



THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 06.11.2025

Judgment pronounced on : 09.01.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.580 of 2022
and CMP. No.22209 of 2022

G.Muruganandam

..Appellant

Vs.

T.A.Danasekaran

..Respondent

Prayer: Appeal Suit filed under Section 96 and Order XLI, Rule 1 of CPC to set aside the Judgment and Decree dated 05.04.2022 passed in O.S. No.71 of 2018 by the II Additional District Judge, Ranipet.

For Appellant : Mr.P.G.Thiyagu

For Respondent : Mr.B.Vijay for
Mr.G.Mohammed Aseef

JUDGMENT

The unsuccessful defendant in a suit for recovery of possession is the appellant, in this first appeal.

2. PLEADINGS:



2.1.PLAINT IN BRIEF:

The plaintiff is the owner of the suit property. The defendant is an unauthorized tenant who had taken the property for occupation on a temporary basis. The defendant has entered into a sale agreement based on fabricated documents. The defendant filed a suit for specific performance in O.S. No.26 of 2009 before the District Court, Vellore. The said suit was transferred to the Second Additional District Court, Ranipet, Vellore and renumbered as O.S. No.1 of 2011 and the defendant did not come forward to contest the suit and the suit came to be dismissed on 17.09.2012. The defendant did not vacate despite the dismissal of the suit. The plaintiff was constrained to issue a lawyers' notice on 31.03.2018, calling upon the defendant to vacate and also pay damages. As the defendant did not comply with the demands made in the lawyer's notice, the suit has been filed.

2.2. WRITTEN STATEMENT IN BRIEF:

The defendant entered into a sale agreement with the plaintiff on 23.04.2008 for a total sale consideration of Rs.15 lakhs and on the date of agreement, an advance of Rs.51,000/- had been paid. Subsequently, the defendant advanced further monies and Rs.7,01,000/- in all, has been paid and pursuant to the agreement, possession was handed over by the plaintiff to the defendant. It is true that the suit filed by the defendant for specific performance



was dismissed and the attempts to have the decree set aside were also unsuccessful. However, the defendant has been in continuous possession and enjoyment of the suit property for more than 12 years and has therefore, perfected his title by way of adverse possession and the defendant therefore, prayed for dismissal of the suit.

2.3.ISSUES FRAMED BY THE TRIAL COURT:

- 1. Whether the plaintiff is the absolute owner of the suit property?*
- 2. Whether the defendant is in unlawful possession of the suit property?*
- 3. Whether the plaintiff is entitled to the relief of declaration and recovery of possession as prayed for?*
- 4. Whether the plaintiff is entitled to recover Rs.2,88,000/- from the defendant as damages for use and occupation of the property from 15.07.2015 to 31.06.2018 with interest as prayed for?*
- 5. Whether the plaintiff is entitled for recovery of Rs.8,000/- per month from July 2018 till the date of delivery of possession with interest from the defendant as mesne profits?*
- 6. Whether the plaintiff is entitled get the relief of permanent injunction?*
- 7. Whether the defendant has perfected his titled by way of adverse possession?*
- 8. To what cost and other relief the plaintiff is entitled?*

2.4. TRIAL:

At Trial, the plaintiff has examined himself as P.W.1 and marked Exs.A1 to Ex.A9 and on the side of the defendants, the defendant himself examined as D.W.1 and one Jeyakumar as D.W2 and Ex.B1 to Ex.B10 were marked. Ex.A5



to Ex.A9 were marked through D.W1, in cross examination,

2.5. FINDINGS AND DECISION OF THE TRAIL COURT:

The Trial Court answered the issues in favour of the plaintiff and partly decreed the suit granting relief of possession, declaration and injunction while, declining the relief for damages.

3.I have heard Mr.P.G.Thiyagu, learned counsel for the appellant and Mr.B.Vijay, learned counsel for Mr.G.Mohammed Aseef, learned counsel for the respondent.

4. THE CONTENTIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:

4.1.Mr.P.G.Thiyagu, learned counsel for the appellant would submit that even though the suit for specific performance filed by the defendant had been dismissed and the issue had become final in 2012, the plaintiff did not file the present suit for seeking recovery of possession for almost six years thereafter. He would therefore contend that the possession which was given to the defendant under the sale agreement had become adverse to the interest of the plaintiff and admittedly the defendant is in possession for more than 12 years and therefore, his possession has ripened into a right, conferring protection in



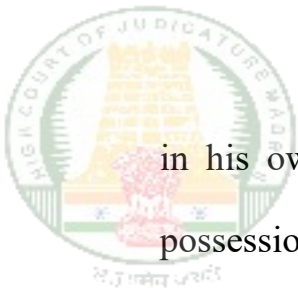
view of law of adverse possession.

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4.2. He would also submit that there is absolutely no justification on the part of the respondent/plaintiff to contend that the sale agreement was fabricated since even though the respondent/plaintiff claimed that the petitioner is a tenant, the same was not established in the Civil Suit and taking me through the lawyer's notice issued prior to the filing of the suit as well, Mr.P.G.Thiyagu would contend that it is the categorical case of the respondent that the appellant is only a tenant. He would also state that Ex.A5 to Ex.A9 were marked only in cross examination and in the light of the above, it is not open to the respondent to even contend that the agreement is fabricated as the document is produced on the side of the plaintiff himself. He would further state that the defendant is willing to vacate, if the advance of Rs.7,01,000/- is refunded to the appellant since even the decree for damages has been rejected by the Trial Court.

