

**IN THE COURT OF THE DISTRICT MUNSIF AT UDHAGAMANDALAM,
THE NILGIRIS.**

**PRESENT: THIRU. A.MOHANA KRISHNAN, B.A., B.L.,
DISTRICT MUNSIF, UDHAGAMANDALAM.**

MONDAY, THE 16th DAY OF DECEMBER 2024

O.S.No.58/2020

1. H.Raju @ Venkatesan,
2. H.Sampath

..... Plaintiffs

/Vs/

1. S.Rangan,
2. S.Ramamoorthy,
3. S.Govindaraj,
4. Parvathi.

..... Defendants

This suit coming on 04.10.2024 for final hearing before me in the presence of Thiru.R.Dinesh, Advocate for the plaintiff and the defendants called absent and set exparte and having stood over till this day for consideration, this court delivered the following:

J U D G M E N T

Suit for recovery of possession and cost of the suit.

BRIEF AVERMENTS OF THE PLAINT FILED BY THE PLAINTIFFS
IS AS FOLLOWS:-

The suit schedule property was originally purchased by one Mr.Venkat and one Mr.Narayanan as joint purchasers under Sale deed dated 17.10.1926 from one

Mr.Mandimadhasaibu. The plaintiff's are the grand sons of late. Mr.Venkat and sons of Anumaian. The defendants are also grand sons of late Mr.Venkat and sons of late Mr.Sannan. The venkat died in 1984 and Anumaian died in 1995. Sannan died in the year 2000. The said Venkat was allotted an extent of 13 cents of land along with six residential building. The Venkat i.e., the grand father of plaintiffs and defendants executed a gift settlement in favour of the plaintiff's on 18.08.1976. The plaintiffs are absolute owners of the above 13 cents along with residential buildings bearing D.No.111, 112, 113, 116, 117 and 118. The plaintiffs are occupying the buildings with door numbers 112 and 113. The defendants who are cousins of the plaintiffs approached the plaintiff's for short stay of the buildings bearing door number 111, 116, 117 and 118. The plaintiffs permitted the 1st to 4th defendants to occupy the door number 117, 118, 116 and 111 respectively. From the year 2012 the plaintiff called the defendants to vacate and handover the possession of the suit schedule properties since, it was required for the plaintiffs children. But, the defendants were dragging. On 12.08.2015, the plaintiffs also issued legal notice but, since the defendants personally met the plaintiffs and sought time, the action was dropped in the year 2015. But, now the plaintiff children are married and there are no residential buildings for their occupation. Hence, the plaintiffs are hereby revoking the permissive possession and seeking recovery of possession. Hence, the suit.

BRIEF AVERMENTS OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS IS AS FOLLOWS:-

02. The said Venkat and Nanjundan not Narayanan purchased the property to an extent of 25 cents. The plaintiffs have not stated when partition was effected between Venkat and Nanjundan. The plaintiffs have stated that they are entitled to 13 cents but, the document produced by them shows that they are entitled to 12 08/16 cents and not 13 cents. The plaintiffs have not come forward to say how they are entitled for 13 cents of land with building. The documents is executed in the year 1976 when the plaintiffs were minors. The plaintiffs ought to have filed suit within 3 years from the date of attainment of majority. Hence, the suit is barred by limitation. The plaintiffs have not filed any evidence to show when they construed the buildings. The defendants are not in permissive possession of the suit property. The alleged D.Nos are vague. The allegation that on 12.08.2015 the plaintiffs requested the defendants to vacate the suit property is absolutely false. The plaintiffs issued legal notice to the defendants to given unlawfully. When the defendants met the plaintiffs in person, the plaintiffs appologized for their act and promised that they would not take action. The plaintiffs are not entitled for relief of possession since they belong to the defendants on their own. The cause of action is combined. Hence, the suit is liable to be dismissed with cost.

03. On consideration of the above plaint, written statement filed by either side, this court has framed the following issues on 14.09.2023 to decide the suit.

Issue No.(i) : Whether the suit is barred by limitation?

Issue No.(ii) : Whether the defendants are in permissive possession of

the suit schedule property?

Issue No.(iii) : Whether the court fee paid by the plaintiff are incorrect?

