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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	12.03.2024
Pronounced on	:	15.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).No.12 of 2015

and

S.A.(MD).No.156 of 2015

and

M.P.(MD).No.1 of 2015

C.R.P.(MD).No.12 of 2015:

Virudhunagar Municipality,

Through its Commissioner,

Virudhunagar

... Petitioner/Respondent/1st

Defendant

Vs.

Poonkodi

...Respondent/Petitioner/
Plaintiff

PRAYER: Civil Revision Petition has been filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 10.12.2014 passed in E.P.No.91 of 2004 in O.S.No.185 of 2002 on the file of the District Munsif



Court, Virudhunagar.

For Petitioner : Mr.M.Muthugeethayan

For Respondent : Mr.S.Parthasarathy

S.A.(MD).No.156 of 2015:

Virudhunagar Municipality,
by its Commissioner,
Virudhunagar
Respondent/Appellant

... 3rd Defendant/3rd

Vs.

1. Poongodi

... Plaintiff/Appellant/1st Respondent

2. Government of Tamil Nadu,
Kamarajar District rep.
by Virudhunagar District
Collector.

3. Secretary
R.D.A., and L.A.Department,
Madras.

4. Secretary,
Ministry of Works,
Housing and Distribution,
Government of India,
New Delhi.

... Defendants 1,2 & 4/
Respondents 1,2 & 4/
Respondents 2 to 4

PRAYER: Second Appeal has been filed under Section 100 of C.P.C., to
set aside the Judgment and decree dated 20.07.2000 made in A.S.No.37 of



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1997 on the file of the Sub Court, Virudhunagar and confirm the Judgment and decree dated 29.11.1996 made in O.S.No.354 of 1997 on the file of the District Munsif Court, Virudhunagar.

For Petitioner : Mr.H.Rahamadulla
for Mr.M.Liagat Ali

For Respondents : Mr.S.Parthasarathy for R1

: Mr.A.K.Manikkam,
Special Government Pleader, for R2

: No appearance for R3 & R4

COMMON ORDER

The Virudhunagar Municipality filed this appeal challenging the judgment and decree passed in A.S.No.37 of 1997, dated 20.07.2000, by the Sub Court, Virudhunagar, reversing the judgment and decree dated 29.11.1996, made in O.S.No.354 of 1997, by the District Munsif Court, Virudhunagar.

2.The first respondent filed a suit in O.S.No.354 of 1994 seeking for declaration of the suit scheduled property as a absolute owner and restraining the appellant Municipality from collecting rent from her. As per



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the plaintiff averment, the Central Government announced the Scheme on 30.11.1954, to construct the house for the Low-Income Women, herein after called LIG. As per the scheme, the first respondent availed the said facilities and passed the loan to the third respondent through the second respondent. The third respondent passed the resolution on 29.02.1960 and applied a scheme loan and constructed 54 houses including the suit mentioned property, and allotted them to the eligible persons.

2.1.The suit property was allotted to the plaintiff in the year 1964, and the possession was delivered to her on the same date itself. Since 1964 onwards, the Plaintiff is in absolute possession and enjoyment of property. As per the scheme, the title of the property has been passed on her favour on the date of the allotment and delivery of the possession itself. Only the execution of the release deed alone was postponed till the date of the clearance of loan by the hire purchase basis. Further, in case of the plaintiff is concerned, she is in possession and enjoyment of property for more than 30 years and he duly cleared the loan in the form of rent in 30 years installment on the basis of the hire purchase in the year 1993 itself. No arrears of loan is due by the plaintiff. The plaintiff, by virtue of



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uninterrupted possession and enjoyment, has the prescriptive title over the suit property and the plaintiff is the owner of the property.

