

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.535 of 2012

Vetri Selvi

.. Appellant/Defendant.

- Vs -

1. Lakshmi

2. D.Sheela Devi

3. Srinivasan

4. Durga

.. Respondents/Plaintiffs.

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 28.07.2011, made in A.S.No.39 of 2010 on the file of the learned IV Additional Judge, City Civil Court, Chennai confirming the Judgment and Decree dated 29.04.2009, made in O.S.No.3600 of 2007 on the file of the learned XVI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.M.V.Muralidharan

For Respondents : Mr.K.P.Gopalakrishnan.

J U D G M E N T

The defendant in O.S.No.3600 of 2007 on the file of the learned XVI Assistant Judge, City Civil Court, Chennai is the appellant herein. The respondents are the plaintiffs in the suit. The plaintiffs filed the suit for declaration that the suit property belongs to them and for recovery of possession from the defendant and also for permanent injunction to restrain the defendant from dealing with the suit property in any manner. The plaintiffs also had prayed for damages at the rate of Rs.3,000/- per month for use and occupation. The Trial Court by decree and judgment dated 29.04.2009, decreed the suit as prayed for. Challenging the same, the appellant filed an appeal in A.S.No.39 of 2010 on the file of the learned IV Additional Judge, City Civil Court, Chennai. During the pendency of the appeal, the defendant filed C.M.P.No.795 of 2011 for reception of additional documents in evidence. By decree and judgment dated 28.07.2011, the lower Appellate Court allowed C.M.P.No.795 of 2011, received three documents in additional evidence as Exs.B6 to B8 and dismissed the appeal, thereby, confirming the decree and judgment of

the Trial Court. Challenging the same, the appellant is before this Court with this second appeal.

2. I have heard the learned counsel on either side and perused the records carefully.

3. The case of the plaintiffs is that the suit property originally belonged to the Tamil Nadu Slum Clearance Board and the same was allotted to one Mr.Durai. Mr.Durai was the son of the first plaintiff, husband of the second plaintiff and father of the plaintiffs 3 and 4. From the date of allotment, Mr.Durai and the plaintiffs were in occupation of the suit property. Mr.Durai died on 04.04.1994, leaving behind the plaintiffs as his Legal Representatives. After the demise of Mr.Durai, his brother one Mr.Govindasamy was managing the affairs of the family and the plaintiffs shifted the residence to some other place. But without their knowledge, the defendant trespassed into the suit property and started living in the same. A legal notice was issued to the defendant by the plaintiffs on 03.02.2006, calling upon her to vacate and handover the suit property. But the defendant did not come forward to comply with the same. The defendant, according to the plaintiffs, has got no right to be in possession of the property and her continuing in possession is illegal. Therefore, according to the plaintiffs they are entitled for the relief as sought for in the plaint.

4. In the written statement, it was contended by the defendant that it is true that the suit property originally belonged to the Tamil Nadu Slum Clearance Board and the same was allotted to one Mr.Durai on 04.04.1994. It is further stated that when Mr.Durai was alive, he sold away the suit property in the year 1993 itself for a consideration of Rs.75,000/-. It is further alleged that the defendant has also perfected her title by adverse possession. Thus, according to the defendant, she is the absolute owner of the suit property. She has further stated that the Tamil Nadu Slum Clearance Board has also transferred the allotment in the name of the defendant vide Exs.B1 and B5.

5. Based on the above pleadings, the Trial Court framed appropriate issues. Before the Trial Court, the second plaintiff was examined as P.W.1 and as many as four documents were exhibited and on the side of the defendant, the defendant was examined as D.W.1 and five documents were exhibited. Having considered all the above, the Trial Court found that there is no proof in respect of the purchase made by the defendant from Mr.Durai. The Trial Court therefore held that the plaintiffs are entitled for the relief as sought for and the same was confirmed by the lower appellate Court also.

