



A.S.No.195 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2026

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

A.S.No.195 of 2023

and

C.M.P.No.7952 of 2023

Yasoda

... Appellant

Vs.

1. Joseph Cyril

2. Vanitha Cyril

3. M.S. Sivakumar (since deceased)
Managing Director,
M/s. Hygrevar Home and Hearth Ltd.,
33/1C, Sindhur Prestige Point,
I Main Road, Kasturba Nagar,
Adyar, Chennai – 600 020. (set *ex parte*)

... Respondent

Prayer : Appeal filed under Section 96 r/w. Order 41 Rule 1 of the Code of Civil Procedure against the judgment and decree dated 28.04.2022 passed in O.S.No.4226 of 2020 on the file of the XVII Additional City Civil Court, Chennai.



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For Appellant : Mr.Guru Dhananjay
For R1 and R2 : Mr.P.B.Sampath Kumar
R3 : Died

J U D G M E N T

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Aggrieved over the judgment and decree passed by the learned XVII Additional Judge, City Civil Court, Chennai, in O.S.No.4226 of 2020, dated 28.04.2022, declaring the title of the plaintiff and granting a decree of recovery of possession, the 2nd defendant in the suit has filed the above Appeal.

2.For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3.The plaintiffs are husband and wife. It is the case of the plaintiffs that they have purchased the suit property, which is a vacant land, by virtue of sale deed dated 22.10.2003 from one Dr.Saifinaaz and Mr.Habib Mirza Altaf Hussain. Later, the plaintiffs entered into a construction agreement,



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dated 07.10.2004, with the 1st defendant engaged by the owners of the property. The 1st defendant agreed to construct a flat having super built up area of 1200 sq.ft. in the First Floor. The construction of the flat was completed in the middle of 2005 and possession was handed over to the plaintiffs at the end of 2005. The 2nd defendant was working as Marketing Manager in the Company run by the 1st defendant. She had developed a good rapport with the plaintiffs. After the plaintiffs got possession of the flat, the 2nd defendant requested the plaintiffs in the month of January, 2006, to permit her to occupy the flat, as her mother, who was a chronic cancer patient, was taking treatment at Cancer Institute, Adyar. She also promised to vacate and hand over the flat after completion of the treatment of her mother. The plaintiffs permitted the 2nd defendant to occupy the premises on sympathetic grounds till September, 2006. When the plaintiffs demanded the possession of the flat at the end of September, 2006, the 2nd defendant requested them to extend the time till December, 2006, as her mother was still in the hospital. The mother of the 2nd defendant died on 22.01.2007. However, the 2nd defendant has not vacated the premises. On the contrary, the 2nd defendant filed a suit in O.S.No.6305 of 2007 on the file of the XII Assistant City Civil Court, Chennai, against the 1st plaintiff and 1st defendant



for permanent injunction restraining them from evicting her without following due process of law. The said suit was dismissed after trial and the Appeal filed by the 2nd defendant was also dismissed. Hence, the plaintiffs have filed the present suit for declaration of title and for recovery of possession of the suit property.

4.The 1st defendant remained *ex parte* before the trial Court.

5.It is the contention of the 2nd defendant that she was working as Marketing Manager in the 1st defendant Company. The plaintiffs approached the Company for booking a flat in one of the project at 4th Main Road, Gandhi Nagar and advanced a sizeable amount in the year 1999-2000. As the plaintiffs were not satisfied with the project, they expressed their dissatisfaction and wanted to cancel all the transactions with the said Company. The Company, which was represented by the 1st defendant as Managing Director, also agreed and assured the plaintiffs to return back the amounts given by the plaintiffs. Accordingly, the 1st defendant had returned the 1st installment of Rs.15 Lakhs in the month of December, 2006, to the plaintiffs, which was also received by the plaintiffs. Further, it is the



contention of the 2nd defendant that the suit property stands in the name of M.S.Sivakumar in his individual capacity. The flat was also mortgaged with the Canara Bank and the 2nd defendant stood as guarantor for the loan availed by the 1st defendant in the year 2002. Besides, the 1st defendant had also borrowed loan from third parties. The 1st defendant had also availed loan of Rs.12 Lakhs from the 2nd defendant's father. As the 1st defendant could not repay the loan amount, the 1st defendant permitted the 2nd defendant to occupy the flat as a security to the loan amount. Accordingly, the 2nd defendant took possession of the property, renovated and refurnished the same, and thereby, she is in possession of the property. As the 1st defendant could not pay the salary to the 2nd defendant nor repay the loan amount, the 2nd defendant continues to be in the possession of the property. Hence, according to the 2nd defendant, the contention of the plaintiffs that they have permitted her to occupy the premises, is not correct and therefore, disputed their claim.