2.2.The defendants Nos.1 to 3 are not the owners of the house and the first defendant got the scheme loan from the fourth defendant on condition stipulated in the scheme. The second defendant is the authorised designatory of the first defendant and third defendant is the authorised agent of the second defendant for construction of the houses. The defendants 1 to 3 only can collect the loan arrears, if any in the form of rent on the basis of hire purchase till the clearance of the loan within the stipulated period of 30 years installments. Hence neither the first defendant nor the second and third defendants can be construed as the owners of the suit property and hence, they cannot continue as permanent owners of the suit property and collect the rent. The defendants 1 to 3 are bound to execute the release deed as soon as the loan is cleared. But, they have not done so. Hence, the plaintiff issued a notice to the defendants 1 to 3 on 22.07.1991. In spite of the receipt of the notice, they sent a reply denying the right of the plaintiff.



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2.3. Further, it is stated that the defendants 1 to 3, out of 54 houses, sold some 37 houses to the allottees for outright price at the rate of Rs. 4,000/- per house. 17 houses are including the suit properties alone left to the allottees on the hire purchase basis for which, the third defendant now claims some right and ownership on wrong assumption and on 10-11-1994 he abruptly attempted to collect the loan arrears as a rent by coercive method. Hence, the plaintiff has no loan arrears as on date due to be cleared. She cleared her loan arrears on 19.08.1993 itself. Hence, he filed a suit for declaration that the plaintiff is the absolute owner of the suit properties and consequently for permanent injunction restraining the third defendant from collecting loan arrears as a rent for the suit scheduled properties from the plaintiff. The cause of action according to the plaintiff, is that the suit property was allotted to the plaintiff on 22.07.1991 when the defendants 1, 3 and 4 received a notice on 04.09.1991 when the third defendant alone sent a reply to the plaintiff on 19.08.1993 when the third defendant attempted to collect the loan arrears by coercive method from the plaintiff.



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2.4. This is a cause of action, he filed a suit for declaration of the plaintiff, declaring that she alone is the owner of this property and consequently restraining the third defendant from attempting to collect the loan arrears as a rent from the plaintiff for the suit property by order of permanent injunction. This is a cause of action, the suit was filed on 16-11-1994 and the plaintiff as the third defendant filed a written statement. The appellant denied the allotment of the property own house to be in the year 1994. He also denied the specific case of the plaintiff that he cleared a loan in the form of rent in 30 years installments on the basis of the hire purchase agreement. He also specifically denied the execution of the hire purchase agreement and he also denied no arrears of the loan due by the plaintiff and he denied that the plaintiff is not entitled to pay the title, prescriptive title over the suit property. The plaintiff also further pleaded that the plaintiff is a tenant of the suit property. He denied that the title of the plaintiff and hence, he is evicted on the grounds of the denial of the title. The appellant is still vested with the ownership of the scheme. The plaintiff has no right to claim the passing of title to her, when there is a resolution for evicting the house that statutory belongs to the third defendant. The appellant further stated in the written statement that the



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plaintiff concluded the concept of the rent with the concept of the sale price. Out of 54 houses, 33 houses had been sold to the Municipal employee and 4 houses to non-municipal employee of Low Income Group, during the absence of the elected body. After election of the elected body, It passed a resolution prohibiting the outright sale of remaining 17 houses to the occupants, because of rent of the accommodation for its own paid staff working as well as transferred and posted Virudhunagar. The municipality also specifically raised the question that the 16 occupants is not eligible firstly on the ground that her annual income exceed Rs.6,000/- per annum. The same cannot be classified as Low Income Group. The plaintiff has continued to be tenant under the appellant. She has estopped from denying the title of ownership of the suit property. As per the clause 8 of the scheme, the appellant is the ownership of the property vested is empowered to rent suit property out and collect the rent therefore. They are entitled to recover the rent from the occupants and their possessive lawful ownership. The plaintiff being a tenant, he bound to obey the contract of the lease. There was no express agreement for sale of the suit property occupied by the plaintiff. The word rent is not synonymous the word “consideration”. There is no ad-item with respect to the suit property



occupied by the plaintiff. The plaintiff with all greediness to get the title of ownership of the property filed the suit seeking the declaration of the title. The plaintiff being a tenant, bound on duty to tendor or pay rent to the third defendant for use and occupation of the suit property. Hence, as long as there is due relationship between the parties and landlord and tenant, the defendant is entitled to claim the rent. In the event of a specific relationship of landlord and tenant, the claim of the plaintiff that the acquired title and subscription is not at all accepted. The value of the property was not properly given and the property is worth more than Rs.1 lakh and and hence, They also question the jurisdiction of the Court on the grounds of pecuniary limit. Hence, he seeks for dismissal and the plaintiff has not entitled into declaration and injunction as prayed for. With this pleading, the learned trial judge framed the following questions:

2.4.1.தாவா சொத்து வாதிக்கு வாடகைக்குதான் விடப்பட்டது என்பது உண்மையா?

