

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.604 of 2015

and

M.P.Nos.1 & 2 of 2015

Saraswathi

..Appellant/Plaintiff

Vs.

1.E.S.Ganapathy

2.Tamil Nadu Electricity Board,
Represented by its
Assistant Engineer,
Aruvapadi Village,
Mayiladuthurai Taluk,
Nagapattinam District.

..Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the decree and judgment passed in A.S.No.42 of 2014 dated 26.03.2015 on the file of the learned Additional Subordinate Judge, Mayiladuthurai in reversing the judgment and decree passed in O.S.No.226 of 2012 dated 15.04.2014 on the file of the learned Additional District Munsif, Mayiladuthurai.

For Appellant : Ms.P.Srividhya
For R.1 : Mr.S.D.S.Phillip
For R.2 : No Appearance

JUDGMENT

Though the miscellaneous petition is listed today, by consent of both parties, the second appeal itself is taken up for final disposal.

2.The plaintiff in O.S.No.226 of 2012 on the file of the learned Additional District Munsif, Mayiladuthurai is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for permanent injunction to restrain the defendants from in any manner interfering with the peaceful possession and enjoyment of the plaintiff and also to restrain the defendants from disconnecting the

electricity service connection. The trial Court by decree and judgment dated 15.04.2014 decreed the suit as prayed for. As against the same, the first defendant filed an appeal in A.S.No.42 of 2014 on the file of the learned Additional Subordinate Judge, Mayiladuthurai. The First Appellate Court, by decree and judgment dated 26.03.2015 allowed the appeal in part, thereby setting aside the decree and judgment granted against the first defendant alone and confirming the decree and judgment of the trial Court as against the second defendant. Challenging the same, the appellant/plaintiff is before this Court with this second appeal.

3.The case of the plaintiff in brief is as follows:-

The first defendant was the original owner of the suit property. For about 30 years, the plaintiff has been in possession and enjoyment of the suit property as an occupant. The plaintiff has constructed a house on the suit property and the local panchayat has also assessed the same for house tax. It is his further case that she has been paying house tax to the local authority regularly. It is her further case that there are lot of other documents like family card, etc., to prove that she is in possession and enjoyment of the suit property. It is her further contention that as per the Tamil Nadu Occupants of Kudiyruppu (conferment of ownership) Act 1971, she has become the absolute owner of the suit property. Thus, the first defendant has got no right whatsoever over the suit property. It is her further contention that there is electricity service connection given to the suit property by the second defendant. There was an attempt made by the defendants to dis-connect the same. With these allegations, the plaintiff filed the present suit for the above reliefs.

4.The first defendant contested the suit. According to the first defendant, the suit property absolutely belongs to him. The adjoining property was originally owned by the brother of the first defendant. By means of a sale deed dated 21.01.2004, the plaintiff purchased 16 cents of land comprised in S.No.284/2 from the brother of the first defendant. The said property purchased by the plaintiff is the adjacent property of the suit property. It is his further contention that during the year 2012, the plaintiff trespassed into the suit property and put up a small hut. In respect of the same, the first defendant made a complaint to the Police in the month of August 2012 and the same was under enquiry. In order to preempt the police from taking action and with a view to prevent the first defendant from removing the trespass, according to the first defendant, the plaintiff has filed the present suit with false allegations. It is his further contention that he has never given any licence to the plaintiff to occupy the suit property and thus, she is not entitled for the benefits of the Tamil Nadu Occupants of Kudiyruppu (conferment of ownership) Act 1971.

5. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, two witnesses were examined and 12 documents were exhibited. On the side of the defendants, three witnesses were examined and 7 documents were exhibited. Having considered all the above, the trial Court decreed the suit which was in part set aside by the First Appellate Court. That is how the appellant/plaintiff is before this Court with this second appeal.

6. I have heard the learned counsel for the appellant and the learned counsel for the first respondent and there is no representation for the second respondent. I have also perused the records carefully.

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

"a. When the plaintiff is in possession of the suit property for a long period of more than 10 years as permissive occupant, whether lower appellate court erred in law in holding that a mere suit for injunction is not maintainable without a prayer for declaration ?

b. Whether the benefits under the Tamil Nadu Act 40 of 1971 can be claimed only before the authorities constituted under the said Act, whether the lower appellate Court erred in law in holding that the plaintiff ought to have sought for a relief of declaration of her rights to the Tamil Nadu Act of 1971 ?

c. Whether the lower Appellate Court erred in holding that the plaintiff's possession cannot be protected when the first defendant's witnesses had admitted the plaintiff's possession to the suit property for more than 10 years ?".

8. Admittedly, the suit property was owned by the first defendant. There is no dispute regarding the title of the first defendant originally. What all that is stated by the plaintiff is that she was given licence by the first defendant to occupy the suit property and thus, she has been in possession and enjoyment of the same for the past 30 years and thus, she is entitled for the benefits of the Tamil Nadu Occupants of Kudiyiruppu (conferment of ownership) Act 1971. The question whether the plaintiff is entitled for the benefits of the Tamil Nadu Occupants of Kudiyiruppu (conferment of ownership) Act 1971, or not, cannot be gone into

by the Civil Court as it is for the authority concerned constituted under the Act itself. It is for the plaintiff to work out her remedy before the appropriate forum.

