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DR.A.D. MARIA CLETE, J

Heard.

2.This Second Appeal is filed against the judgment and decree dated 22.08.2013 passed in A.S.No.63 of 2011 by the Principal Subordinate Judge, Salem, confirming the judgment and decree dated 23.02.2010 passed in O.S.No.740 of 2006 by the II Additional District Munsif, Salem.

3.The appellants are the defendants and the first respondent is the plaintiff in the trial Court. For the sake of convenience, the parties are referred to as they were arrayed in the suit.

4.The Brief Facts of the case is as follows: The suit property comprised in Survey No.104/2B, Thathagapatty Village, Salem District, was originally assigned in 1972 by the Government, under military service quota, to the plaintiff's father Perumal Gounder and his son Narayanan. Perumal Gounder executed a registered Will dated 01.07.1982 bequeathing the suit property to the plaintiff. Upon his demise, the plaintiff became the owner and continued in possession and enjoyment.



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5.It is the case of the plaintiff that the defendants, who were assigned land in Survey No.105/1A under the Harijan Welfare Scheme, encroached upon the suit property and put up a thatched shed. The plaintiff had earlier filed O.S.No.446 of 1998, which was dismissed for default on 09.11.2001. After a period of silence, the defendants again disturbed the plaintiff's possession when she attempted to measure the property in 2004. Hence, the present suit was filed for declaration and injunction and was later amended for recovery of possession.

6.The defence is that the Government had assigned 5 cents in S.No.105/1A to the grandfather of the second defendant and that the second defendant's father had also purchased land in S.Nos.105/1, 105/2, and 105/3 measuring 195 sq.ft. in 1981. It was further pleaded that the present suit, filed after dismissal of the earlier suit, was time-barred.

7.The Trial Court decreed the suit, declared the plaintiff's title, and granted recovery of possession. It held that the suit was within limitation since it was filed on the basis of a fresh cause of action arising in 2004 when the defendants disturbed possession during measurement. The Court also held that the presence of additional defendants (formal official



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defendants without seeking any relief against them) in the present suit

WEB.COM distinguished it from the earlier one.

8.The First Appellate Court confirmed the decree of the Trial Court, holding that the earlier suit O.S.No.446 of 1998 was not decided on merits and hence did not operate as res judicata.

9.The primary contention in this second appeal are: The suit ought to have been filed within three years from the cause of action pleaded in the earlier suit. However, Ground No.6 of the appeal itself admits that the plaintiff's case is one of trespass and dispossession in 1996. Even assuming so, Article 65 of the Limitation Act prescribes a 12-year limitation for suits for recovery of possession. As the present suit was filed in the year 2006 before expiry of 12 years, the same is not barred by limitation. The contention of the appellant that the period of limitation is three years is not sustainable.

10.Maintainability of the fresh suit – It is urged that, in view of the dismissal of the earlier suit O.S.No.446 of 1998 for default, a fresh suit on the same cause of action is barred under Order IX Rule 9 CPC. The addition



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of formal official defendants (Tahsildar and others) does not alter the cause of action nor the identity of the principal contesting defendants.

11.The Courts below proceeded on the footing that res judicata was not attracted and the suit is not hit by limitation. However, the issue in the present case is not res judicata or Limitation but the statutory bar under Order IX Rule 9 CPC, which expressly prohibits a fresh suit between the same parties on the same cause of action after dismissal of a prior suit for default.

12.Both Courts below failed to examine the maintainability of O.S.No.740 of 2006 from the perspective of Order IX Rule 9 CPC.

13.Accordingly, the following substantial question of law arises for consideration:

“Whether the Courts below erred in failing to examine the maintainability of the suit O.S.No.740 of 2006 in view of the dismissal of the earlier suit O.S.No.446 of 1998, in the light of Order IX Rule 9 of the Code of Civil Procedure, 1908?”



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WEB COPY 14. In fine, the Second Appeal is admitted. The Registry is directed to issue notice to respondents 1 to 4. Considering that the matter is already around ten years old, the Registry shall also serve notice on the 1st respondent through the counsel who appeared for her before the Courts below. The appellant is additionally permitted to issue private notice to the respondents by RPAD/Speed Post. Post after two weeks i.e., on 12.12.2025.

27.11.2025

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