2.4.2.வாதி இந்த வழக்கில் கோரும் பரிகாரங்கள் அவருக்கு கிடைக்கத்தக்கவையா?

2.4.3.தவணைமுறை லோன்படி தன்னால் விலைக்கு முறைப்படி வாங்கப்பட்டதுதான் தாவா சொத்து என வாதி கூறுவது சரியா?

2.4.4.வாதியினால் லோன் அடைக்கப்பட்டு விட்டதாக கூறுவது சரியா?



2.4.5.வேறு பரிகாரங்கள்?

2.5.After framing the issues on the side of the plaintiff, they examined P.W.1 to 3 and 5 documents were exhibited as Ex.P1 to 5. On the side of the Municipality/Appellant, no one was examined and one document was exhibited as Ex.D1.

3.The plaintiff filed a suit in O.S. No.192 of 1990, in which he specifically pleaded that he was a tenant and hence, he filed a suit seeking for bare injunction, restraining the appellant from evicting her without due process of law. The learned trial judge considering the documents dismissed the suit holding that the plaintiff has not established her case that she had been allotted the house under the scheme and she paid the amount after the hire purchase agreement and also he is come under the Low Income Group. Further, he has not established the title to the suit property upon making the entire payment of the loan. In such circumstances, the learned trial judge dismissed the suit. Aggrieved over the same, he filed the first appeal before the learned Sub Court, Virudhunagar, in A.S.No.37 of 1997. The appeal suit was allowed by the



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learned trial judge by order dated 20.07.2000. The first appellate Judge held that the appellant's annual income is less than Rs.6,000/- and he also paid the rent for more than 30 years as per the scheme. Under Ex.P.1, in the year 1964, the value of the house is fixed as Rs.10,000/- and among Rs. 10,000/-, the Central Government loan is specified as Rs.8,000/- and the remaining loan amount was granted by the State Government as Rs. 2,000/-. In the evidence of the appeal, he stated that he was in the house for 32 years and hence, the municipality after receipt of the rent more than Rs.55 per month. After thirty years now, they denied the transfer of title and hence, upon make entire payment, he is entitled for declaration of suit scheduled property and he was treated as owner and he was not liable to pay any of the rent. Aggrieved over the same, the Municipality preferred the second appeal.

3.1.At the time of admission, this Court framed the following substantial questions of law:

(i).Whether a tenant is entitled to file a suit for declaration as they are the owner of the property when admittedly the property belongs to the Municipality. The tenant has no loco-standi to file such a suit?

(ii).Whether the lower appellate Court was correct when a Central Government Order has been there banning



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the sale of the houses not other than the employee of the Municipality?

(iii).the onus to prove that plaintiff is entitled and eligible to purchase the house only lies on the plaintiff and not contra. The plaintiff ought to have proved that she got income elow the level of the eligibility for purchasing the property. The person claiming eligibility only should prove his case and not otherwise?

(iv).The other reasons given by the lower Appellate court for allowing the appeal is not valid in law and liable to be set aside.

4.The learned counsel appearing for the Municipality submitted that the first respondent plaintiff neither entitled to claim declaration of title to the property nor entitled to seeking relief of injunction restraining the Municipality from collecting rent. She has not allotted any house under the scheme. He is acted only tenant in this house. None of the document produced by her shows that under the scheme, she got allotment and applied for the loan and thereafter, he paid the amount by instalment under the hire purchase agreement. But, the learned trial Judge without any document, erroneously allowed the first appeal filed by the plaintiff and without made any discussion about the finding of the respondent is not



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allottee under the scheme and he has not produced any certificate to show that he submitted the loan and hence, he is entitled for declaration.

