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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Appeal Suit No.10 of 2015
and M.P.No.1 of 2015

The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai 600 003.

... Appellant/Defendants

-Versus-

Mrs.Meera SV Kumar

... Respondent/Plaintiff

This appeal suit is directed against the judgment and decree dated 26.09.2012 passed in O.S.No.10045 of 2010 by the learned VI Additional Judge, City Civil court, Chennai.

For Appellant : Ms.Karthikaa Ashok

For Respondent : Mr.M.S.Krishnan, Senior Counsel for
Mr.K.V.Babu

JUDGMENT

The sole defendant in O.S.No.10045 of 2010 on the file of the learned VI Additional Judge, City Civil Court, Chennai, is the appellant herein. The sole plaintiff in the said suit, is the respondent herein. The said suit was originally filed before this court and numbered as C.S.No.171 of 2009. Subsequently, on the rearrangement of the pecuniary jurisdiction, the suit was transmitted to the City Civil Court and accordingly renumbered as O.S.No.10045 of 2010. The plaintiff filed the said suit for declaration of title and for consequential relief of injunction restraining the defendant from in any manner interfering with his peaceful possession and enjoyment of the suit property. The trial court by decree and judgement dated 26.09.2012 decreed the suit as prayed for. As against the same, the appellant has come up with this appeal.

2. By consent, the appeal itself has been taken up for final hearing. I have heard the learned counsel for the appellant and the learned senior counsel for the respondent and also perused the records carefully.



3. The case of the plaintiff in brief is as follows:- The suit property is a vacant site described in the suit schedule as Plot No.32A, at Seshadripuram, Velacherry Village. It is admittedly comprised in S.No.159/1 and subsequently sub divided as S.No.159/4. A partnership firm by name M/s.Murugan Syndicate was the owner of the lands comprised in S.Nos.159, 162 and 163/1 at Velacherry Village. The Velacherry Village was originally within the Town Panchayat limits known as "Velacherry Town Panchayat". M/s.Murugan Syndicate [The Partnership Firm] laid plots on the above said land and obtained Layout Approval from the then Deputy Director, Town Planning, Chennai Region under Letter Roc.3967/69 MR2. There were as many as 36 house sites approved in the lay out and the extent of the layout was Acre 3 and 61 cents. Plot No.32 in the said approved layout is situated on the south of Plot No.31 and on the east of 30 feet road. According to the plaintiffs, on the immediate south of Plot No.32, a separate approved house site bearing Plot No.32A is situated. The children's play space is situated on the further south of Plot No.32A. Plot No.32A was not, however, sold out by its original owner viz., M/s.Murugan Syndicate.

4. Later on, an insolvency proceeding in I.P.No.76 of 1971 was initiated before this court [Madras High Court] seeking to declare Mr.C.V.Nadanasabapathy and Mrs.O.P.Sulochana, the partners of M/s.Murugan Syndicate, as insolvents. In the said proceedings, this court, accordingly, declared them as insolvents and ordered vesting the properties belonging to them and that of M/s.Murugan Syndicate including Plot No.32A [the suit property herein] in the Official Assignee, High Court, Madras. One Mrs.Lizzle Bai offered to buy three strips and Plot No.32A situate in S.No.s.159/1, 162 and 163/1 measuring 2 grounds and 1126 square feet from the Official Assignee. A report to this effect was filed before this court and this court by order dated 06.09.1982 permitted the official assignee to sell the plots to Mrs.Lizzle Bai or to her nominee. Mrs.Lizzle Bai had nominated one Mr.K.Nessaiah for purchasing the properties comprised in S.Nos.159/1, 162 and 163/1 measuring 2 grounds and 1126 square feet including the suit property [Plot No.32A measuring 1 ground and 18 square feet] herein. Accordingly, the Official Assignee executed a deed of conveyance on 21.09.1982 thereby selling away the suit property viz., Plot No.32A measuring 2416 and three other properties in favour of Mr.Nesaiah Son of Kuttikong. Mr.Nesaiah was inducted into the possession of the suit property and he continued to be in possession and enjoyment of the same. Thereafter, the plaintiff wanted to purchase the suit property from Mr.Nessiah. Accordingly, she purchased the same by means of a registered sale deed dated 09.02.2004. From the date of purchase, according to the plaintiff, she has been in exclusive possession and enjoyment of the suit property.



