

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM.

PRESENT: SELVI. M.S. Varalakshmi, B.A., B.L.,
District Munsif, Madurantakam.

Friday the 15th day of February 2019.

I.A. No. 674/2018

in

O.S. No. 305/2012.

1. Munusamy Reddiar (Died)
2. M. Rajendiran Reddiar
3. M. Santhana Kumar
4. M. Baskar
5. Smt. Revathy
6. Smt. Selvi

...Petitioners/Defendants.

..Vs..

1. Smt. Adhilakshmi
2. Perumal
3. Vedagiri
4. Veerasamy
5. Smt. Alangaram

..Respondent/Plaintiffs

This petition coming before me for final hearing on 02.02.2019 in the presence of Thiru.M.Tamilmaran counsel for Petitioner/Defendants and Thiru.R.E.Charles counsel for Respondents/Plaintiffs and upon hearing the both sides and upon perusal of records and having stood over for consideration and till this date, and this court delivered the following:

Order

Petition filed Under Order VII Rule 11 of CPC, to reject the Plaint and pass such other suitable orders.

2. The Petition mentioned averments is as follows:

The Petitioners/Defendants submit it is admitted case by both side, earlier the present 2nd Plaintiff Perumal had already filed the suit in O.S.No.349/2002 for himself and also on behalf of other plaintiffs for permanent injunction against the defendants 1 and 2. After due trial this Hon'ble court was pleased to dismiss the suit holding tat the defendants in the earlier suits the defendants 1 and 2 in the present suit were in possession and enjoyment from the year 1968. Admit the 2nd plaintiff had filed the appeal in A.S.No.19/2008 before the sub court Madurantakam which was withdrawn as not pressed.

Now We have filed the petition to reject the plaint under order 7 rule 11 as plaint has no cause of action and the suit is barred by law. As per order 7 rule 11 Rejection of plaint shall be rejected in the following cases (a) where it does not disclose a cause of action (b) where the suit appears from the statement in the plain to be barred by any law.

The Petitioner submits that the plaint averments the cause of action arose in the plaint "On 1st week of January of 2002 the date of trespass and put up construction in the suit property by the defendants and on subsequent dates de-die-indium at Athivakkam Village, Zamin Endathur Firka, Madurantakam Taluk". The above cause of action is one of the facts and that facts already decided in the suit in 349/2002. The petitioner submit the earlier suit filed by the 2nd plaintiff on behalf of other plaintiffs also which was admitted in the earlier plaint pleadings and subsequent this suit also and the earlier judgment copy plaint copy and written statement copy in O.S.No.349/2002 filed as documents nos 5 to 7 in the plaint and perusal of the document No.5 judgment in O.S.No.349/ 2002 this Hon'ble court was clearly held that the suit properties were in possession and enjoyment of this defendants from the year

1968 such as மேலும் வா.சா. 1 தன் சாட்சியத்தில் 1964 யிலேயே தாவா சர்வே எண் உட்பிரிவு செய்யப்பட்டதாகவும், பட்ட வேதாச்சல பெயரில் தான் வந்து உள்ளதாகவும், அவர் தான் அனுபவித்து வருவதாகவும் தாவா சொத்தில் வடக்கு புறம்ஒருபெரிய குடோன் உள்ளதாகவும் தெற்கு புறத்தில் ஆதிநாராயண ரெட்டியார் வீடு கட்டி குடியிருந்து வருவதாகவும், தாவா சொத்தில் 50 வருட தென்னை மரங்கள் பனைமரங்கள் உள்ளதாகவும் இதனை பிரதிவாதியின் குடும்பத்தினர் தான் நட்பும் பராமரித்து வருகிறார்கள் என்றும் கிணறு பம்பு செட் ஆகியவற்றை பிரதிவாதிகள் தான் 50 வருடங்களாக அனுபவித்து வருகிறார்கள் என்றும், ஒப்புக்கொண்டு சாட்சியம் அளித்து இருக்கிறார், இந்த நிலையில் தாவா சொத்துக்கள் பொருத்து ஏற்கனவே செங்கல்பட்டு உரிமையியல் நீதிமன்றத்தில் அ.வ.எண்.89/1968 என்று ஒரு பணம் திரும்ப தாக்கல் செய்யப்பட்டு தீர்ப்பாணை பெற்று நிறைவேற்று நடவடிக்கைகள் இ.ம.எண்,27/1982 ஏலம் நடவடிக்கை எடுத்தற்கான பி. 22 தாக்கல் செய்யப்பட்டுள்ளது, இதில் தாவா சொத்து இந்த முனுசாமி ரெட்டியார் பெயரில் இருந்ததாக காணப்படுகிறது, இதில் இருந்தே 1968 ஆண்டில் இருந்து தாவா சொத்துக்கள் இந்த பிரதிவாதியின் சுவாதீனத்திலும் அனுபவத்திலும் இருந்து வருகிறது என்பது நிரூபணமாகிறது,

So, this Hon'ble court clearly come to conclusion that the defendants are in lawful possession and enjoyment from the year 1968 to till disposal of the suit in O.S.No.349/2002 on 18.12.2007 in respect of same suit properties same parties and the facts of cause of cause of action for the present suit have been already decided by earlier suit on O.S.No.349/2002 and the averments in respect of cause of action will amounts to resjudicata and as such the

plaintiffs have no cause of action to file the present suit.