4.1.The learned counsel further submitted that without obtaining any sale deed after completion of the payment under the scheme by establishing his right over to obtain the sale deed from the appellant/Municipality by producing the document to show that he obtained allotment order and he made payment under the hire purchase agreement, the suit for declaration is not maintainable. When the first respondent herself made a specific plea in O.S.No.192 of 1990 as a tenant of the suit property. In that, he filed a specific suit that he is a tenant and hence, he has not been evicted under the due process of law and he has estopped from conducting that he is the owner of the suit scheduled property without any titled deed and right over the property as any capacities. In the said circumstances, he seeks for the interference in the finding of the learned appellate Judge.

5.The learned counsel appearing for the first respondent submitted that the pleading in the earlier proceedings as a tenant is the ignorance of



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the parties. There was no estopped against statutory and hence, the submission of the learned counsel for the appellant is not accepted one. The learned counsel for the first respondent/plaintiff further submitted that the plaintiff filed a suit without specific pleadings that he was allotted the houses under the central Government scheme. As per the scheme, he was allotted and he paid the amount and after completion of the entire due amount, he is entitled to seek for declaration of the title and hence, the learned appellate judge was correctly in holding that the first respondent is entitled for the decree for declaration.

5.1. It is the specific case of the Municipality/appellant that the first respondent plaintiff is not entitled to claim under the scheme on the ground that she was earned more than Rs.6,000/- p.a., but she was working as a teacher in the Municipality and his annual income is Rs.36,000/- is not correct. Taking the judicial notice, the salary amount of Rs.36,000/- as pleaded by the appellant is unimaginable one and in the year 1964, the amount of the Rs.36,000/- as annual salary is unbelievable and hence, the learned trial judge after considering the non production of the material documents on the side of the Municipality to prove that he is working as a



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teacher and he was not entitled to claim benefit under the scheme. The learned appellate Judge correctly view that the adverse difference against the Municipality. The learned trial judge after considering the non production of any documents to show that the appellant was not allotted a house and he has adverse difference against the Municipality.

5.2.The learned counsel for the first respondent submitted that he has not claimed right over the property not as a Municipality and he has claimed as individual which was well with the guidelines issued by the scheme under Ex.A1. As per Ex.A1, her annual income is less than Rs. 6,000/- and hence, she is entitled to apply under the scheme and in respect of allotment order and he paid amount regularly to the municipality and on completion of the same, he is entitled for the declaration of the above said relief.

6.With this argument, the learned counsel for the plaintiff submitted that the subsequent development is concerned on the observation of the learned appellate Judge, the Municipality is entitled to recover the remaining amount due from the plaintiff. The respondent filed a suit in



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O.S.No.185 of 2022 seeking for declaration of mandatory injunction to execute the sale deed and change the house tax receipt in her favour and the suit was decreed. Aggrieved over the same, the first appeal also filed and the same was allowed. Thereafter, he filed execution proceeding in the said case, on the basis of the said decree the EP Court ordered the arrest of the accused official of the municipality and municipality filed the present civil revision petition and the municipality obtained stay and hence, as on date the petitioner is entitled for decree for declaration and injunction.

7.This Court considered the rival submission made on either and perused the record and also the judgment of the Court below.

Discussion on the questions:

8.The Central Government announced the scheme to construct the house for the Low Income Group. As per the scheme, the Central Government granted 80% and the State Government granted 20% and the scheme was executed through individual himself, the cooperative societies and State Government or any designated authority by it. The Municipality/appellant was allotted 54 houses and they constructed 54



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houses. Out of which, they allotted 37 houses as a out rate sale to the various beneficiaries and the remaining 17 houses were not allotted to any body and the same were occupied the number of persons as a tenant. The first respondent is the one of the tenant. As per Ex.P.1, namely, the suit in O.S.No.354 of 1994 and the first respondent pleaded that he is the tenant under the municipality and he filed a suit for the permanent injunction restraining the appellant municipality from evicting the same under due process of law. In the suit, according to the evidence of P.W.1 was decreed and thereafter, the first respondent filed present suit for declaration and injunction and restraining the municipality from collecting rent.