5. It is the further case of the plaintiff that for the purpose of developing the suit property, she had appointed one Mr.N.Anand as her Power Agent. Mr.N.Anand, the Power Agent of the plaintiff made an application to Chennai Metropolitan Development Authority for planning permission for construction of residential building on the suit property viz., plot No.32A. Accordingly, the Chennai Metropolitan Development Authority in its letter No.A2/6035/04 dated 23.04.2004 [vide permit No.A/001160/180/04 dated 23.04.2004] granted permission for construction of a residential house. Thereafter, Mr.N.Anand, on behalf of the plaintiff, approached the defendant Corporation for further permission to start construction. On receipt of such request, the officials of the defendant corporation visited the site on 28.05.2004 and thereafter, informed the plaintiff that the suit property belongs to the defendant corporation and therefore, the plaintiff should hand over vacant possession of the same to the Corporation. It was in those circumstances, the plaintiff filed the present suit. According to the plaintiff, the defendant has got no right what soever over the suit property. It is her further case that the land was neither gifted in favour of the defendant corporation, nor was there any proceedings by which the said land was acquired by the defendant corporation for a public purpose. Thus, according to the plaintiff, the defendant has got no title over the suit property nor is there any other right for the defendant corporation.

6. The defendant in his written statement submitted that it is true that the Deputy Director, Town Planning, Madras Region, had approved the layout in S.Nos.159, 162 and 163 of Velacherry Village under LPDM/DDTP No.55/69 in favour of M/s.Murugan Syndicate. It is also admitted that there were only 36 plots. According to the defendants, there was no plot earmarked as Plot No.32A at all. It is the further case of the defendant that on the south of Plot No.32 there is a vacant land in a triangular shape, which was originally earmarked for children's play in the approved layout. Thus, according to the defendant, the alleged purchase made by the plaintiff is not valid. It is the further contention of the defendant that the sale made by the Official Assignee would not confer any title on the plaintiff's vendor Mr.Nessiah and, in turn, the sale deed executed by Mr.Nessiah in favour of the plaintiff shall not confer any title on her. In essence, the contention of the defendant is that the suit property absolutely belongs to the respondent - Chennai Corporation. It is also the case that the corporation had already sent a letter to the Member Secretary, CMDA, to cancel the planning permission already granted in favour of the plaintiff. It is also contended that the defendant had already written a letter to the Tahsildar, Mambalam-Guindy Taluk, to cancel the patta for the suit property granted in favour of Mr.N.Anand, the Power of Attorney of the plaintiff.

7. Based on the above pleadings, the trial court framed appropriate issues. Thereafter, both the parties were called upon by the trial court to let in evidence. On the side of the plaintiff,

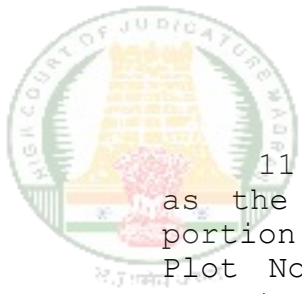


she was examined as P.W.1 and as many as 10 documents were marked and on the side of the defendant-Corporation, one Mr.P.Pasupathi was examined as D.W.1 and as many as 6 documents were marked. During trial of the case, an Advocate Commissioner was appointed. His report was marked as Ex.C.1 and the photographs taken by him accompanying the report were marked as Ex.C.2. Having considered the above, the trial court decreed the suit. Challenging the same, the defendant corporation is now before this court with this appeal.

