

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.593 of 2009

and

M.P.No.1 of 2009

Harideesan

... Appellant/Plaintiff

Vs.

1. Kaliamurthy

2. Mohana

... Respondents/Defendants

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 30.12.2008 passed in A.S.No.08 of 2008 on the file of the learned Additional Sub Judge, Puducherry confirming the judgment and decree made in O.S.No.280 of 2004 on the file of the I Additional District Munsif, Puducherry dated 22.10.2007.

For Appellant : Mr.K.Sathishkumar

For Respondents : Mr.V.Lakshminarayanan

J U D G M E N T

The unsuccessful plaintiff before the Courts below in a suit for mandatory injunction, directing the defendants to deliver vacant possession of the property and for damages, is the appellant herein.

2. The suit property is an extent of 3 cents in re-survey No.96, which is a housing site. Admittedly, the Government of Pondicherry, under the scheme of granting free patta to the poor and landless schedule caste people, allotted the suit property to the plaintiff on 09.03.1981, as evidenced by Ex.A-1. As the plaintiff had an urgent need for money, he borrowed a sum of Rs.5,000/- from the first defendant, for which, the suit property was given as a security and the plaintiff had signed on blank papers and given to the defendants. Subsequently, according to the plaintiff, during December 1995, at the request of the defendants, they were permitted to be in possession of the suit property as licensees till the plaintiff repays the loan amount. As the defendants refused to vacate the premises when the plaintiff admitted to discharge the loan by repaying the amount, the suit came to be filed. But the specific case of the defendants / respondents is that the wife of the plaintiff was

allotted free patta in respect of another item of the property by the Government. The suit property was sold to the second defendant under Ex.B1 on 03.02.1992, after receiving a valid consideration of Rs.7,000/- and the second defendant was to be in possession of the property. As the suit property was a Government free patta land, though the same was reduced to writing, it could not be registered. The signature found on the Ex.B.1 was admitted by the plaintiff. Though the plaintiff had deposed inconsistently, it is found by the Courts below that the signature in Ex.B.1 was that of the plaintiff.

3. Before the Trial Court, the plaintiff examined himself as PW-1 and one more witness was examined as PW-2 and Exhibits A1 to A4 were marked. On the side of the defendants, the first defendant examined himself as DW-1 and more witness was examined as DW-2 and Exhibits B1 and B2 were marked on the side of the Defendants.

4. Upon the oral and documentary evidence produced on either side, the Trial Court dismissed OS.No.280 of 2004 dated 22.10.2007 which was also affirmed by the Lower Appellate Court in A.S.No.08 of 2008 dated 30.12.2008, aggrieved by which, the present second appeal has been preferred by the plaintiff/appellant.

5. The Courts below had categorically found that the signature in Ex.B.1 [Sale Deed] was that of the plaintiff and that was corroborated by Ex.B.2 [Signature of Plaintiff in Ex.B1]. From the above documents Exs.B1 and B.2, it is clear that the plaintiff had sold the property to the defendants only with an intention to sell and not as a security for the loan borrowed. The reason for non registration for the said sale deed as explained by the defendants is also acceptable. It is also admitted by the plaintiff that the defendants after the purchase of the property, had put up pucca superstructure with brick construction and have also obtained electricity connection in the name of the second defendant.

6. Ex.B.1 is of the year 1992 and only after purchase in the year 1992, the defendants have put up pucca structure spending more than Rs.80,000/-. The plaintiff is also residing near the suit property. The plaintiff had acquiesced to the act of construction made by the defendants in the suit property. Even presuming that the contention of the plaintiff that the defendants are only licensees of the suit property, when the defendants were putting up a pucca structure, the plaintiff ought to have objected to the same. Having allowed the defendants to raise a superstructure, the plaintiff is estopped from questioning the same.

7. The plaintiff has also contended that Ex.B.1 is unstamped and un-registered and therefore cannot be looked into. However, it is a settled legal position that an unstamped, unregistered document may be looked into for the collateral purpose to see the nature of the possession of the suit property by the defendants. When Ex.B.1 can be looked into at least for the collateral purpose of the possession

of the property, the nature of the possession of the defendant has to be seen. It is admitted that the initial possession of the defendants are not illegal because the plaintiff himself has admitted that the defendants were given possession as a licensee. Whether such possession of the defendants has crystallized into that of ownership subsequently has been established by the defendants under Exs.B.1 and B2. The plaintiff has not proved his case independently to hold that the possession of the defendants is illegal as he has not established the same. The defendant's possession is therefore that of the licensee.

8. The learned counsel for the respondents placed his reliance of the judgment of the Hon'ble Supreme Court reported in (2004) 6 SCC Page 140 Virendra Nath, Through P.A.Holder R.R.Gupta Vs Mohd. Jamil and Others, wherein, it has been held as follows:

9. "Even though the mortgage deed which was unregistered and being in possession of the mortgagee, could not be produced by the mortgager, evidence could be admitted for collateral purpose of ascertaining the nature of possession of Jan Mohammad. There is no evidence that the possession of Jan Mohammad as mortgagee ever became adverse to the knowledge of the original owner, that is, the mortgagor".

He has also placed his reliance of the Hon'ble Supreme Court reported in (2003) 4 SCC Page 161 in Bondar Singh and Others Vs Nihal Singh and Others, wherein, it has been held as follows:.

5. "Legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land. The sale deed in question at least shows that initial possession of the plaintiffs over the suit land was not illegal unauthorized. It is significant to note that the sale deed is dated 09.05.1931 and Fakir Chand died somewhere in the year 1949-50.

9. The learned counsel for the appellant in turn placed his reliance in (2009) (5) CTC Page 1 in M.Kothai Achi @ Chellammai Achi Vs P.L.Manickam and Others which is not applicable to the facts of the present case. In such circumstances, the appellant has failed to establish the case as projected by him in the plaint.

10. In the result, the Second Appeal is dismissed and the judgment and decree dated 30.12.2008 passed in A.S.No.08 of 2008 on the file of the Subordinate Court, Puducherry, confirming the judgment and decree dated 22.10.2007 passed in O.S.No. 280 of 2004 on the file of the I Additional District Munsif, Puducherry, are confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

srn

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1.The Additional Sub Judge, Puducherry

2.The I Addl. District Munsif Court, Puducherry

Copy to:

The Section Officer,
V.R.Section, High Court,
Madras.

+ 1 cc to Ms.P.Mahalakshmi, Advocate SR 34119

+ 1 cc to Mr.V.Raghavachari, Advocate SR 34092

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