9.It is the specific case of the plaintiff that he is the allottee under the scheme and he applied loan under the hire purchase agreement and he paid the entire amount. Therefore, he is entitled for declaration and and injunction restraining the municipality from collecting rent and the municipality has no authority to collecting rent after the payment of the hire purchase agreement. To prove the allotment order, the plaintiff has not produced any document and also to prove the hire purchase agreement, he has not produced any document and proved the payment of the entire hire



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purchase agreement, he has not produced any document to prove the payment of entire ryot purchase agreement. Apart from that, in his own legal notice Ex.P.2, It is stated as follows:-

5. My client Smt. Poonmodi Ratnasamy is one among them who has been allotted the houses under the scheme. The house bearing door No.50 in the Low-Income Group Colony at Virudhunagar Municipality has been allotted to her and she is residing there for more than 27 years. She is willing and ready to pay the full amount due from her in one instalment to complete 30 annual equal instalments for claiming the ownership of the house allotted to her.

10. Further from Ex.B1, it is clear that she is tenant of the appellant Municipality. The relevant portion of Ex.B1 are as follows:

“4. The suit property is a house, in a colony, administered by the defendant Municipality. The plaintiff has become a tenant of the defendant in respect of the suit property. The plaintiff has been a tenant of the defendant municipality in respect of the suit property for the last about twenty years. The rent for the suit property per month is Rs.55/- payable as per English Month. The Plaintiff has been regularly paying the rent for the suit property to the defendant.



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5.The plaintiff received a notice from the defendant dated 05.12.1989, informing that the rent for the suit property has been increased to Rs.150/- per month from 01.01.1990. The defendant also informed the plaintiff in the said notice that the rent has been increased as per the resolution No.724, dated 22.11.1989, of the Municipal Council. It is submitted that the defendant Municipality cannot enhance the rent for the suit property arbitrarily. It has to be stated in this connection that no opportunity at all has been given by the defendant municipality to the plaintiff to put forth her case against the enhancement of rent to the suit property. Moreover the defendant municipality has not authority, power, or right to enhance the rent arbitrarily and high-handedly. As such the enhancement of rent for the suit property made by the defendant municipality with effect from 01.01.1990, is not legal and valid. The plaintiff caused a reply dated 11.12.1989 to be sent through her advocate to the defendant. The defendant received the reply sent on behalf of the plaintiff on 12.12.1989.

7.As per the order of the Government and its policy, the houses in the colony are being sold to the tenants at reasonable rates. Many of the houses in the colony have been thus sold to the tenants in furtherance of such policy and order. The plaintiff is one among



some persons claiming priority right to purchase the house in which she is residing as a tenant.”

11. The plaintiff was not examined before the Court below to substantiate her claim. But, her husband deposed that she has not produced any document to show that the plaintiff entered into the hire purchase agreement and the said evidence is as follows:

பாரா 4ல் நான் வாடகைதாரர் என்றும் ஒவ்வொரு மாதமும் ரூ.55 வாடகை செலுத்துகிறேன் என்றும், வாதுரையில் கூறியுள்ளேன். நான் என் வாதுரையில் தவணை முறையில் வீட்டுப்பணத்தை கொடுத்தது ஒரு வகையான கிரையம் என நான் சொல்லவில்லை. ஆனால் நான் கூண்டில் ஏறி கிரையப்பணத்தை வீட்டிற்கு மொத்தமாகச் செலுத்துவது ஒருவகை. மாதத்தவணையில் செலுத்துவது மற்றொரு வகை எனக் கூறியுள்ளேன். என்.டி1.எக்சிபிட்டிலும் 8வது பாராவில் அசிஸ்டெண்ட் ரூ லோக்கல் பாடி எனக்குறிப்பிடப்பட்டுள்ளது. பிரதிவாதி முனிசிபாலிட்டி லோக்கல்பாடி தான்.