Now the present plaintiffs' advocate clearly pleaded by suppressing the above facts of cause of action which has been already decided in the earlier suit and therefore perusal of the plaint coupled with judgment in O.S.No.349/2002 filed as document No.5 along with plaint would reveal that the cause of action for the present suit has already decided against the present plaintiffs in favour of the defendants. The facts of the judgment with regard to the possession have become final and no appeal was filed by the present respondent/plaintiff. So the cause of action facts pleaded in the plaint has been decided in the earlier suit as such the present plaintiffs have no cause of action to file the suit. If the plaint has no cause of action it is liable to be rejected under order 7 Rule 11 (e) of CPC.

The petitioner submit that as discussed above this Hon'ble court already come to conclusion that they and their predecessor were in lawful possession and enjoyment from the year 1968. As such the suit is barred by limitation to file the present suit. Therefore the suit is barred by law. If the suit is barred by any law, it is liable to be rejected under order 7 rule 11 (e) of C.P.C.

3. Counter filed by the 2nd Respondent/2nd Plaintiff and adopted by the other Respondents 1,3 to 5/Plaintiffs 1,3 to 5 are as follows:

The allegations contained in the affidavit filed in support of the petition are all incorrect. The allegations contained in the affidavit that the petitioners were admitted case by both side, earlier the present 2nd plaintiff Perumal had already filed the suit in O.S.No.349/2002 for himself and also on behalf of other plaintiffs for permanent injunction against the defendants 1 and 2 and after due trial this Hon'ble court was pleased to dismiss the

suit holding tat the defendants in the earlier suits the defendants 1 and 2 in the present suit were in possession and enjoyment from the year 1968 and admit the 2nd plaintiff had filed the appeal in A.S.No.19/2008 before the sub court Madurantakam which was withdrawn as not pressed and the decree and judgment in O.S.No.349/2002 and decree and judgment in A.S.No.19/2008 are filed herewith to be read as part and parcel hereof are all false and denied.

The 2nd respondent/2nd plaintiff submits that now the petitioners have filed the petition to reject the plaint under order 7 rule 11 as plaint has no cause of action and the suit is barred by law and As per order 7 rule 11 Rejection of plaint shall be rejected in the following cases (a) where it does not disclose a cause of action (b) where the suit appears from the statement in the plain to be barred by any law and the 2nd respondent/2nd defendant submits that the plaint averments the cause of action arose in the plaint "On 1st week of January of 2002 the date of trespass and put up construction in the suit property by the defendants and on subsequent dates de-die-indium at Athivakkam Village, Zamin Endathur Firka, Madurantakam Taluk " and the above cause of action is one of the facts and that facts already decided in the suit in 349/2002 and the petitioner earlier suit filed by the 2nd plaintiff on behalf of other plaintiffs also which was admitted in the earlier plaint pleadings and subsequent this suit also and the earlier judgment copy plaint copy and written statement copy in O.S.No.349/2002 filed as documents nos 5 to 7 in the plaint and perusal of the document no.5 judgment in O.S.No.349/ 2002 this Hon'ble court was clearly held that the suit properties were in possession and enjoyment of this defendants from the year 1968 such as மேலும் வா.சா. 1 தன் சாட்சியத்தில் 1964 யிலேயே தாவா சர்வே எண் உட்பிரிவு செய்யப்பட்டதாகவும், பட்டா

வேதாச்சல பெயரில் தான் வந்து உள்ளதாகவும், அவர் தான் அனுபவித்து வருவதாகவும் தாவா சொத்தில் வடக்கு புறம் ஒரு பெரிய குடோன் உள்ளதாகவும் தெற்கு புறத்தில் ஆதிநாராயண ரெட்டியார் வீடு கட்டி குடியிருந்து வருவதாகவும், தாவா சொத்தில் 50 வருட தென்னை மரங்கள் பனைமரங்கள் உள்ளதாகவும் இதனை பிரதிவாதியின் குடும்பத்தினர் தான் நட்பும் பராமரித்து வருகிறார்கள் என்றும் கிணறு பம்பு செட் ஆகியவற்றை பிரதிவாதிகள் தான் 50 வருடங்களாக அனுபவித்து வருகிறார்கள் என்றும், ஒப்புக்கொண்டு சாட்சியம் அளித்து இருக்கிறார், இந்த நிலையில் தாவா சொத்துக்கள் பொருத்து ஏற்கனவே செங்கல்பட்டு உரிமையியல் நீதிமன்றத்தில் அ.வ.எண்.89/1968 என்று ஒரு பணம் திரும்ப தாக்கல் செய்யப்பட்டு தீர்ப்பாணை பெற்று நிறைவேற்று நடவடிக்கைகள் இ.ம.எண்.27/1982 ஏலம் நடவடிக்கை எடுத்தற்கான பி,22 தாக்கல் செய்யப்பட்டுள்ளது, இதில் தாவா சொத்து இந்த முனுசாமி ரெட்டியார் பெயரில் இருந்ததாக காணப்படுகிறது, இதில் இருந்தே 1968 ஆண்டில் இருந்து தாவா சொத்துக்கள் இந்த பிரதிவாதியின் சுவாதீனத்திலும் அனுபவத்திலும் இருந்து வருகிறது என்பது நிரூபணமானது are all highly false and denied. The observation in the judgment in previous suit is not legally binding on the plaintiff herein and the defendants can claim adverse possession against the plaintiffs herein only they admit the title of the plaintiff. The enjoyment and possession of long period do not confer any title to the defendants unless and until they admit the title of the plaintiffs and hence, the long possession as alleged in the petition that the defendants and their predecessors are enjoying the property for more than 50 years never confer any right to the defendants and their predecessors in the suit property.