6. In this appeal, it is contended that the title of the suit property was never transferred by the Tamil Nadu Slum Clearance Board

either in the name of Mr.Durai or in the name of the plaintiffs. Therefore, according to the appellant, there can be no decree declaring that the plaintiffs have got absolute title for the suit property. It is also contended that Mr.Durai who has only a possessory title had transferred the same to the defendant. It is also stated that the lower Appellate Court was not right in rejecting Exs.B6 and B7 as unregistered documents and it can be looked into for collateral purposes. It is also further stated that the allotment has been transferred in the name of the defendant and the defendant has got every right to continue possession in the suit property.

7. While admitting this second appeal, this Court framed the following substantial question of law :

"Whether the suit for declaration that the suit property belongs to the plaintiffs is not bad in law for non-joinder of necessary party, when the Tamil Nadu Slum Clearance Board from whom the plaintiffs claims allotment has not been made a party to the suit, especially in the absence of any deed conveying the property in favour of the plaintiffs ?

8. The learned counsel appearing for the appellant while reiterating the above grounds would submit that the decree and judgment passed by the Trial Court which came to be confirmed by the lower Appellate Court deserves to be interfered with.

9. The learned counsel appearing for the respondents would submit that it is not in the practice of the Tamil Nadu Slum Clearance Board to execute any deed of conveyance of title of the property to the allottee. He would submit that the allotment order itself would convey title. Thus, by means of the allotment order, Mr.Durai has become the absolute owner and thus after the demise of Mr.Durai, the plaintiffs have become the absolute owner. The learned counsel further pointed out that in the written statement, the defendant has admitted the title of Mr.Durai. Therefore, according to the learned counsel, the Courts below were right in declaring the title of the plaintiffs. The learned counsel would further submit that since the defendant has no right to continue in occupation of the suit property, the Courts below have rightly granted a decree for recovery of possession and also for damages.

10. The learned counsel for the appellant would submit that the above contention of the learned counsel for the respondents cannot be considered because the Tamil Nadu Slum Clearance Board has not been impleaded as a party in the suit.

11. I have considered the above submission.

12. It is not in dispute that the suit property was originally allotted to one Mr.Durai. Though it is stated that Mr.Durai has sold away the limited right which he had over the property to the defendant, absolutely there is no evidence for the same. The Courts below have considered the oral as well as documentary evidence and came to the conclusion that the theory put forward by the defendant that there was sale made by Mr.Durai has not been proved. This is essentially a question of fact which has been appreciated by two Courts below to come to the conclusion that the alleged sale stated to have been made by Mr.Durai to the defendant is not true. In this, I do not find any perversity warranting interference.

13. The learned counsel appearing for the appellant would submit that Ex.B5 would go to show that the allotment was later on transferred by the Tamil Nadu Slum Clearance Board in favour of the appellant. But a perusal of Ex.B5 would go to show that it is not a re-allotment order in favour of the defendant and it is only a letter written by the Tamil Nadu Slum Clearance Board to the defendant asking her to comply with certain conditions so as to take a decision on transferring the allotment order in the name of the defendant. Absolutely there is no evidence that such re-allotment order was issued in the name of the defendant. Therefore, this argument of the learned counsel for the appellant deserves only to be rejected.

14. In the suit, admittedly the Tamil Nadu Slum Clearance Board has not been impleaded as a party. It has also not been established that the Tamil Nadu Slum Clearance Board ever executed any deed either conveying or transferring title of the property to Mr.Durai or to the plaintiffs. In the absence of the Tamil Nadu Slum Clearance Board as a party to the suit and in the absence of any deed of conveyance of title executed by the Tamil Nadu Slum Clearance Board either in the name of Mr.Durai or in the name of the plaintiffs, in my considered opinion, the Courts below were not right in holding that the plaintiffs have got absolute title over the suit property. To that extent, the substantial question of law framed needs to be answered against the plaintiffs / respondents herein.