8. In this appeal it is contended by the appellant that there is overwhelming evidence to show that there is no such plot as Plot No.32A at all. Therefore, the so called sale made under Ex.A.1 by the Official Assignee to Mr.Nessiah and the sale made by Mr.Nessiah in favour of the plaintiff under Ex.A.2 would not confer title on her. The learned counsel would further submit that the report submitted by the Advocate Commissioner and the photographs appended to the same would also go to show that on the south of Plot No.32, there is no separate plot as plot No.32A. It is also further contended that absolutely there is no document to show that a plot was carved out as Plot No.32A on the south of plot No.32 and that the same was approved by the Town Planning Authority.

9. The learned senior counsel appearing for the respondent would vehemently oppose this appeal. According to him, Plot No.32A was earmarked many decades ago by the Deputy Director, Town Planning, Chennai Region and that the said plot is situated on the immediate south of Plot No.32. Plot No.32A is the suit property herein.

10. The learned counsel would further contend that assuming that the vacant site situated on the immediate south of Plot No.32 had been earmarked as children's play space, that would not automatically transfer the title for the property to the defendant corporation. The defendant corporation can acquire title either by a gift deed executed by the original owner of the land or by acquisition. In the instant case, so far the vacant site situated immediately on the south of Plot No.32 is concerned, neither there is any gift deed executed by the original owner in favour of the defendant corporation nor is there any such acquisition by the corporation. Thus, according to the learned counsel, admittedly, the title for the property was in the hands of M/s.Murugan Syndicate and as per the order of Madras High Court, after its partners were declared as insolvents, this property stood vested with the official assignee and thereafter, it was sold to Mr.Nessiah after getting permission from this court. The learned counsel would further submit that when there is a judicial approval for the sale made in favour of Mr.Nessiah, the vendor of the plaintiff, it is not now open for the defendant corporation to dispute the title of the plaintiff.



11. The learned senior counsel would further submit that so far as the possession is concerned, the plaintiff claims that only a portion of the property, which is situated on the immediate south of Plot No.32 and the plaintiff does not claim title for the entire vacant space, which is in triangular shape. According to him, going by the four boundaries in the sale deed executed by the official assignee, it is crystal clear that the play ground is situated on the immediate south of Plot No.32A and not on the immediate south of Plot No.32. Thus, according to the learned counsel, the plaintiff has proved her title, which can never be disputed and she is also in possession of the suit property. The possession of the plaintiff is not at all disputed in the written statement, the learned senior counsel pointed out.

12. In view of the rival submissions made and going by the grounds of appeal raised in the appeal memorandum, the following points have arisen for consideration in this appeal:-

(1) Whether the title for the suit property would have been transferred to the appellant - Chennai Corporation in the absence of a sale deed executed by the owner of the land and in the absence of any acquisition in favour of the corporation according to law?

(2) Whether the sale made by the official assignee in favour of Mr.Nessiah and the sale made by Mr.Nessiah in favour of the plaintiff in turn would confer title on the plaintiff?

(3) Whether the trial court was right in holding that the appellant - Chennai Corporation has got no title for the property?

(4) Whether earmarking of space in the approved lay out as a space for public purpose would automatically amount to vestiture of the property in favour of the appellant corporation and would it tantamount to handing over of vacant possession to the appellant - Chennai Corporation?

(5) Whether the trial court was right in granting the relief of injunction as a consequential relief?

13. I have carefully considered the submissions made by the learned counsel on either side and also perused the records carefully.

