

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2015

CORAM

THE HON'BLE MS. JUSTICE R. MALA

S.A.No.1067 of 1999

K.Kannaiyan

S/o.Kumarasamy

... 1st Defendant/Appellant/Appellant

Vs

1.Mohammed Issak

... Plaintiff/1st Respondent/Respondent

2.Fathima Beevi

... 2nd Defendant/2nd Respondent/Respondent

3.Fazarullah

... 3rd Defendant/3rd Respondent/Respondent

Prayer:

Second appeal filed under Section 100 of CPC against the judgment and decree dated 20.11.1998 made in A.S.No.13 of 1998 on the file of the Principle Subordinate Judge, Mayiladuthurai confirming the judgment and decree dated 22.10.1997 made in O.S.No.89 of 1996 on the file of the Additional District Munsif, Mayiladuthurai.

For Appellant : Mr.S.Sounthar

For Respondents: Mr.A.Muthukumar, for R1

Ms.P.Srividya, for R2 and R3

J U D G M E N T

The second appeal arises out of the judgment and decree dated 20.11.1998 made in A.S.No.13 of 1998 on the file of the Principle Subordinate Judge, Mayiladuthurai confirming the judgment and decree dated 22.10.1997 made in O.S.No.89 of 1996 on the file of the Additional District Munsif, Mayiladuthurai.

2. The averment made in the plaint are as follows:

(a) The suit property situated in Sirunangur village was purchased by the plaintiff from one Zanath Beevi vide registered sale deed dated 01.08.1980. Thus, the plaintiff became the absolute owner of the suit property. The first defendant had entered into a rental agreement with the said Zanath Beevi and he was residing as a tenant in the suit property from 15.09.1974. However, as on 31.08.1991 the

first defendant had to pay Rs.3000/- as rent due to the plaintiff. Since the first defendant was not regular in paying the rent, the plaintiff took steps to evict the first defendant from the suit property. While so, without the knowledge of the plaintiff, the first defendant took steps to obtain electricity supply connection in the suit property. Hence, the plaintiff sent a legal notice dated 18.09.1991 to the first defendant and he had also sent the copy of the said notice to the officials of the electricity department and urged them not to give electricity supply connection to the suit property. Thereafter, the first defendant had issued a reply notice stating that he had entered into a sale agreement with the father of the plaintiff viz., Yacob about 16 years ago and he had also paid an advance amount of Rs.1100/- and only on that basis he was residing in the suit property. Further, he had averred that he had spent Rs.12,000/- towards repair works for the suit house and had spent Rs.3,000/- for obtaining electricity supply connection. However, all the allegations made in the reply notice are false and he has put up false claim over the suit property. The plaintiff's father never executed any agreement of sale in respect of the suit property in favour of the 1st defendant and the plaintiff's father was never the owner of the suit property and he has no right to sell the same. Even if he had executed any agreement of sale in favour of the 1st defendant, the alleged agreement is not valid and the 1st defendant had never made any improvement in the suit property. The 1st defendant has no right to get electricity service connection or for effecting any repairs without the consent of the plaintiff. Even though the 1st defendant is a tenant in respect of the suit property since in the reply notice the 1st defendant disputes the title of the plaintiff for the suit property and he claims to be in possession in part performance of an agreement of sale, the plaintiff is constrained to file the present suit for recovery of possession of the suit property based on the title alternatively and seek a declaration therefor.

(b) Since the 1st defendant denied the title of the plaintiff in respect of the suit property and denied the relationship of the landlord and tenant, the 1st defendant is liable to pay damages in lieu of rent at the rate of Rs.150/- per month. The 1st defendant left past arrears of rent of Rs.3,000/- and the plaintiff claims the same in the suit accordingly as past damages in lieu of rent. The 1st defendant in his reply has stated that there are other heirs of the plaintiff's father who are also entitled to share in the suit property. However, the said allegations are false. The 2nd defendant is the mother and the 3rd defendant is the brother of the plaintiff. The defendants 2 and 3 had filed a suit in O.S.No.72 of 1982 on the file of the Subordinate Court, Mayiladuthurai against this plaintiff for partition and separate possession of their share in the family's properties. The present suit property was also included in the said suit in O.S.No.72 of 1982. The Subordinate Court, Mayiladuthurai had held that the suit property is not the exclusive property of the plaintiff and it is available for partition among the heirs of Yacob.

Against the said finding and other findings of the said Court, the plaintiff has filed an appeal in A.S.No.19 of 1987 before the High Court and the same is pending. The plaintiff is filing the present suit without prejudice to the rights of the parties in A.S.No.19 of 1987 which is pending and the plaintiff also undertakes to hold the suit property as a co-owner with the defendants 2 and 3 or as his exclusive property as may be decided in A.S.No.19 of 1987.