6. Based on the pleadings of the parties, the trial Court has framed the following issues :

(1) *Whether the plaintiffs are entitled for declaration that they are*



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the owners of the suit property ?

(2) Whether the plaintiffs are entitled for recovery of possession as prayed for ?

(3) Whether the plaintiffs are entitled for damages as prayed for ?

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

7.On the side of the plaintiffs, the 1st plaintiff was examined as P.W.1 and Exs.A1 to A4 were marked. On the side of the defendants, the 2nd defendant was examined as D.W.1 and Exs.B1 to B18 were marked.

8.The trial Court, on appreciation of evidence and materials on record, by its judgment and decree dated 28.04.2022, decreed the suit for declaration and recovery of possession and granted two months' time for delivery of possession.

9.Aggrieved over the decree and judgment of the trial Court, the 2nd defendant has filed the above Appeal.

10.The main contention of the learned counsel for the appellant/2nd defendant is that the 2nd defendant was employed under the 1st defendant.



Besides, when the 1st defendant failed to repay the loan availed from the Canara Bank, the 2nd defendant stood as guarantor. That apart, the 1st defendant also availed a loan of Rs.12 Lakhs from the 2nd defendant's father. In lieu of the said loan, as security, the 2nd defendant was inducted into the suit property. Further, it is the contention of the learned counsel that the plaintiffs are said to have purchased the property from the Power Agents of Sivakumar on behalf of the 1st defendant Company, however, the property stands in the name of Sivakumar in his individual capacity. Therefore, the trial Court, decreeing the suit, is not proper.

11. Whereas, the learned counsel for the respondents 1 and 2/plaintiffs would submit that the transfer of the property in the name of the plaintiffs is not disputed. But the only contention of the 2nd defendant is that she was in permissive possession under the 1st defendant. In such view of the matter, since the plaintiffs became the absolute owners of the property by virtue of the sale deed dated 22.10.2003 (Ex.A1) and the suit has been filed within the period of limitation, the plaintiffs are entitled to declaration of title and recovery of possession, and therefore, according to him, the trial Court has rightly decreed the suit.



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12. In the light of the above submissions, the points that arise for consideration in this Appeal are as follows :

1. *Whether the appellant/2nd defendant can dispute the title of the plaintiffs on the basis that she was inducted into possession with permission ?*
2. *To what relief, the parties are entitled ?*

Point No.(1) :

13. The suit property (vacant site) was originally purchased by the plaintiffs under Ex.A1. Later, a construction agreement was entered into between the plaintiffs and the 1st defendant Company under Ex.A2. It is the contention of the plaintiffs that, after construction of the flat, they got possession of the property; the 2nd defendant developed good rapport with the plaintiffs and requested them to permit her to occupy the flat on the ground that her mother was not well and taking treatment; therefore, the plaintiffs have allowed the 2nd defendant to reside in the flat; however, as the 2nd defendant did not vacate the flat even in the month of December, 2006, the present suit came to be filed. Whereas, it is the contention of the 2nd defendant that she was working under the 1st defendant and she also stood as



guarantor to the 1st defendant while the 1st defendant availed a loan from Canara Bank; that apart, the 1st defendant has also borrowed loan of Rs.12 Lakhs from her father and as a security to the said loan, the 2nd defendant was given permission to reside in the flat; hence, she continues to reside in the flat only with the permission given by the 1st defendant.

14.Be that as it may. The fact remains that the 2nd defendant is only in permissive possession and she has not set up any title to the property. Only with the permission, whether it be from the plaintiffs or the 1st defendant, the 2nd defendant is in possession of the flat. This aspect has been clearly admitted in the pleadings itself.