14. It is an undisputed fact that the vacant lands comprised in S.Nos.159/1, 162 and 163/1 at Velacherry Village were owned by the partnership firm known as "M/s.Murugan Syndicate". One Sri.C.V.Nadanasabapathy and Ms.O.P.Sulochana were the partners of the said partnership firm. It is also not in dispute that the said properties were developed and plots were laid by the said partnership



firm. It is also the admitted case that the Deputy Director, Town Planning, Madras Region, has granted approval for the layout under Ex.B.6. A perusal of Ex.B.6 Approved Layout Plan would go to show that Plot No.32 is situated on the east of 30 feet road and on the south of plot No.31. On the immediate south of plot No.32, there is a triangular portion, which is shown as children's play area. But, it is contended by the plaintiff that on the immediate south of plot No.32, a new plot viz., Plot No.32A was carved out and the same was approved. But, unfortunately, there is no documentary proof to show that any such plot No.32A was approved. But, whether plot No.32A is an approved plot or not is immaterial to decide the issues involved in the suit and to answer the points framed in this appeal for consideration. Assuming that Plot No.32A has not been approved, it does not mean that the original owner has lost his title in favour of the defendant corporation. The reasons are so simple, but very clear. Though a particular space would have been earmarked for any public purpose in the approved layout, it is too well-settled that such approval order would not automatically vest the title for the said space in favour of the defendant corporation. It requires transfer of title in favour of the defendant corporation either by means of a sale deed or by means of a gift deed or by means of acquisition. In this case, admittedly, there was no such transfer effected by means of any of the above said courses available. Therefore, for the entire triangular portion situated on the immediate south of Plot No.32, the title remained with M/s.Murugan Syndicate.

15. Admittedly, the partners of M/s.Murugan Syndicate viz., Mr.C.V.Nadanasabapathy and Ms.Sulochana were adjudicated as insolvents in I.P.No.76 of 1971 and the High Court ordered vestiture of their properties with the Official Assignee, High Court, Madras. The suit property, which has been described as Plot No.32A and situated immediately on the south of plot No.32, also stood vested with the Official Assignee. Ex.A.1 deed of conveyance executed by the Official Assignee would further go to show that the Official Assignee wanted to sell plot No.32A viz., the suit property herein. He submitted a report to this court seeking permission to sell the property to Mrs.Lizzle Bai or to her nominee. This happened not in the recent past, but, it had happened in the year 1982 i.e., on 06.09.1982. This court, accordingly, granted permission to the Official Assignee to sell Plot No.32A situated in S.No.159/1,162 and 163/1 measuring 1 ground and 18 square feet [2418 square feet] Accordingly, the Official Assignee executed Ex.A.1 in favour of Mr.Nessiah for a valuable consideration of on 21.09.1982. Thus, it is manifestly clear that under Ex.A.1 the title for the property was transferred to Mr.Nessiah. The said transfer was also approved by this court, which is also evident from the documents.

16. Mr.Nessiah, thereafter, sold away the said property [suit property herein] to the plaintiff under Ex.A.2 on 09.02.2004 i.e., after 22 years of the sale made by the Official Assignee, High Court,



Madras. It is never the case of the defendant corporation that the corporation was in possession and enjoyment of the property all these years.

17. Thus, under Ex.A.2, the plaintiff has become the absolute owner of the suit property. The patta for the property has also been transferred. As I have already pointed out, never in the past, was there any transfer of title either by M/s.Murugan Syndicate or by Mr.Nessiah or subsequently by the plaintiff in favour of the defendant corporation. Though in the written statement in para 9, the defendant corporation has contended that the suit property absolutely belongs to the corporation, the said contention is without any basis. The learned counsel for the appellant is not in a position to substantiate the said contention as to how the defendant corporation acquired title for the suit property. Therefore, in my considered opinion, the trial court was right in declaring the title for the suit property in favour of the plaintiff.