3. The appellant herein who is the first defendant in the suit has filed the written statement wherein it was stated that the defendant has not entered into any tenancy arrangement with the plaintiff on 15.09.1974 as alleged in the plaint. The defendant do not admit that the plaintiff became the owner of the suit property by virtue of the alleged sale deed dated 01.08.1980 and said to have been purchased from one Zeenath Beevi. The defendant admits that the plaintiff and defendants 2 and 3 are the legal heirs of one Yakoob Rowther of Tirumangalam Village. The said Yakoob Rowther put this defendant in possession of the said house some 16 years ago in pursuance of an agreement of sale entered into between him and this defendant. The price was fixed at Rs.3000/- and this defendant paid a sum of Rs.100/- in the first instance. Thereafter, he paid a sum of Rs.1000/- to Yakoob Rowther. In the mean time, the said Yakoob Rowther passed away. While so, this defendant who has to pay the balance amount of Rs.1900/- and get the document registered. However, as dispute arose between the legal heirs of the said Yakoob Rowther, they were unable to come together and have the sale transaction completed. However, this defendant continues to remain in possession and enjoyment of the said property and is always ready and willing to complete the sale transaction and pay the balance amount of Rs.1900/- to the legal heirs of the deceased Yakoob Rowther. As owner of the property he had spent a sum of Rs.12,000/- to carry out repair works in the building and Rs.3000/- to obtain electricity service connection. The Electricity Department knowing fully well of the right and possession of this defendant granted permission to put up electric connection. However, the connection sought for by the plaintiff was rejected. Furthermore, the sale arrangement is also known to Kali Vasan, Senbagacheri K.Satyaseelan and the deceased Abdul Kareem of Tirumangalam. Only in order to drive out this defendant from the suit house the plea of tenancy was falsely introduced and the lease deed was fabricated. Thus, the defendant sought for dismissal of the suit.

4. The Learned Trial Judge after considering the averments made in the plaint, written statement and additional written statement and arguments on either side counsel, has framed necessary issues and on perusing the oral and documentary evidence decreed the suit against which the 1st defendant as appellant has preferred an appeal in A.S.No.13 of 1998. The said appeal in A.S.No.30 of 2001 came to be dismissed, against which the present second appeal has been preferred.

5. At the time of admission, the following question of law has been framed.

"Having stated in one breadth that the defendant is a tenant and in another breadth treating him in a different capacity, is the suit as framed its maintainable on the following grounds:-

(a) if the defendant is a tenant, will the civil court has jurisdiction to try the suit? Or

(b) even assuming that the defendant is not the tenant still for want of notice under Section 106 of the Transfer of Property Act can the relief be granted? "

6. Challenging the concurrent finding of the Courts below, the learned counsel appearing for the appellant would submit that the first respondent herein as plaintiff has filed the suit for recovery of possession on the basis that the appellant herein is only a tenant and alternatively for declaration of title and recovery of possession. The learned counsel would submit that one Zanath Beevi is the original owner of the property from whom he purchased the property under Ex.A.1/Sale deed on 01.08.1980. The appellant herein is alleged to be a tenant under him as per Ex.A.3/Rental agreement, dated 15.09.1974. As soon as the appellant attempted to obtain electricity service connection in his name, the first respondent/plaintiff issued a legal notice. On receipt of the said notice, the appellant/first defendant issued a reply notice stating that he had entered into a sale agreement with one Yacob, the father of the first respondent/plaintiff about 16 years ago and from thereon he is in possession. Hence, the first respondent/plaintiff filed a suit for recovery of possession. The learned counsel for the appellant would submit that the Trial Court has rightly held that there is no tenancy agreement between the parties, however held that the plaintiff is the owner of the property and granted recovery of possession. The Trial Court had failed to consider that the appellant herein has entered into an oral sale agreement with the father of the first respondent/plaintiff Mohammed Issak and in pursuance of the same he was put into possession. The learned counsel would further submit that once the Trial Court had disbelieved the landlord tenant relationship, the Trial Court ought to have dismissed the suit and the Trial Court ought not to have granted the decree of declaration and recovery of possession. Thus, the learned counsel for the appellant prayed for allowing the appeal.

