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S.A.No.10 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.10 of 2022
and CMP.No.227 of 2022

Ravichandran

... Appellant

vs.

1.Jayaraman
2.Thirunavukarasu
3.Govindaraj
4.Prakasam
5.Kannan
6.Papathi
7.Rajendran

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 29.09.2021 made in A.S.No.25 of 2018 on the file of the Sub Court, Tiruvarur reversing the Judgment and Decree dated 11.01.2018 made in O.S.No.24 of 2016 on the file of the District Munsif Court, Tiruvarur.

For Appellant : Mr.J.Nandagopal
for J.Jyothi

For Respondents :Mr.S.Angamuthu
for M/s.D.Prabu
for R2 to R5
R1 and R6 – died



J U D G M E N T

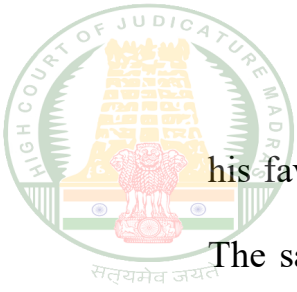
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The unsuccessful first defendant is the appellant.

2. The respondents 1 to 5 filed a suit for recovery of possession against the appellant/first defendant and other respondents/defendants 2 and 3. The suit was dismissed by the trial Court, the First Appeal filed by plaintiffs was allowed by the First Appellate Court and the suit was decreed. Challenging the same, the first defendant has come before this Court.

3. According to the respondents 1 to 5/plaintiffs, the suit property belongs to father of the plaintiffs, second defendant and one Sundarambal, mother of 3rd defendant namely Rathinam Pillai. Even during the life time of Rathinam Pillai, the suit item 1 was given to 1st plaintiff for cultivation and suit item 2 was given to the 2nd plaintiff for cultivation. During the year 1988, the plaintiffs 1 and 2 received a sum of Rs.4,000/- from the 1st defendant and allowed him to cultivate the suit property in lieu of interest for the said amount. In the year 2004, the plaintiffs 1 and 2 offered to repay the amount and requested 1st defendant to hand over possession of the suit property. However, the 1st defendant with evil intention claimed that the plaintiffs 1 and 2 executed a sale agreement in respect of the suit property in

2/10



his favour and filed a suit for specific performance in O.S.No.217 of 2004.

The said suit was dismissed by the trial Court on 25.03.2013. The appeal filed by the first defendant in A.S.No.17 of 2013 on the file of Subordinate Court, Thiruvavarur was also dismissed on 28.08.2014. Challenging the said findings, the first defendant did not file any second appeal.

4. The original owner of the suit property Rathinam Pillai died leaving behind the plaintiffs, second defendant and mother of the 3rd defendant as his legal representatives. Since the defendants 2 and 3 failed to join the plaintiffs, the instant suit has been filed by the plaintiffs arraying them as defendants 2 and 3. The plaintiffs further stated that the possession of the first defendant is unlawful one and hence sought for recovery of possession.

5. The first defendant filed a written statement and claimed that the plaintiffs 1 and 2 executed a sale agreement in his favour, after receiving a sale consideration of Rs.9,500/- and handed over possession of the suit property to him.



6. It was stated that though the specific performance suit filed by the first defendant was dismissed by the trial Court as well as First Appellate Court, the first defendant preferred second appeal and the same was pending. In such circumstances, the present suit before disposal of the second appeal was not maintainable.

7. The first defendant denied the averment in the plaint as if plaintiffs received Rs.4,000/- from the first defendant and handed over possession of the suit properties to him to enjoy the same in lieu of interest.

8. It was also stated that any lis pertaining to mortgage shall be by way of registered documents. In the absence of registered documents, the allegation by the plaintiffs cannot be acceptable. The first defendant also raised a plea that he has been in possession and enjoyment of the suit property from the year 1988 and therefore the present suit is barred by limitation.