Issue No.(iv) : Whether the plaintiffs are entitled to recovery of possession as prayed for?

Issue No.(v) : To what other relief, the plaintiffs are entitled to?

04. On the side of the plaintiffs, the 2nd plaintiff examined himself as P.W.1 and Ex.A.1 to Ex.A.5 were marked. P.W.1 not cross examined by the defendants even after sufficient opportunities. The defendants counsel reported "no instruction". Hence, the defendants were called absent and set exparte on 03.10.2024.

POINT :

Issue No.(i) : Whether the suit is barred by limitation?

05. The plaintiffs have filed this suit stating that the suit schedule properties were purchased by the plaintiff's grandfather Venkat and one Narayanan in the year 07.10.1926. The plaintiff's father Annumaiyan and the defendant's father Sannan are sons of the said Venkat. The Venkat who is the grandfather of the plaintiff and the defendants executed a settlement deed dated 18.08.1976. Out of the 6 Door numbers, the plaintiffs permitted the defendants to occupy the said 4 Doors number which is suit schedule properties. The defendants are in permissive possession of the suit schedule property. The plaintiffs requested the defendants to handover the possession in the year 2012 and issued legal notice in the year 2015. At personal request of the defendants, the plaintiffs permitted the defendants to continuing in the

suit schedule property even after legal notice. But, now the plaintiffs children are married and require the suit schedule property. Per contra, the defendants contended that the plaintiffs ought to have filed the suit within 3 years from the date of attainment of their majority hence, the suit is barred by limitation. The defendants have taken a stand that they are not in permissive occupation of the suit schedule property but they are in possession on their own.

06. This court carefully considered the entire case records and heard the submissions of learned plaintiff counsel. At the outset, it can be seen that the relationship of the parties that the plaintiffs and the defendants are all grand children of Venkat is a admitted fact. The plaintiff has produced Ex.A.1 which shows that the plaintiff's grandfather Venkat and one Narayanan has purchased vacant land. The defendant's in the written statement has stated that the other person is Nanjan not Narayanan but Ex.A.1 shows it is Narayanan and not Nanjundan. Also the plaintiffs have taken a stand that the plaintiffs have not stated how partition have taken place between Venkat and other person. But, this court finds that since, the plaintiffs and the defendants are all legal heirs of Venkat they cannot question the title of Venkat. Because, the defendants are also claiming through Venkat. How partition was effected between Venkat and other persons is not an issue in this suit.

07. The Ex.A.2 which is the Gift Settlement deed dated 18.08.1976 shows that the Venkat has settled his 12 8/12 cents in favour of his grand sons Raju and Sampath sons of Anumiyan who are the plaintiffs herein. It shows that the plaintiffs

Raju and Sampath have been gifted 12 8/12 cents. The defendants have a stand that only 12 8/16 cents is gifted in Ex.A.2 but the plaintiffs have mentioned 13 cents in the plaint. This court finds that mere discrepancy of mentioning the extent will not affect the plaintiffs right in this suit because the extent is not issue in this suit. The question is whether the defendants are in possession as permissive possession of suit schedule properties or in their own right. Ex.A.3 is the Extract from Town Survey land register which reflects the name of the plaintiffs. The defendants have not cross examined the plaintiffs wherein the defendants counsel has reported "no instruction". Also, even after opportunities the defendants have not let in evidence. Hence, based on the above circumstances, this court inclined to believe that the defendants are in permissive possession of the suit schedule property.

08. The defendants have simply state that they are in possession on their own and not in permissive possession but, the defendants have not given any evidence and not cross examined the P.W.1 to show that how they are in possession and what individual right they have over suit schedule properties. Hence, based on the oral and documentary evidence of plaintiffs this court is inclined to believe that the defendants are in permissive possession. When the defendants are in permissive possession of the suit schedule property, the limitation for recovery of possession would start when the defendants possession become adverse to the plaintiffs right. As per Article 65 of the Limitation Act, the plaintiffs have to file the suit within 12 years when the defendant's possession becomes adverse to the plaintiffs.