9. So far as the present suit is concerned, this Court is concerned only with the possession of the suit property. The trial Court had found that the plaintiff has been in possession and enjoyment of the suit property as a permissive occupant under the licence granted by the first defendant, whereas, according to the First Appellate Court, the plaintiff is a trespasser. In my considered view, both the Courts below ought not to have gone into this question and instead they ought to have gone into the question of settled possession.

10. Here, it is not in dispute that the plaintiff has been in possession of the property but, what all that is stated by the plaintiff is that that she was given licence by the first defendant to occupy the suit property and she has been in possession of the suit property for the past 30 years. The house tax receipts produced by the plaintiff would go to show that she has been in possession and enjoyment of the suit property from the year 1997. Though, it is now contended by the first defendant that these house tax receipts Ex.A.1 to A.8, do not relate to the suit property and they relate to the property purchased by the plaintiff from the brother of the first defendant, I find no such pleading at all in the written statement. Even when these documents were produced through P.W.1 and when P.W.1 stated in her evidence that these documents pertain to the suit property, there is no denial by the first defendant. Therefore, it is not now available for the first defendant to contend that the alleged house tax receipts do not relate to the suit property at all. Therefore, it is crystal clear that at least from the year 1997 onwards, the plaintiff has proved her possession over the suit property. Thus, in my considered view, the plaintiff has proved that she has been in settled possession of the suit property.

11. It is of course true that the trespasser is not entitled for injunction as against its true owner, but, in this case, since, there is enormous evidence to show that the plaintiff has been in settled possession of the suit property at least from the year 1997, there can be no bar for granting permanent injunction to the plaintiff against the defendants from interfering with her peaceful possession and enjoyment of the suit property. But, at the same time, it shall not be misconstrued as though this Court has enjoined the first defendant from recovering possession of the suit property from the plaintiff. Further, this decree and judgment shall not be a bar for the first defendant to work out his remedies for recovery of possession of the suit property from the plaintiff by filing appropriate suit. Similarly, it shall not be misconstrued as though this Court has conceded that the plaintiff has got right to continue to be in possession of the

suit property. Whether she is entitled for the benefits of the Tamil Nadu Occupants of Kudiyiruppu (conferment of ownership) Act 1971 or not, are all matters to be decided by the competent forum under the Act and therefore, the plaintiff may work out her remedies in respect of the same before the appropriate authority.

12.Now, turning to the first substantial question of law framed in this second appeal, it states that when the plaintiff is in possession of the suit property for a long period of more than 10 years as permissive occupant, whether lower appellate Court erred in law in holding that a mere suit for injunction is not maintainable without a prayer for declaration?. In my considered view, the First Appellate Court was not right in going into the said question instead of going into the question of settled possession of the suit property. When the plaintiff is debarred from establishing her title before the Civil Court since, the appropriate forum to grant relief to her under the Tamil Nadu Occupants of Kudiyiruppu (conferment of ownership) Act 1971, is the authority constituted under the said Act itself, the First Appellate Court was not right in allowing the appeal in part in favour of the first defendant. Hence, I answer the first question of law in favour of the appellant herein.

13.So far as the second question of law is concerned, the First Appellate Court was right in holding that the remedy for the plaintiff is to work out under the Tamil Nadu Occupants of Kudiyiruppu (conferment of ownership) Act 1971, before the competent authority. Hence, I answer this question of law also in favour of the appellant.

14.So far as the third question of law is concerned, I have held that the plaintiff's possession is to be protected as she is in settled possession of law however, with liberty to the first defendant to recover possession from the plaintiff, if he is so entitled, by following the procedure established by law. Accordingly, all the three questions of law are answered.

15.In the result, the second appeal is allowed in the following terms:-

(i)The decree and judgment of the First Appellate Court is set aside and the decree and judgment of the trial Court is restored, however, with the clarifications that it shall not be mis-construed as though this Court has enjoined the first defendant from recovering possession of the suit property from the plaintiff. Accordingly, the first defendant is at liberty to work out his remedies for recovery of possession of the suit property from the plaintiff by filing appropriate suit. Similarly, it shall not be misconstrued as though this Court has conceded that the plaintiff has got right to continue to be in possession of the suit property for ever.

Whether the plaintiff is entitled for the benefits of the Tamil Nadu Occupants of Kudiyiruppu (conferment of ownership) Act 1971 or not, is a matter to be decided by the competent forum under the Act and therefore, the plaintiff may work out her remedies in respect of the same before the appropriate authority.

There shall be no order as to cost. Consequently, connected miscellaneous petitions are closed.

JBM

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Additional Subordinate Judge,
Mayiladuthurai.

2.The Additional District Munsif,
Mayiladuthurai.

+ 1 CC TO Ms.P.Srividhya, Advocate Sr 61902

+ 2 ccs to Mr.S.D.S.Phillip, Advocate Sr 61835

MSM/CO
KR/18/1/16

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S.A.No.604 of 2015

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