பிரதிவாதிக்கும் எனக்கும் இடையே ஆன விற்பனை குறித்து நான் எந்த ஒப்பந்தமும் கோர்ட்டில் தாக்கல் செய்யவில்லை. பிரதிவாதி என்னுடன் செய்த ஒப்பந்தத்தை நிறைவேற்றவில்லை. எனவே அந்த ஒப்பந்தத்தை கோர்ட்டு நிறைவேற்றித் தர வேண்டும் என எந்த தாக்கீதும் கோர்ட்டில் செய்யவில்லை.

இப்பொழுது நான் குடியிருக்கும் வீட்டை மத்திய அரசு நான் பணம் தரவேண்டிய அடிப்படையில் தான் ஒதுக்கீடு செய்தது. அப்படி எனக்கு மத்திய அரசு அதன் வீட்டை



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ஒதுக்கீடு செய்ததற்கான உத்தரவை நான் கோர்ட்டில் தாக்கல் செய்யவில்லை.

நான் இதே வழக்கிற்காக ரிட் பெட்சன் நம்பர்.1422/94ல் எங்களுக்கு சொத்தை விற்கவேண்டும் என போட்ட மனு எனக்கு தெரியாது. சென்ட்ரல் கவர்ன்மெண்டு லோன்களை முனிசிபாலிட்டி மூலம் வசூல் செய்கிறார்கள். அதனால் தான் லோனை வாடகையாக கட்டினேன்.

12. P.W.2 was also examined and he deposed that the plaintiff is tenant and she is a tenant and plaintiff also a tenant. The plaintiff paid the rent of Rs.55/-. She does not aware that the plaintiff whether has made any agreement and the material portion of the evidence is as follows:

முதல் விசாரணை (ஞானமணி)

பூங்கொடி அம்மாளுக்கும் மத்திய அரசுக்கும் ஒப்பந்தம் ஆனதா என்பது எனக்கு தெரியாது மாநில அரசுடனும் செய்துகொண்ட ஒப்பந்தமும் எனக்கு தெரியாது.

13. The plaintiff filed a suit for declaration claiming absolute title to the suit schedule property. The suit schedule property is one of the house of the Low Income Group colony bearing Door No.50 constructed under the Scheme of Central Government dated 30.11.1954. The scheme had been implemented through the disbursement of loan by the fourth



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defendant in the Suit. The first and second defendants implemented the scheme by disbursing the said loan to the individual or to the co-operative societies belongs to the Low-Income Group. The scheme is envisaged for the person who do not already own a house and whose income does not exceed Rs.6,000/- per annum. The house under the scheme can be constructed by the individual himself or co-operative society or state Government or any other authority designated by it. If the scheme was implemented by the State Government through their authorities, the designated authority build the houses and the said houses must be sold at outright rate or on hire purchase basis. Till the payment of the due, the ownership of the property vested with Government and the appellant municipality entitled to receive the rent for the period.

14. It is the case of the plaintiff is that she entered the hire purchase agreement to purchase the suit schedule house property and she had completely paid the entire amount and she became the owner of the property. Her specific case is that title to the property has been passed in favour of the plaintiff on the date of the allotment and the delivery of possession made on the basis of the allotment. She duly cleared the loan in



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the form of making payment of the loan amount under the hire purchase agreement for the period of 30 years. But, the municipality without executing the proper document conferring the title, evaded and also demanded rent for her occupation in the said house. Therefore, they seek the suit with prayer to declare the title to the suit property and permanent injunction restraining the appellant municipality from demanding rent.