15.From Ex.A1 (sale deed dated 22.10.2003), it is seen that the plaintiffs have purchased 262 sq.ft of vacant land out of 3 Grounds and 440 sq.ft of total land. Later, they have also entered into a construction agreement with the 1st defendant, dated 07.10.2004, under Ex.A2. The construction agreement was entered into in respect of 1200 sq.ft. super built up area. It is the specific case of the plaintiffs that the flat has been constructed and has been handed over to them. The very construction



agreement is also not disputed by the 2nd defendant. It is the only contention of the appellant/2nd defendant that she was permitted to reside in the property by the 1st defendant as security for the loan advanced by her father. The fact remains that the construction agreement came to be executed on 07.10.2004. Later, the construction of the flat has been completed in the year 2005. This fact also has not been disputed. The entire cross-examination of D.W.1 (2nd defendant) also clearly shows that, even the 1st defendant did not claim any right over the suit property. The suit property has been sold to the plaintiffs by one Sivakumar who is the Managing Director of the 1st defendant Company.

16.A contention has been raised by the 2nd defendant that the said Sivakumar has purchased the property in his individual capacity and therefore, he could not have sold the same to the plaintiffs in the name of the Company. It is relevant to note that it is not the case of the 1st defendant that he is the owner of the property. Having not laid any claim over the property, in fact, he has remained *ex parte* in the suit.



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17. Admittedly, the 2nd defendant is in permissive possession. According to her, it is only with the permission of the 1st defendant. Even assuming that she is occupying the premises with the permission of the 1st defendant, the fact remains that the property has now been transferred in the name of the plaintiffs. They have become the absolute owners of the property from the year 2003 onwards. The construction of the flat has also been completed. The evidence of Sivakumar was recorded in the earlier suit in O.S.No.6305 of 2007, which has been filed by the 2nd defendant as Ex.B18. Admittedly, Sivakumar has now died. Therefore, the said evidence has been filed to show as if the 2nd defendant was inducted into possession by the 1st defendant. But in his entire evidence, the said Sivakumar has disputed that he has received an amount from the 2nd defendant's father. Even he denied the suggestion that he has permitted the 2nd defendant to occupy the premises towards the loan borrowed by him. Therefore, the contention of the 2nd defendant that, only towards the loan she was permitted to reside in the property, has not been established.



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18.Now, the fact remains that the property has already been transferred under Ex.A1 and the title is in the name of the plaintiffs. The 2nd defendant came into possession in the year 2006, even according to her pleadings. The present suit has been filed within a period of 12 years, i.e., within the period of limitation. As the appellant/2nd defendant has no other defence except the permission said to have been granted by the 1st defendant, the plaintiffs, being the absolute owners of the property, are certainly entitled to declaration of title and recovery of possession. Therefore, the appellant/2nd defendant cannot dispute the title of the plaintiffs. Accordingly, ***Point No.(1) is answered in favour of the plaintiffs.***

19.Further, while admitting the Appeal and granting stay, this Court had directed the appellant/2nd defendant to deposit a sum of Rs.25,000/- per month from the month of July, 2023, and directed the amount to be deposited on or before 10th of every succeeding month to the credit of the suit. It is now stated that the amount is being deposited regularly. In such view of the matter, the plaintiffs/respondents 1 and 2 are entitled to withdraw the said amount on making proper application before the trial Court. ***Point***



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No.(2) is answered accordingly.

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20.In view of the above discussion, we do not find any merit in this Appeal. Accordingly, **this Appeal is dismissed with costs.** Consequently, connected miscellaneous petition is closed.

21.At this juncture, the learned counsel for the appellant would request this Court to grant eight weeks' time to the appellant to vacate the premises. Acceding to his request, eight weeks' time is granted for vacating and handing over vacant possession to the plaintiffs.

(N.S.K., J.) (R.S.V., J.)
09.02.2026

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Internet : Yes
Index : Yes / No
Speaking Order / Nonspeaking order
Neutral Citation : Yes

To

1.The XVII Additional Judge,
City Civil Court,
Chennai.

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and
R. SAKTHIVEL, J.

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2.The Section Officer,
VR Section,
High Court, Madras.

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