from 1996 and as per the family arrangement, the defendant alone is entitled to the suit property and in the absence of any pleadings and materials to show as to when permission / licence was given to the defendant to reside in the suit property?

(2) Whether the trial Court erred in rejecting the plea that the suit for recovery of possession itself is not maintainable?



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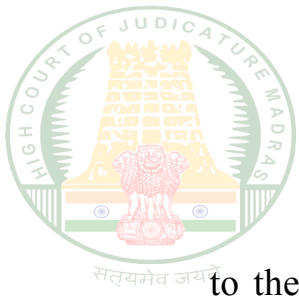
(3) Whether the impugned judgment and decree of the trial Court is liable to be interfered with?

(4) To what other relief, the parties are entitled to?

C.M.P.(MD)No.5253 of 2023:

9. The appellant has filed the above application under Order 41 Rule 27 C.P.C., for reception of additional evidence.

10. The case of the petitioner/appellant is that when the trial was going on, he had become seriously ill, that he suffered with paralysis and also diagnosed with Seizures and Hemiparesis, that the petitioner had fallen down and sustained fracture in the right Femur Bone and was taking treatment at Ramakrishna Hospital and subsequently at Ganga Medical Centre, Coimbatore, that the petitioner due to his medical condition was not able to follow the trial proceedings and more particularly he was not able to search and produce certain documents before the trial Court so as to substantiate his defence, that after recovery he has found out the original application dated 15.02.1988 filed by him



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to the Tamil Nadu Housing Board along with other certain documents, such as payment receipts made towards allotment and subscription of the subject property, that the petitioner has paid the full and final settlement to the tune of Rs.41,118/- to the Tamil Nadu Housing Board in the year 2011, that the petitioner alone has paid for stamp duty and registration expenses for getting the sale deed from the Housing Board, that the above documents are vital documents to establish and substantiate his defence, that the non-production of the said documents before the trial Court is neither wilful nor wanton and that therefore, it has become just and necessary to permit the petitioner to produce the additional evidence.

11. The respondent has filed counter affidavit disputing the petitioner's affidavit averments and further stated that the medical reason was invented for the purpose of maintaining the present frivolous petition at the fag end of the proceedings in order to drag on the appeal so as to prevent the respondent from enjoying the fruits of the decree, that the above petition lacks bonafide and the same has to be dismissed for want of due diligence, that all the documents from Serial Nos.1 to 21 were dated prior to the filing of the suit on 22.08.2019 and the only one document No.22 dated 20.09.2021 is the discharge summary which was



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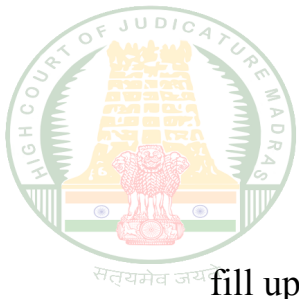
available even before passing of the judgment on 24.02.2022 and the same is totally not relevant and that therefore, the petition is liable to be dismissed.

12. Whether the documents now produced are to be received as additional documents is the point for consideration?

13. Under Rule 27 of Order XLI C.P.C., production of additional evidence, whether oral or documentary is permitted only under three circumstances which are;

-Where (i) the trial Court had refused to admit the evidence, though it ought to have been admitted; (ii) the evidence was not available to the party, despite exercise of due diligence and (iii) the appellate Court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature.

14. It is settled law that additional evidence in appellate Court cannot be produced by a party as of right and that the essentials of Order 41 Rule 27 C.P.C., have to be satisfied. It is pertinent to note that the said provision cannot be used to patch up the weak points in the case and



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fill up the omission in the Court of appeal.

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15. In the present case, the petitioner has produced the application made by the defendant dated 15.02.1988, letter issued by the Tamil Nadu Housing Board calling for participating in the selection lot dated 20.02.1989, receipts for instalment payment made to the Tamil Nadu Housing Board and the property tax receipts, full and final payment made to Tamil Nadu Housing Board, discharge summary issued by the two hospitals and other medical records.