15. To prove the said case, she has not appeared and deposed before this Court. As stated above, she filed the suit against the municipality in O.S.No.192 of 1990 against the appellant seeking relief of permanent injunction restraining the appellant municipality from evicting her except due process of law with the specific plea that the appellant municipality without any valid reason enhanced the monthly rent of the suit schedule property from Rs.55/- to Rs.150/-. In the said suit, she pleaded that she was tenant and the monthly rent for the suit schedule property per month is Rs.55/-. From the records, it is revealed that the said suit was decreed. Subsequently, the plaintiff filed a suit claiming the title over the suit schedule property with the contradictory pleadings and claim. Once, she claimed as a tenant and filed a suit in the year 1990, subsequently, she is



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estopped from making the contradictory pleadings as if she was the owner of the property and she obtained the allotment order and on the basis of the allotment order, she obtained the hire purchase loan and she paid the entire amount. She cannot make plea contradictory to taking in O.S.No.192 of 1990. Therefore, the theory of approbate and reprobate is applicable to the present case and on the said principle, the pleadings of the plaintiff that she was the owner of the property contrary to the earlier pleading in O.S.No.192 of 1990 as a tenant. Therefore, this Court has no reason to hold that the plaintiff is the owner of the suit schedule property.

16. It is the duty of the plaintiff to prove her case by producing the relevant document and oral evidence. It is settled principle also, the plaintiff must prove his case. But, in this case, the plaintiff failed to prove her right over the property as a allottee under the scheme. She has not produced any document to prove the allotment. Further she has not proved that she obtained the loan under the hire purchase agreement and produce the receipts for the settlement of the said hire purchase dues. She has also not produced any document to show that she obtained the sale deed after the payment of the entire amount under the hire purchase agreement.



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Without producing any of the documents, she claims title. But, the learned first appellate Judge without considering the same, decreed the suit holding that the municipality has not established that the plaintiff is not come under the Low-Income Group and the rent had been paid by the plaintiff as a payment for loan and the municipality has not produced any document to show that the plaintiff is not allottee and granted liberty to the municipality recover any loan amount. Therefore, the said finding passed by the learned appellant judge by shifting the burden upon the municipality is perverse. The Hon'ble Supreme Court has reiterated the principle that the plaintiff prove her case and the plaintiff has not entitled to decree on the basis of the weakness in the defendant case and the same has fortified by the following judgment of the Hon'ble Supreme Court in the case of ***Jagdish Prasad Patel v. Shivnath***, reported in **(2019) 6 SCC 82**

“44. In the suit for declaration of title and possession, the respondent-plaintiffs could succeed only on the strength of their own title and not on the weakness of the case of the appellant-defendants. The burden is on the respondent-plaintiffs to establish their title to the suit properties to show that they are entitled for a decree for declaration. The respondent-plaintiffs have neither produced the title document i.e. patta-lease which the respondent-plaintiffs are relying upon nor proved their right



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by adducing any other evidence. As noted above, the revenue entries relied on by them are also held to be not genuine. In any event, revenue entries for few khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title.

45. Observing that in a suit for declaration of title, the respondent-plaintiffs are to succeed only on the strength of their own title irrespective of whether the appellant-defendants have proved their case or not, in Union of India v. Vasavi Coop. Housing Society Ltd. [Union of India v. Vasavi Coop. Housing Society Ltd., (2014) 2 SCC 269 : (2014) 2 SCC (Civ) 66] , it was held as under : (SCC p. 275, para 15)

‘15. It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.’”

17. The learned trial Judge correctly dismissed the suit holding that the plaintiff admitted her relationship as a tenant in the earlier suit and she has not produced any document to show the allotment, obtainment of loan under the hire purchase agreement and the payment in the hire purchase agreement. The learned trial Judge also appreciated the evidence of the plaintiff. In the said circumstances, the first appellate Court has not



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jurisdiction to reverse the finding of the trial Court on surmises and conjecture. Further, the first appellate Court has not assigned any reason to reverse the finding of the learned trial Judge. The Hon'ble Supreme Court repeatedly has held that the well considered trial Court judgment has not been reversed by the first appellate Court without any legal infirmities and perversity.

18. The learned counsel for the first respondent relied the judgment of the Hon'ble Supreme Court in the case of *Shri Krishan Vs. the Kurukshetra University*, reported in *AIR 1976 Supreme Court 376*, which is not applicable wherein, it is stated that the candidate made the letter stating that he admitted his student. In this case, the admission was made in the pleadings and the same was culminated into the judgment and decree ie., in O.S.Mo.192 of 1990, she took a plea that she was tenant and she was paying the rent of Rs.55/-. But in the present suit she claimed that she was the owner of the property and she paid the said amount as a loan due amount. But, there was not document produced. Therefore, the said judgment is not applicable.



