

**Seetharaman Vs. Mani**

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**SooperKanoon Citation :** [sooperkanoon.com/1168959](http://sooperkanoon.com/1168959)

**Court :** Chennai

**Decided On :** Apr-10-2014

**Judge :** The Hon'ble Tmt. Justice Pushpa Sathyanarayana

**Appellant :** Seetharaman

**Respondent :** Mani

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated:

10. 04 2014 Coram The Hon'ble TMT. JUSTICE PUSHPA SATHYANARAYANA  
Second Appeal No.899 of 2006 Seetharaman .. Appellant vs. Mani .. Respondent  
Appeal filed under Section 100 of the Code of Civil Procedure against the  
judgment and decree dated 09.03.2005 in A.S. No.10 of 2004 on the file of the  
Additional Subordinate Judge, Mayiladuthurai reversing the judgment and decree  
dated 11.12.2003 made in O.S. No.98 of 2000 on the file of the District Munsif,  
Sirkali. For Appellants : Mr. S. Udhayakumar For Respondent : Mr. T.  
Sathiyamoorthy for M/s G.M. Mani & Associates

**JUDGMENT**

The plaintiff who had filed the suit for recovery of possession of the suit property after removing the encroachment, has filed this Second Appeal challenging the legality and correctness of the judgment and decree dated 09.03.2005 passed by the Additional Subordinate Judge, Mayiladuthurai, in A.S. No.10 of 2004 wherein

and by which the judgment and decree dated 11.12.2003 made in O.S. No.98 of 2000 on the file of the District Munsif, Sirkali, was reversed allowing the First Appeal at the instance of the defendant.

2. According to the plaintiff, he purchased the property situate at Pulichakadu Village in Sirkali Taluk, on 17.11.1988 from Venkataramani, Rajamani and Natarajan, who were all sons of one Kalyanarama Iyer. The suit property is a vacant site which belonged to the Sattanatha Swamy Devasthanam, Sirkali. The suit land is a proposal land which means that the occupier of the land is competent to convey the same and the owner is to render service to the temple as Oozhiyamdar. The plaintiff, having purchased the same for valid consideration, claims absolute title to the suit property. It is stated that with respect to the same property, the defendant originally entered into an agreement with the plaintiff on 03.4.1983 by paying Rs.6500/- as advance and agreed to pay the balance of Rs.9600/- on or before 30.4.1983. As the defendant did not perform his part of the contract by paying the balance of the sale consideration, one of the plaintiff's vendors, viz., Natarajan issued a notice on 05.11.1983 calling upon the defendant to get the sale completed or else, to terminate the contract. As there was no response from the defendant, the agreement dated 03.4.1983 was cancelled and the property was sold in favour of the plaintiff on 17.11.1988. The defendant coming to know of the sale, attempted to trespass into the suit property which resulted in a suit being filed in O.S. No.352 of 1988 on the file of the District Munsif Court, Sirkali. Pending the suit, the defendant trespassed into the suit property and occupied the same. Therefore, the plaintiff filed an Application in I.A. No.1406 of 1994 to amend the plaint for recovery of possession and the same was dismissed. As the plaintiff lost the cause of action on which he based his claim, decided to give up the suit and filed the present suit for recovery of possession.

3. The suit was resisted by the defendant claiming that he has been in possession for more than 40 years in the suit property. He claims to have been put in possession pursuant to the agreement of sale from Kalyanarama Iyer and his sons, who are the vendors of the plaintiff. The defendant also contested saying that the suit is hit by the principles of res judicata and for non-joinder of necessary party, viz., Sattanatha Swamy Devasthanam trustee.

4. Before the trial Court, the plaintiff examined himself as P.W.1 besides examining one Kalyanarama Iyer and Ramamirtham as P.Ws.2 and 3 respectively and marked Exs. A.1 to A.6. The defendant, besides examining himself as D.W.1, examined three more witnesses as D.Ws. 2 to 4 and marked Exs. B.1 to B.11.

5. The trial Court relying upon the evidence adduced by the witnesses and the arguments advanced by the learned counsels thereon, came to the conclusion that the plaintiff is entitled for recovery of possession and accordingly, decreed the suit. As against the said judgment, the defendant filed A.S. No.10 of 2004 on the file of the Additional Subordinate Judge, Mayiladuthurai, and the learned First Appellate Judge, on appreciation of the facts of the case, reversed the finding of the trial Court and allowed the appeal at the instance of the defendant. Feeling aggrieved, the plaintiff is before this Court.

6. At the time of admission of this Second Appeal, the following substantial questions of law were formulated for consideration:- (i) Whether the suit is maintainable without impleading a temple as a party as defendant in the suit?. (ii) Whether the possession of the plaintiff in pursuance of the sale deed is valid in law?.

7. Heard Mr. S. Udhayakumar, learned counsel appearing for the appellant and Mr. T. Sathiyamoorthy, learned counsel appearing for the respondent and perused the records.