16. The only reason assigned is that since he was not well, he could not search and produce the documents before the trial Court. As rightly contended by the learned Counsel for the plaintiff, all the documents except one discharge summary issued by Ganga Medical Centre, Coimbatore, were dated prior to the filing of the suit, ie., on 22.08.2019 and the discharge summary issued by Ganga Medical Centre was dated 20.09.2021, prior to the passing of the impugned judgment on 24.02.2022. It is pertinent to note that the suit was filed on 22.08.2019 and the judgment came to be pronounced on 24.02.2022. It is not the case of the petitioner/appellant that the documents now sought to be received were not within his knowledge and came to know subsequently.



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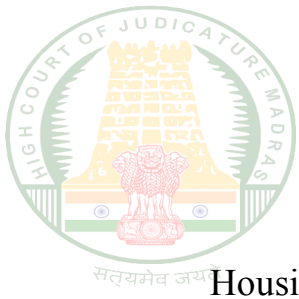
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17. As already pointed out, the defendant during trial, entered into witness box and was subjected to lengthy cross-examination and that he had chosen to produce 10 documents before the trial Court. The defendant has not shown that the above documents are necessary for this Court for pronouncing the judgment or that the documents are required for some other substantial cause of like nature. Since the petitioner has not shown the existence of the conditions required for reception of additional evidence as contemplated under Order 41 Rule 27 C.P.C., the same cannot be received at this stage. Hence, this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed.

Points 1 to 4:

18. The plaintiff's specific case is that he applied and obtained allotment from the Tamil Nadu Housing Board vide order dated 01.03.1989, that the plaintiff and the Executive Engineer/ Administrative Officer, Trichy Housing Unit entered into a lease-cum-sale agreement dated 15.07.1999, that the plaintiff along with the Head Surveyor, Trichy

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Housing Unit, has executed Possession Transfer Certificate dated 21.01.1991 and that thereafter the Executive Engineer/Administrative Officer, Trichy Housing Unit has executed the sale deed dated 02.09.2011 and as such he has become the absolute owner of the suit property. According to the plaintiff, after allotment and possession of the suit property, he permitted his parents to reside in the suit property and that since the defendant got married in the year 1996, as per the requisition of the defendant, he permitted them to reside in the suit property and that only on the basis of the permission granted by the plaintiff, the defendant has been in possession and enjoyment of the suit property.

19. The plaintiff has produced Possession Transfer Certificate dated 21.01.1991 and the sale deed executed by the Executive Engineer and the Administrative Officer, Trichy Housing Unit dated 02.09.2011 which are admittedly, stand in the name of the plaintiff. It is the further case of the plaintiff that patta came to be issued in his favour, that he has been paying the property tax and that the plaintiff alone had obtained electricity and water service connections. Admittedly, patta in respect of the suit property, property tax assessment, electricity and water service



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connection stand in the name of the plaintiff.

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20. The defendant has raised two main pleas and the first one is that as per the family arrangement, the defendant alone had paid all the sale consideration to the Housing Board and the plaintiff being the elder member of the family, documents were taken in his name and that subsequently, the plaintiff has failed to transfer the suit property in favour of the defendant. It is the further case of the defendant that he alone sold 30 sovereigns of gold jewels to purchase the suit property and that he alone is having title over the suit property. The next plea advanced by the defendant is that since he has been in possession and enjoyment of the property for more than 23 years, he has perfected his title by adverse possession and ouster.

21. The defendant in his evidence would categorically admit that all the documents in respect of the suit property which came to be produced by the defendant himself stand in the name of the plaintiff. Though the defendant has alleged some family arrangements, he has not elaborated anything further. The defendant has not even furnished the date on which and before whom the family arrangement was entered into



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and the manner in which the same was given effect to.

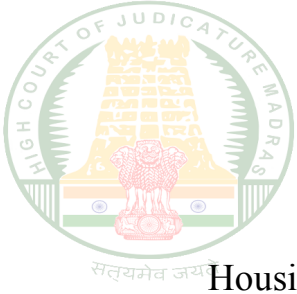
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22. The defendant as D.W.1 in his cross-examination would say,

“நான் சொல்லக்கூடிய குடும்ப ஏற்பாடு எந்த ஁ததில் நடைபெற்றது என்றால் எந்த ஁ததி என்று சொல்ல முடியாது. ஁ரு புரிதலின் (understanding) அடிப்படையில்தான் அவ்வாறு சொல்கிறேன். குடும்பத்தில் முத்தவர் என்ற முறையில் வாதி பெயரில் வீடு வாட்கியதாக சொல்லியுள்ளேன் என்றால் சரிதான்.”