5. THE CONTENTION OF THE LEARNED COUNSEL FOR THE RESPONDENT:

5.1. Per contra, Mr.B.Vijay, learned counsel for the respondent would submit that by no stretch of imagination, the defence raised in the written statement would entitle or blossom into a plea of adverse possession for the simple reason that the defendant has never asserted right or title to the property



in his own name. The mere fact that the defendant has been in continuous possession and enjoyment will not clothe him with any protection, taking shelter under law of adverse possession. He would further state that for 17 long years the appellant has been enjoying the suit property without paying a single penny to the respondent/plaintiff.

5.2.He would further state that as regards the request for refund of advance, firstly, Mr.Vijay would contend that the payments have been disputed at trial and consequently, the defendant has not proved such payments and secondly, there is not even a counter claim filed the suit for seeking refund of the alleged advance and in such circumstances, Mr.Vijay would contend that there is absolutely no justification for even making a request now, for refunding the alleged advance amount of Rs.7,01,000/-.

5.3. In support of his contention Mr.Vijay, learned counsel would also rely on the decisions of this Court in *M.Subbiah Vs. T.Subbiah (dead)*, reported in, 2009 (1) CTC 366, as well as the decision of this Court in *R.Muthamizhselvan Vs. Govindarajulu and others*, in AS.Nos.538 & 539 of 2016, dated 10.09.2025. Mr.Vijay, learned counsel for the respondent would pray for dismissal of the appeal and a direction to be issued to the appellant to vacate and hand over vacant possession of the suit property within a specific



time period.

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6. I have carefully considered the submissions advanced by the learned counsel on either side.

7. POINTS FOR CONSIDERATION:

Taking into account the nature of the pleadings before the Trial Court, the oral and documentary evidence adduced by the parties and decision of the Trial Court and the grounds of appeal and the arguments of the learned counsel on either side, I proceed to frame the following points for consideration:

(i) Whether a tenant or an agreement holder who is put in possession is entitled to plead adverse possession as a defence, in a suit for recovery of possession?

8. The following facts are not in dispute:

(i) The defendants projected a sale agreement with the plaintiff for a total sale consideration of Rs.15,00,000/-.

(ii) On the date of agreement Rs.51,000/- was paid as advance.

(iii) Further advances were made by the defendant and in all, a total advance of Rs.7,01,000/- had been paid.

(iv) The suit for specific performance filed by the defendant came to be dismissed and the same has attained finality.



(v) Despite notice calling upon the defendant to vacate, the defendant has not vacated the suit property which has resulted in filing of the present suit.

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9. During trial, the parties have entered into the witness box and put forth their respective cases. Though in the pre-suit notice, the plaintiff has claimed that the defendant was a tenant and pending tenancy, the sale agreement has been entered into, that plea was virtually given up while filing the suit. In the plaint, the plaintiff contends that the defendant took the property temporarily for his occupation and it was only in furtherance of the sale agreement and therefore, the defendant was termed as an unauthorized tenant. The case of the defendant is that his possession was only under the sale agreement and never as a tenant. The only defence that was taken by the defendant is that having been in possession and enjoyment of the suit property for more than 12 years, the defendant has perfected his title by adverse possession and the plaintiff has lost his right to recover possession of the property.

10. The defendant has not been able to establish hostile and adverse title to the interest of the plaintiff. Mere long and continuous possession, even if it is beyond the period of 12 years, will not confer any right or protection to such person in possession. It is fundamental that in order to succeed in a defence of adverse possession, the person claiming protection should establish open,



continuous and also hostile enjoyment of the property, to the knowledge of the person having lawful right and title. It was never the cases of the defendant that his enjoyment has been hostile. In fact, this Court in *M.Subbiah's* case (referred herein supra), has clearly laid down that a person in possession of the property pursuant to an agreement of sale can never plead adverse possession and his possession is only permissive and derivative. In *R.Muthamizhselvan's* case (referred herein supra), it has been held that a person inducted into possession under a sale agreement can only be a permissive occupant and such possession will never become adverse as against the owner of the property. Both these decisions would squarely apply to the facts of the present case.

11. Coming to the request of the learned counsel for the appellant Mr.P.G.Thiagu for refund of advance, I am unable to entertain such request for the following reasons. Firstly, the suit for specific performance was not prosecuted diligently and the same came to be dismissed for non prosecution. The plaintiff has failed to establish the payments allegedly made to the tune of Rs.7,01,000/-. Secondly, there is no counter claim seeking refund of said sum of Rs.7,01,000/- even in the present suit. In view of the above, it is not open to the appellant to even seek for such a relief of refund of the advance amount. Even in equity, I find that the appellant has been in possession of the property for nearly 17/18 years and has not paid a single rupee to the respondent/landlord,



towards use and occupation, either as rents or damages. Considering the above, even assuming without admitting that the appellant had paid Rs.7,01,000/- as advance and the entire amount has been accounted, it can at best be adjusted as against payment for use and occupation, even if a very nominal per month rate is applied for damages towards use and occupation of the property.

12. In the light of the above, viewed from any angle, the appellant is not entitled to any relief. Point for consideration is answered against the appellant. The decree of the Trial Court is confirmed. The appellant shall vacate and hand over the vacant possession of the tenanted suit property by end of March, 2026.

13. In fine, the Appeal Suit is dismissed. Connected Miscellaneous Petition is also dismissed. No costs.

09.01.2026

Neutral Citation Case : Yes

Internet: Yes

Index : Yes

To

1. The II Additional District Judge, Ranipet.

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



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P.B.BALAJI.J,

rkp

Pre-delivery judgment made in
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