9. Before the trial Court, the plaintiffs 1, 2 and 5 have been examined as PW.1 to PW.3 on their behalf, the six documents were marked as Exs.A1 to A6. Though the defendants filed a written statement, subsequently they were set ex-parte and hence there was no evidence on their side.



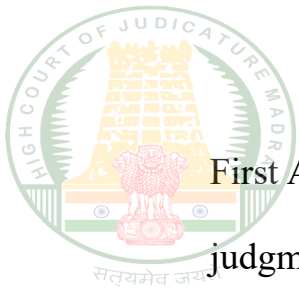
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10. The trial Court on consideration of oral and documentary evidence let in by the plaintiffs dismissed the suit on the ground that it was barred by limitation. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.25 of 2018 on the file of Subordinate Court, Thiruvarur. The First Appellate Court found that the suit was well within the limitation and reversed the findings of the trial Court, as a necessary consequence, the appeal was allowed and the suit was decreed, granting decree for recovery of possession. Aggrieved by the same, the first defendant has come before this Court.

11. The learned counsel appearing for the appellant would submit that even as per the admitted case of the plaintiffs, the first defendant has been in possession and enjoyment of the suit property from the year 1988 and therefore, the present suit filed in the year 2016 is hopelessly barred by limitation.

12. From the pleadings of the parties and also the documentary evidence let in by the plaintiffs, it is clear, the first defendant earlier filed a suit for specific performance and the said suit was dismissed as seen from Exs.A3 and A4 judgment and decree passed in O.S.No.217 of 2004. The

5/10



First Appeal filed by the first defendant was also dismissed as seen from the judgment and decree passed in A.S.No.17 of 2013 which were marked as Exs.A5 and A6. Therefore, it is clear that the first defendant admitting the title of the plaintiffs over the suit property claimed right under sale agreement allegedly executed by the plaintiffs 1 and 2. The 1st defendant as a person claiming right under sale agreement cannot raise a plea of hostile possession, as possession under agreement is treated as a permissive possession.

13. In the case on hand, the plea raised by the first defendant that he was agreement holder under plaintiff's 1 and 2 was negated by the trial Court as well as the First Appellate Court. Even though it was stated in the written statement that the first defendant preferred second appeal, challenging the dismissal of his specific performance suit, no material has been produced before the Courts below. Therefore, the findings rendered in the specific performance suit filed by the first defendant had attained finality.

14. It is settled law that in a suit for recovery of possession based on title, limitation starts from the date on which the possession of the defendants becomes adverse to the plaintiff. In the case on hand, in view of



the averment raised in the earlier suit, the first defendant admitted title of plaintiffs 1 and 2. Hence, there is no dispute with regard to the title of the plaintiffs to maintain the suit. Therefore, based on the title, the plaintiffs are entitled to recover possession, unless the defendants are able to prove adverse possession.

15. The First Appellate Court observed that the first defendant issued a legal notice on 14.06.2004 claiming right under sale agreement allegedly executed by plaintiffs 1 and 2. Even assuming the date of legal notice was taken as the starting point of hostile possession, the suit has been filed within time on 12.02.2015. Therefore, the First Appellate Court came to the conclusion that the suit was very well within time.

16. It is pertinent to mention that claiming possession under sale agreement cannot be treated as hostile possession. Therefore, the date of legal notice issued by the first defendant could not be treated as starting point for limitation as far as relief of recovery of possession is concerned. As pointed out by the First Appellate Court, even assuming it was taken as a starting point for limitation, the suit was filed within limitation period on 12.10.2015.



17. In such circumstances, the First Appellate Court rightly came to the conclusion that the suit claim is not bared by limitation and reversed the findings of the trial Court on the question of limitation.

18. I do not find any legal error in the conclusion of the First Appellate Court and find no substantial question of law arisen for consideration. Accordingly, the second appeal stands dismissed. Consequently, the connected civil miscellaneous petition is closed. No costs.

15.04.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

- 1.The Sub Court, Tiruvarur.
- 2.The District Munsif Court,
Tiruvarur.



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S.SOUNTHAR, J.

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