18. Now, coming to the consequential relief of injunction, after the purchase of the property, the plaintiff, through her Power Agent Mr.Anand, made an application to the CMDA for permission for making construction on the suit property. Under Ex.A.3 dated 23.04.2014, the planning approval was given by the CMDA. As rightly pointed out by the learned senior counsel for the respondent, the CMDA officials would not have granted approval without making personal visit to the suit property. The very fact that planning approval was given by the CMDA would go to strengthen the case of the plaintiff that she is in possession and enjoyment of the property. The whole trouble started when the plaintiff applied for further permission from the respondent corporation for construction of residential building. When the same was refused by the corporation on the ground that the space is earmarked for public purpose, the plaintiff filed a writ petition in W.P.No.17817 of 2004. By order dated 27.04.2006 [Ex.A.6], this court allowed the writ petition thereby directing the corporation to grant permission. As against the same, the appellant corporation filed an appeal in W.A.No.233 of 2007 before a Division Bench of this Court. By order dated 12.06.2008 [Ex.A.7], the Division Bench of this Court modified the order of the learned single Judge and directed the corporation to consider the request of the petitioner for building approval. But, approval was not given. At that stage, since the title of the plaintiff was disputed, the plaintiff filed this suit. All these facts would go to show that the plaintiff is in possession of the suit property. Here, I need to emphasis that in the written statement, no where, the defendant corporation has stated that the possession was ever in the hands of the defendant corporation. Thus, it is an undisputed fact that the plaintiff is in possession of the property. Thus, in my considered opinion, the trial court was right in granting the relief of injunction also in favour of the plaintiff.



19. The learned counsel for the appellant would submit that Plot No.32A had never come into existence and, therefore, the decree and judgement of the trial court should be interfered with.

20. In my considered opinion, as I have already pointed out, it is immaterial in this appeal as to whether any space was named as Plot No.32A or not. The suit property has been duly described by means of survey number and four boundaries in Ex.A.1 and Ex.A.2. The property is identifiable and there is no dispute regarding the identity of the property also. Under Order VII, Rule 3 of CPC, it is enough that the suit property is described either by means of survey number or by means of four boundaries or by both. In this case, the plaintiff has so described the property by means of four boundaries, which coincides with the four boundaries mentioned under Ex.A.1 and Ex.A.2. In my considered opinion, Ex.A.1 sale deed requires more weightage. It is not a deed of conveyance of title executed by any individual. It has been executed by the Official Assignee, High Court, Madras. This sale under Ex.A.1 made by the Official Assignee on the orders of this court was on 21.09.1982. At this length of time, if we are to say that the said sale made by this court through the Official assignee in 1982 is doubtful, then, there will be no sanctity attached to any sale made by the courts of law. It cannot be construed that before ordering vestiture of the suit property with the Official Assignee, before the ordering the sale of the property in favour of Mr.Nessiah and before approving the sale made by the Official Assignee in favour of Mr.Nessiah, this court was not aware of the title for the property. I am sure that this court was fully convinced that the title was only with M/s.Murugan Syndicate and that is how, this court ordered sale of the property. The sale made by the Official Assignee cannot be stated to be invalid or void. Neither could it be said that the title for the suit property was even transferred to the Corporation of Chennai. Thus, the sale made by the Official Assignee is valid and the same had conveyed title to Mr.Nessiah. The plaintiff is only an innocent purchaser from Mr.Nessiah after several years of the sale by the Official Assignee to Mr.Nessiah. As rightly contended by the learned senior counsel for the respondent, it is not as though the plaintiff claims title for the entire triangular portion earmarked as "children play space". She claims title and possession only for a smaller extent measuring 2418 square feet on the immediate south of plot No.32. On the further south of suit property lies the children play space over, which the plaintiff does not claim any right.

21. The learned counsel appearing for the appellant would place reliance on a judgement of this court in Krishna Nagar Residents Welfare Association Rep. By its Secretary Mr.A.V.Dhakshnamurthy and others v. The Director of Town and Country Planning, Madras-2 and others, 2001 - 3- L.W. 828 wherein this court has held that if any property is earmarked for a public purpose as per lay out approval granted by DTCP, the same shall be used only for the said public



purpose and not for any other purpose. In the said judgement, this court has followed the earlier judgement of the Hon'ble Supreme Court in PT. Chet Ram Vashist (Dead) By LRs v. Municipal Corporation of Delhi, (1995) 1 SCC 47 wherein also the Hon'ble Supreme Court has taken the similar view. In the said judgement, the Hon'ble Supreme Court has held thus:-

"The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself."