09. The plaintiffs have given oral evidence stating that, they requested the defendants to vacate in the year 2012 and also issued notice in the year 12.08.2015. Also, the oral evidence of plaintiff/P.W.1 shows that they have permitted the defendants to continue even after the legal notice only at the request of the defendants in person. Eventhough, the defendant's in their written statement stated that the plaintiffs issue false legal notice and the plaintiffs apologized for their act to the defendants when the defendants met the plaintiffs in person, the defendants have not proved that fact by cross examining P.W.1 or letting evidence on their evidence. Hence, based on the oral evidence of P.W.1, this court inclined to believe that the plaintiffs permitted the defendants to continue even after the legal notice, only at the request of the defendants. As long as defendants are in possession with the permission of the plaintiffs, the possession will not become adverse. The P.W.1 has further deposed that now they are revoking permissive possession because their children have no residential buildings for their occupation. The defendants are not giving the possession. Hence, only before the filing of the suit it can be taken that the defendants possession has become adverse against the plaintiff. Also, even if the limitation is calculated from 2015, the suit is filed within 12 years i.e., the suit is filed on 2020 itself. Hence, this court finds that this suit is not barred by limitation. Accordingly, this issue is answered in favour of the plaintiffs.

Issue No.(ii) : Whether the defendants are in permissive possession of the suit schedule property?

10. It has been held in the discussion of Issue No.(i) itself that the defendants are in permissive possession of the suit schedule property. The discussions in Issue No.(i) shows that the plaintiff's grandfather Venkat gifted the suit schedule property vide Ex.A.2 to the plaintiffs and the plaintiffs have proved that the defendants are in permissive possession under the plaintiffs. The plaintiffs have proved that fact of permissive possession by oral evidence wherein the defendants have not cross examined the P.W.1 or let in evidence on their side to disprove it. Hence, this court finds that the defendants are in permissive possession of the suit schedule property. Accordingly, this issue is answered in favour of the plaintiffs.

Issue No.(iii) : Whether the court fee paid by the plaintiffs are incorrect?

11. The plaintiffs have valued the suit under Section 30 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. The plaintiffs have stated that market value of the property is Rs.1,00,000/-. As far as court fee is concerned, this court has to believe that the market value is Rs.1,00,000/- unless the defendants have objected it. But the defendants have simply stated that in the court fee is not correct but, the defendants have not cross examined P.W.1 nor let their side evidence. Hence, this court finds that this suit valued under Section 30 providing of Rs.1 lakhs and paying court fee of Rs.3000/- is corrected. Accordingly, this issue is answered in favour of the plaintiffs.

Issue No.(iv) : Whether the plaintiffs are entitled to recovery of possession as prayed for?

12. It has been held in issue No.(i) and (ii) that the defendants are in permissive possession of the suit schedule property. Hence, when the plaintiffs who are owners of the suit schedule property require the premises for their children's use, the defendants should vacate and handover the possession to the plaintiffs. Also, it has been held in issue No.(i) the suit is within limitation. Hence, this court finds that the plaintiffs are entitled to recovery of possession as prayed for and the defendants are liable to vacate and handover vacant possession of the suit schedule premises to the plaintiffs within 3 months (i.e.) on or before 31.03.2025.

Issue No.(iii) : To what other relief the plaintiffs are entitled?

13. Considering the circumstances of this case, this court finds that the plaintiffs are not entitled to any other relief from this court.

In the result, this suit is decreed as prayed for. No cost.

Dictated by me to the Steno-typist, typed by her in computer, corrected and pronounced by me in open court, this the 16th day of December 2024.

Sd/-A.Mohanakrishnan,
DISTRICT MUNSIF,
UDHAGAMANDALAM

Plaintiff's side:

PW1: Sampath

Defendant's side:

NIL

List of documents marked:

Plaintiff's side:

01.	Ex.A.1	Certified copy of Sale deed dated 07.10.1926
02.	Ex.A.2	Certified copy of Settlement deed 18.08.1976
03.	Ex.A.3	Extract from the Town survey Land Register
04	Ex.A.4	Legal notice dated 12.08.2015
05	Ex.A.5	Acknowledgement

Defendant's side: - Nil -

Sd/-A.Mohanakrishnan,
DISTRICT MUNSIF,
UDHAGAMANDALAM

District Munsif Court Udhagamandalam	
Judgment	O.S.No.58/2020
Dated	16.12.2024