Even according to the defendant, their parents were alive at the relevant point of time and as such, the contention that the allotment was taken in favour of the plaintiff being the elder member of the family cannot be accepted. Moreover, the defendant has not given particulars with regard to the terms of family arrangement arrived at between the parties.

23. As rightly observed by the learned trial Judge, if there is really a family arrangement and that the defendant was paying the instalments, then he would have approached the Tamil Nadu Housing Board to transfer the allotment order in his name or in case if the family arrangement was made after the allotment order, the defendant would have approached the Tamil Nadu Housing Board for changing the allotment in his favour or that he would have approached the Tamil Nadu



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Housing Board to execute the sale deed in his favour. But admittedly, the defendant has not done anything. Though the defendant has alleged that he sold 30 Sovereigns of gold to purchase the property, he has not elaborated anything further. In cross-examination he would say

“தாவாச்சோத்தை வாங்குவதற்காக என் மனைவியின் 30 சவரன் நகைகளை விற்ப்பு தாவாச்சோத்திற்கு பணம் செலுத்தினன் என்று சொல்லும்பாது இ எந்த உத்தியில் எவ்வளவு நகைகளை விற்ப்பு பணம் செலுத்தினன் என்று என்னுடைய பிரமாணவாக்குமுலத்திலா இ எதிர்வழக்குரையிலா சொல்லவில்லை என்றால் சரிதான்.”

24. The defendant has claimed to have paid the entire sale consideration but has not provided any evidence to support this claim. Despite alleging that the plaintiff lacked funds and he had the means, the defendant has not furnished any proof. Moreover, even if true, the parties' financial capacity doesn't determine title to the suit property.

25. Although the plaintiff admitted the defendant's possession of the suit property since 1996 and payment of electricity charges, the defendant claimed title through adverse possession and ouster. However, it is settled law that long possession does not automatically imply



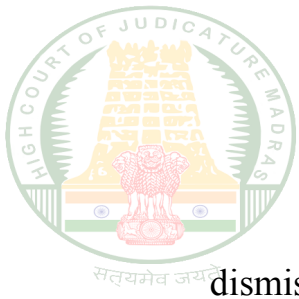
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adverse possession. Adverse possession requires hostile possession, expressly or impliedly denying the true owner's rights.

26. Another crucial aspect is that a person claiming adverse possession must admit another's title to the suit property. The Hon'ble Apex Court has reiterated in a catena of decisions that pleas of title and adverse possession cannot be advanced simultaneously, as both pleas are mutually inconsistent, and the latter does not begin to operate until the former is renounced. In the present case, the defendant has claimed title to the suit property based on family arrangement and payment of entire sale consideration, while also claiming adverse possession due to long possession. Since both pleas are mutually inconsistent, the defendant's defence cannot be sustained.

27. As rightly observed by the learned trial Judge, the plaintiff having proved his title to the suit property and revoked the permission, the defendant is liable to hand over possession of the property to the plaintiff and as such, there is nothing to interfere with the reasoned judgment of the learned trial Judge. Consequently, this Court concludes that the Appeal Suit is devoid of merits and the same is liable to be



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dismissed. Considering the other facts and circumstances and also taking note of the defence taken by the defendant, this Court decides that the appellant must be mulcted with costs.

28. In the result, the Appeal Suit is dismissed with costs confirming the judgment and decree passed in O.S.No.113 of 2019, dated 24.02.2022, on the file of the District Court, Karur. Time for delivery of possession is two months. C.M.P.(MD)No.5253 of 2023 is also dismissed.

09.04.2025

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

SSL

To

1. The District Court, Karur.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

A.S.(MD)No.157 of 2022

09.04.2025