8. The substantial question of law that may arise for consideration based on the pleadings and issues is whether the plaintiff is entitled to recovery of possession based on Ex. A.1 sale deed when the defendant claims his possession only under an agreement of sale which will not give him right or title to the suit property.

9. The admitted facts in this case are that (a) the suit property belongs to Sattanatha Swamy Devasthanam, Sirkali, and it is a proposal land; (b) though the occupiers of the lands are competent to sell, they are liable to render service to the temple as Oozhiamdars; (c) it is admitted by both the parties that the properties were in possession of Kalyanarama Iyer and his sons; (d) the defendant entered into an agreement of sale with the said owners for the purchase of the property

under Ex. B.1 and the plaintiff claims his title under Ex. A.1 which is a sale deed dated 17.11.1988; (e) immediately after the purchase, the plaintiff had filed a suit O.S. No.352 of 1988 for injunction restraining the defendant from disturbing his peaceful possession; (f) pending the suit, the defendant encroached upon the property and put up a thatched shed. Therefore, the plaintiff had to amend the plaint by filing I.A. No.1406 of 1994 for recovery of possession. The said I.A. was dismissed and no revision was filed; and (g) the plaintiff also abandoned the suit O.S. No.352 of 1988 and filed the present suit on the fresh cause of action of trespass by the defendant. On these admitted facts, the trial Court decreed the suit and the First Appellate Court dismissed the same.

10. It is admitted by both the parties that the temple is the original owner of the property and being a proposal land, the occupiers of the lands are entitled to convey the same only on condition that they have to render service to the temple. It is admitted that the sale agreement by the defendant was in force till such time the same was terminated by Ex. A.3 notice dated 05.11.1983. Even after termination, the defendant did not care to either file suit for specific performance or come forward to get the sale executed in his favour whereas the plaintiff has purchased under Ex. A.1 on 17.11.1988 from the sons of Kalyanarama Iyer for valid consideration. As the defendant was trying to trespass into the suit property, the plaintiff filed suit O.S. No.352 of 1988 for bare injunction. However, admittedly, pending the suit, the defendant trespassed into the suit property and took possession of the same. Therefore, the plaintiff did not prosecute the suit. Taking advantage of the same, the defendant has taken a stand that the suit is barred by the principles of res judicata. The said contention of the defendant is not sustainable as the earlier suit though between the same parties and with respect to the same property, it was not decided on merits deciding the rights of parties finally. It was only a suit for bare injunction which was given up on account of the trespass by the defendant. So, the substantial issue between the parties, viz., title and possession, could not be decided in that suit. It is to be noted that since the amendment application filed by the plaintiff for including the relief of recovery of possession was dismissed, the plaintiff thought it fit to file a fresh suit on the subsequent cause of action. Therefore, it cannot be stated that the present suit is barred by res judicata.

11. Insofar as the question of title is concerned, both the parties are claiming under the same owners, viz., Kalyanarama Iyer and his sons. It is seen that though the defendant had entered into an agreement in the year 1983, he had not pursued the same and got the sale executed in his favour whereas the agreement was terminated in the manner known to law by the vendors of the plaintiff and the property was sold to the plaintiff for valid consideration. The defendant also is making his claim only under the sale agreement. The sale agreement will not confer any right or title to the parties claiming under the same whereas the plaintiff has purchased the same property under a valid sale deed. Therefore, it can be seen that the plaintiff has got a better title with regard to the suit property than the defendant and the defendant has got no manner of right in the same. If really the temple is the owner of the property, the temple would have objected to the sale. However, it is made clear by the plaintiff that any purchaser of the property belonging to the temple of a proposal land, is expected to serve the temple and he is not precluded from alienating the property.

12. Curiously, when both the parties are claiming under the same owner, the only question to be seen is who has got a better title whether it is defendant who is claiming only under an agreement of sale or the plaintiff, who has purchased the property for valid consideration. Therefore, it can be seen that the plaintiff is entitled to maintain a suit for recovery of possession from the defendant as he had encroached the property pending the previous suit.

13. In the light of the above discussion, it can be presumed that the defendant has not established his right that he is the lessee of the temple and that the suit is not barred by principles of res judicata. In the absence of any pleadings and evidence, the defendant also cannot claim right or title by adverse possession. In view of the foregoing, the question of law is answered in favour of the plaintiff. In the result, the Second Appeal succeeds and stands allowed restoring the judgment and decree of the trial Court in O.S. No.98 of 2000 on the file of the District Munsif, Sirkali. The judgment and decree dated 09.03.2005 passed by the First Appellate Court in A.S. No.10 of 2004 are set aside. The suit is decreed as prayed for. However, there shall be no order as to costs. 10 04 2014 Index : Yes Internet : Yes gri To 1. Additional Subordinate Judge Mayiladuthurai 2. District Munsif Sirkali

3. The Record Keeper V.R. Section High Court Madras. PUSHPA SATHYANARAYANA, J.

gri Pre-Delivery Judgment in S.A. No.899 of 2006 Delivered on 10 04 2014

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