22. Referring to these judgments, the learned counsel for the respondent would submit that so far as the suit property is concerned, the appellant, being corporation, is the custodian and, therefore, the consequential relief of injunction should not have been granted. Though attractive, I find no force at all in the said argument. The reasons are more than one. The first one is that there is no document, as of now, either to prove or disprove the existence of Plot No.32A. This Court in the Insolvency Proceedings has mentioned the suit property as Plot No.32A. In my considered opinion, but for the production of documents to show the approval of plot No.32A, the High Court would not have described the same as a house site. Though at this length of time the plaintiff, who is only a very recent purchaser may not be in a position to show that the Plot No.32A was really approved in a subsequent proceedings of the Director of Town Planning, that will not go to rebut the presumption arising out of the sale made by the Official Assignee that Plot No.32A had come into existence and the same was approved by the authority concerned. In my considered opinion, going by the facts and circumstances of the case, I am inclined to raise such presumption under Section 114 of the Evidence Act that plot No.32A was approved by the Director of Town Planning. Such presumption raised under Section 114 of the Evidence Act is, of course, rebuttable. But, in the instance case, the respondent corporation, who claims that there was no such plot carved out as plot No.32A, has not let in any evidence to rebut such presumption under Section 114 of The Evidence Act. Illustration (e) to Section 114 of The Evidence Act speaks that the court may presume existence of certain facts. It is this presumption, which I am inclined to raise in favour of the plaintiff in this case. Though the defendant corporation is expected to be in possession of the documents relating to approval of the layout, cancellation, etc., regarding the suit property, there is no specific plea at all in the written statement that there was no subsequent approval by carving out Plot No.32A made by the CMDA or DTCP. Neither any official document has been proved to show that plot No.32A was never carved out and approved. Thus, in my considered opinion, the presumption arising out of the judicial act of this court remains unrebutted and therefore, I have got every



reason to hold that Plot No.32A came into being and the same was approved by the appropriate authority.

23. In the judgement relied on by the learned counsel for the appellant/defendant, it has been held that so far as the space earmarked for the public purpose is concerned, the corporation is the custodian of the same and the corporation has got right to maintain the same. Regarding this legal position, I have no doubt in my mind at all. But, in the instant case, the defendant corporation has not proved that the suit property was earmarked for a public purpose. It is the case of the plaintiff that the property which is situated on the immediate south of the suit property alone was earmarked for public purpose. Though under Ex.B.6, Plot No.32A is not shown, in my considered opinion, by means of presumption going by the judicial act of this court, I presume that Plot No.32A would have been carved out subsequently and the same would have been approved. The Advocate Commissioner's report would also support the same. As I have already stated, even in the written statement, the defendant corporation has admitted that the patta has been transferred in the name of the plaintiff by the Tahsildar concerned. The Commissioner has also, going by the physical features, mentioned that there is a partition wall between suit property and the property situated on the immediate south of it, which is the play ground for the children. Therefore, I hold that the appellant is not the custodian of the suit property and the appellant has got no other right over the same. Thus, in my considered opinion, the trial court was right in granting the decree for injunction also.

24. In view of the above discussions, I answer all the points in favour of the respondent/plaintiff and I do not find any merit at all in this appeal. This appeal accordingly fails.

25. In the result, this appeal suit is dismissed. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk



To

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1.The VI Additional Judge, City Civil court, Chennai.

+ 2 ccs to Mr.K.V. Babu, Advocate SR.7766

+ 1 cc to Ms. A. Karthikaa Ashok, Advocate SR.7941

TEJ(CO)

EU 11.04.2015

Appeal Suit No.10 of 2015