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19. The learned counsel submitted that the plaintiff prescribed the title by adverse possession. To prove the adverse possession, this Court finds lack of necessary pleadings and evidence to prove the *nec vi, nec clam and nec precario*. Therefore, the plea of the adverse possession cannot be accepted.

20. The learned appellate Judge in A.S.No.37 of 1997 observed that the municipality is at liberty to collect the remaining loan amount. The said finding is against the plaintiff's case of the payment of the entire amount. Therefore, this finding also erroneous one.

21. In view of the above discussion, all the substantial questions framed are answered in favour of the appellants and this Second appeal is allowed and the judgment and decree passed by the learned Subordinate Judge, Virudhunagar in A.S.No.37 of 1997, dated 20.07.2000, is liable to be set aside and the judgment and and decree passed by the learned District Munsif Judge, Virudhunagar, in O.S.No.354 of 1997, dated 29.11.1996 is liable to be restore.



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22. Discussion on the issue involved in Civil Revision Petition:

As stated above, the plaintiff filed a suit for declaration of title and for permanent injunction restraining the appellant municipality from collecting rent in O.S.No.354 of 1997 and the same was dismissed. Aggrieved over the same, the respondent preferred A.S.No.37 of 1997 on the file of the Sub Court, Virudhunagar, and the same was allowed with the specific direction to collect the remaining amount. Thereafter, the plaintiff filed the another suit in O.S.No.185 of 2002 seeking the relief of mandatory injunction against the appellant to execute the sale deed and obtained decree. On the basis of the decree, execution proceeding was filed in E.P.No.91 of 2004. In the said execution proceedings, arrest warrant was issued against the municipal commissioner and other Government Officials by passing the impugned order dated 10.12.2014. challenging the same, the present C.R.P. has been filed. Thereafter, the same was posted along with this Second Appeal.

23. The respondent filed the suit in O.S.No.185 of 2002 only on the basis of the judgment in A.S.No.37 of 1997, which had been impugned in the second appeal. When the foundation of her claim is challenged before



this Court, any proceedings on the basis of the said disputed claim is not legally maintainable. Further, the plaintiff has not established the title to the property and hence, he has not entitled to obtain sale deed. This Court in the above Second Appeal elaborately discussed the issue of entitlement of ownership over the suit schedule property and decided against the plaintiff and therefore, the contempt proceedings initiated against the revision petitioner is not legally maintainable and in result, there was no willful disobedience on the part of the petitioner. Therefore, this Court is inclined to set aside the order passed in E.P.No.91 of 2002.

24.In result,

24.1.C.R.P.(MD).No.12 of 2015, is hereby allowed with the following directions:

24.1.1.The order passed in E.P.No.91 of 2004 in O.S.No.185 of 2002 by the learned District Munsif Court, Virudhunagar, dated 10.12.2014 is hereby set aside.

24.1.2. There shall be no order as to costs.



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24.2.Second Appeal in S.A.(MD).No.156 of 2015 stands allowed with the following direction:

24.2.1.The judgment and decree passed in A.S.No.37 of 1997, by the learned Sub Judge, dated 20.07.2000, is hereby set aside and the decree passed in O.S.No.354 of 1994, by the learned District Munsif, Virudhunagar, dated 29.11.1996 is hereby restored on its file.

24.2.2.There shall be no order as to costs.

15.07.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No

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To
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1. The Sub Judge, Virudhunagar
2. The District Munsif, Virudhunagar.
3. The District Collector,
Government of Tamil Nadu,
Virudhunagar District.
4. The Secretary
R.D.A., and L.A.Department, Madras.
5. The Secretary,
Ministry of Works,
Housing and Distribution,
Government of India, New Delhi.
6. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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C.R.P.(MD).No.12 of 2015
and
S.A.(MD).No.156 of 2015
and
M.P.(MD).No.1 of 2015

15.07.2024