The 2nd respondent/2nd plaintiff submit that so this Hon'ble court clearly come to conclusion that the defendants are in lawful possession and enjoyment from the year 1968 to till disposal of the suit in O.S.No.349/2002 on 18.12.2007 in respect of same suit properties same parties and the facts of cause of cause of action for the present suit have been already decided by earlier suit on O.S.No.349/2002 and the averments in respect of cause of action will amounts to resjudicata and as such the plaintiffs have no cause of action to file the present suit and now the present plaintiffs' advocate clearly pleaded by suppressing the above facts of cause of action which has been already decided in the earlier suit and therefore perusal of the plaint coupled with judgment in O.S.No.349/2002 filed as document No.5 along with plaint would reveal that the cause of action for the present suit has already decided against the present plaintiffs infavour of the defendants and the facts of the judgment with regard to the possession have become final and no appeal was filed by the present respondent/plaintiff and so the cause of action facts pleaded in the plaint has been decided in the earlier suit as such the present plaintiffs have no cause of action to file the suit are all highly false and denied.

The 2nd respondent/2nd plaintiff submit that the present suit is file for declaration and recovery of possession. The cause of action for the suit as mentioned in the plaint para no.9 are on 05.11.1990 the date of death of Thasiri and on 1st week of January 2002 the date of trespass and put up construction in the suit property by the defendants. The relief sought by the plaintiff for declaration and recovery of possession and hence, from the date of trespass muchless on 1st week January 2002 the suit is filed within 12 years of trespass for recovery of possession under article 55. Further the evidence given in the previous suit in O.S.No.349/2002 cannot be a ground for rejection of plaint. The earlier is for the relief of permanent injunction filed by the

2nd plaintiff herein. Hence, the relief in the earlier proceedings is not same as that of the present suit. Further, the para no.5 of the affidavit that the petitioners have mentioned that the plaint is to be rejected as there is no cause of action and in the same para it is averred in the affidavit that the suit is barred by limitation as already the court has come to a conclusion that the predecessor of the petitioners/defendants are in lawful possession and hence, it is barred by limitation and therefore the plaint is liable to be rejected under order 7 Rule 11 (e) CPC which not at all ground for rejection of plaint.

The 2nd respondent/2nd plaintiff submits that the petitioners themselves are not clear under what ground the plaint is liable to be rejected. As per the judgment of our High courts and the Supreme court, the averments in the plaint alone are to be looked in to for rejection of plaint. The conclusion in the previous suit by the court of law is not a ground for rejection of plaint. The 2nd respondent/2nd plaintiff submits that the issue of the earlier suit is different from the present suit. The issue in the previous case and in the present suit are not one and the same.

4. Now the point for determination is:

Whether the petitioner is entitled for the relief sought for?

On the side of the Petitioners/Defendants the Exhibits P-1 to P-4 were marked. No Exhibits marked on the side of the Respondents/Plaintiffs and no witness were examined on both sides.

5. Heard and perused the records. The Petitioner herein filed the present application to

6. In the result, the Interim Application is dismissed without cost.

7. Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 15th day of February 2019.

District Munsif,
Madurantakam.

Petitioners/Defendants side documents:

Ex.P-1- The copy of Judgment in O.S.No. 349/2002 dated 18.12.2007

Ex.P-2- The copy of Decree in O.S.No. 349/2002 dated 18.12.2007

Ex.P-3- The copy of order in A.S.No. 19/2008 dated 15.02.2010

Ex.P-4- The copy of Decree in A.S.No. 19/2008 dated 15.02.2010

Respondents/Defendants side documents:

- Nil -

Both sides Witness

- Nil-

District Munsif,
Madurantakam.

Draft/Fair/Order

I.A.No. 1149/2018 in

O.S. No. 305/2012

D.D.: 04.10.2018

DMC, MKM.

Decree

O.S. No.

D.D.:

DMC, MKM.