15. But, on that score, the entire decree passed by the Trial Court and confirmed by the lower appellate Court cannot be interfered with. Though it is the contention of the learned counsel for the respondents that allotment order itself shall be construed as the deed of conveyance, I find it difficult to accept the said argument as the mere allotment order shall not convey title. Thus, the respondents have no title. But at the same time, the said allotment order gives possessory right to the plaintiffs. Therefore, though the plaintiffs are not entitled for declaration of title to the property, they are entitled for declaration of possessory right to the suit property. To that extent, in my considered opinion, the decree of the Courts below has to be modified.

16. Now coming to the decree for recovery of possession is concerned, in my considered opinion, the plaintiffs are entitled for such relief. Though it is stated by the defendant that she came to occupy the suit property by virtue of the sale made by Mr.Durai, as I have pointed out, the two Courts below have held on appreciating evidence that the same has not been proved. Ex.B6 has been allegedly executed by the second respondent, but it has not been proved. During appeal, as additional evidence, it was admitted subject to proof. The lower appellate Court has rejected the same for want of registration and also for want of proof. Apart from that, this document has not found any reference in the written statement. The whole gamut of the written statement states that the sale was made only by Mr.Durai and not by the second respondent herein. Therefore, any argument based on Ex.B6 deserves only to be simply rejected. So far as Ex.B7 is concerned, one could see that it has got nothing to do with the property at all. This document has been rejected by the lower appellate Court for the very same reason. If these two documents go out of consideration, absolutely there is no other document to show that the defendant has got any right to continue in the occupation of the suit property. As I have already pointed out, even the Tamil Nadu Slum Clearance Board has not passed any order of re-allotment regularizing the possession of the appellant / defendant. Therefore, the defendant is liable to be vacated from the suit property.

17. Now coming to the damages, the Courts below have ordered payment of Rs.3,000/- per month. But I find that there is no evidence in respect of the rental value of the property so as to assess the quantum of damages to be paid. Simply because the plaintiffs have valued the damages at the rate of Rs.3,000/- per month, in the absence of any evidence, this Court cannot simply confirm the decree of the Courts below in this regard. Admittedly, the house is in a slum area and the same has been constructed by the Tamil Nadu Slum Clearance Board. It is hard to believe that such a house in the slum area would fetch Rs.3,000/- per month as rent. At any rate, there is absolutely no evidence regarding the normal rent which this house in that area would fetch per month. Therefore, in this case, quantifying the damages could be made only by inference. From out of the facts and circumstances of the case, more particularly, the fact that the house was constructed in a slum area for the benefit of slum dwellers, I am of the view that directing the defendant to pay a sum of Rs.750/- per month would be just and reasonable. Accordingly, I am inclined to modify the decree of the Courts below so as to direct the defendant to pay a sum of Rs.750/- per month towards damages instead of Rs.3,000/- as directed by the Courts below.

18. In view of all the above, I am inclined to allow the second appeal in part as detailed below.

19. In the result, the second appeal is allowed in part and the decree and judgment of the trial Court and as confirmed by the lower appellate Court is hereby modified as follows:

i) There shall be a decree declaring that the plaintiffs have got possessory title over the suit property.

ii) There shall be a decree directing the defendant to vacate the suit property and handover vacant possession to the plaintiffs. The time for vacating and handing over possession is six months from today.

iii) There shall be a decree directing the defendant to pay a sum of Rs.750/- per month towards damages for use and occupation of the suit property instead of Rs.3,000/- as decreed by the Courts below, from the date of plaint viz., 30.03.2007 till the date of handing over vacant possession to the plaintiffs.

iv) No costs.

-s/d-

Deputy Registrar(J)

Dt:27/2/2015

True Copy

Sub-Assistant Registrar

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To

1. The IV Additional Judge,
City Civil Court, Chennai.

2. The XVI Assistant Judge,
City Civil Court, Chennai.

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

+ 1 cc to Mr.K.P.Gopalakrishnan, Advocate SR 8870

+ 1 cc to Mr.M.V.Muralidaran, Advocate SR 9007

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