7. Resisting the same, the learned counsels appearing for the respondents would submit that the landlord tenant relationship has been proved by way of marking Ex.A.3 and that notice has been issued. However, the Trial Court has held that the landlord tenant relationship has not been proved and it was held that no notice under Section 106 of the Transfer of Property Act is necessary. But the

Trial Court had correctly granted the decree of declaration that the first respondent/plaintiff is the owner of the property. The learned counsel would further submit that the sale agreement alleged to have been entered with the father of the first respondent/plaintiff is not true and genuine. Even if it is true, the father of the first respondent/plaintiff is not the owner of the property and so, he has not got any right to enter into an agreement with the appellant. The said factum was rightly considered in proper perspective by both the Trial Court and granted the alternative prayer of declaration of title and recovery of possession. By making the above contentions, the learned counsels appearing for the respondents prayed for the dismissal of the appeal.

8. Considered the rival submissions made by both sides and perused the material records, oral and documentary evidences.

9. It is an admitted fact that the suit property originally belongs to one Sabapathy Pillai from whom one Zanath Beevi had purchased the same under Ex.A.2/Sale deed, dated 22.05.1962. The first respondent/plaintiff had purchased the suit property from the said Zanath Beevi under Ex.A.1/Sale deed, dated 01.08.1980. So, the said documents would prove that the suit property was owned by the first respondent/plaintiff. Even though, Ex.A.3/Rental agreement, dated 15.09.1974 has been marked to prove that the appellant herein has entered into a rental agreement with the said Zanath Beevi, the predecessor-in-title, the Trial Court has rightly held that the first respondent/plaintiff is not a party to Ex.A.3/Rental agreement and that he has no personal knowledge of Ex.A.3. Furthermore, the predecessor-in-title who has signed in Ex.A.3/Rental agreement as a landlord was not examined to prove the same. So, the Trial Court has rightly rejected Ex.A.3/Rental agreement stating that it has not been proved.

10. It is pertinent to note that the appellant herein had attempted to obtain electricity service connection and immediately, the first respondent/plaintiff had sent a Ex.A.4/Notice dated 18.09.1991 to this appellant and also the officials of the TNEB. Thereafter, the appellant herein had issued Ex.A.5/Reply notice, dated 24.09.1991, wherein he had stated that he had entered into a sale agreement with one Yacob, the father of the first respondent/plaintiff about 16 years ago and in pursuance of that he is in possession. It was also averred in the said reply notice that the total sale consideration was fixed at Rs.3000/- and the appellant had paid a sum of Rs.100/- in the first instance. Thereafter, he paid a sum of Rs.1000/- and the balance amount to be paid is Rs.1900/-. In pursuance of the part performance, the appellant was put into possession of the suit property and from thereon he is in possession and enjoyment as agreement holder. Hence, he used Section 53A of Transfer of Property Act, 1882 as a shield and as a defence to defeat the right of the plaintiff/first respondent to recover the suit property.

11. But to prove the sale agreement, except the ipse dixit of D.W.1/Kannaiyan, the appellant herein, no other evidence is available. Even though the appellant had examined D.W.2/Mahendran and D.W.3/Rajasekaran, their evidences does not support the case of the appellant. Furthermore, Ex.B.9 to Ex.B.11 filed by the appellant would show that the property tax assessment stands in the name of the respondent. Hence, I am of the view that the appellant herein has not proved the oral sale agreement between him and the father of the first respondent/plaintiff. Besides the same, as per Ex.A.1/Sale deed dated 01.08.1980, the father of the first respondent/plaintiff has no right over the property. In such circumstances, the sale agreement put forth by the appellant is unacceptable and so, the theory of oral sale and part performance under Section 53A of the Transfer of Property Act, 1882 is rejected.

12. As per Ex.A.1/Sale deed dated 01.08.1980, the first respondent/plaintiff is the owner of the property. However, the appellant herein is in possession of the said property. So, the owner of the property viz., the first respondent/plaintiff is entitled to recovery of possession. Thus, both the Courts below had rightly held that the first respondent/plaintiff is entitled to declaration and recovery of possession. In such circumstances, I do not find any merits in this appeal and hence, it is hereby dismissed with costs.

13. In fine,

- (a) The Second Appeal is dismissed with costs.
- (b) The concurrent judgment and decree passed by the Trial Court as well as the first appellate Court is hereby confirmed.
- (c) The time granted for delivery is two months.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Principle Subordinate Judge, Mayiladuthurai
- 2.The Additional District Munsif, Mayiladuthurai.
- 3.The Record Keeper, V.R.Section, High Court, Chennai.

+1cc to Mr.S. Sounthar, Advocate, S.R.No.28438
+1cc to Mr.A. Muthukumar, Advocate, S.R.No.28581

LRS (CO)
EU(20/08/2015)

S.A.No.1067 of 1999