

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.04.2015

CORAM :

THE HON'BLE MS. JUSTICE K.B.K.VASUKI

Second Appeal No.1424 of 2003

1.Arokianathan
2.Josephine

.. Appellants

Vs

1.Parvathammal
2.Sugana Devi
3.T.Mallika
4.Dhanalakshmi
5.Anuradha
6.N.Vijayalakshmi
7.Babu Gajendran
8.N.Mahalakshmi
9.N.Vanitha
10.N.Punitha
11.N.Kavitha
12.N.Navaneetha Krishnan

.. Respondents

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 29.08.2002 made in A.S.No.184 of 1999 on the file of the Additional District-cum-Sessions Judge (Fast Track Court No.I), Chennai confirming the Judgment and Decree dated 27.02.1996 made in O.S.No.11129 of 1992 on the file of the II Assistant, City Civil Court, Chennai.

For Appellants : M/s.R.Thiagarajan, Senior Counsel
for R.N.Amarnath

For Respondents : M/s.N.Dorai Kannan for R1, 3 to 12
No appearance for R2.

J U D G M E N T

The unsuccessful defendants are the appellants herein.

2.The present second appeal is filed against the concurrent judgments of the courts below, thereby declaring the plaintiffs title to the suit items 1 and 2 and for directing the defendants to deliver vacant possession of suit item No.1 and for awarding damage for their use and occupation in the suit item 1, till the same is vacated and for restraining the defendants from interfering with the plaintiffs possession of Suit item No.2.

3.The suit reliefs are sought for in respect of suit items 1 and 2 and the suit item No.1 is the premises bearing Door No.114, Church Road, Saidapet marked as BKCDEFA measuring 45 feet east west and 15 feet north south within the four boundaries mentioned therein and the suit item No.2, is also the premises at Door No.114, Church Road, Saidapet marked as CCIDID measuring east west 15 feet and north south 15 feet within the four boundaries.

4.The plaintiffs have claimed the suit reliefs based on ownership vested upon one C.Nagarajan Chettiar on the strength of the sale deed dated 27.10.1959 and on his death, upon the plaintiffs herein, who are his wife and children. Admittedly, the land on which the superstructure stands belong to Church. The predecessors of the defendants by names Antony, Annamary and Rathinammal were the tenants in respect of the land under Church and they had been in the occupation of the same by putting up construction and the entire superstructure in their occupation bearing Door No.114, Church Road, Saidapet along with their lease hold right upon the land was sold by them in favour of one Nagarajan Chettiar by a registered sale deed dated 27.10.1959 for valuable consideration. According to the plaintiffs, even after the purchase, the vendors were permitted to occupy the premises for nominal rent. The defendants who are their legal heirs, continued to occupy the suit item 1. Whereas, the suit item No.2 was in the occupation of Nagarajan Chettiar and thereafter in the occupation of the plaintiffs and the defendants have no other right over the same. According to the plaintiffs, the defendants claiming wrongful ownership over vacant site as well as superstructure come forward with suit in OS.No.4848 of 1988, which compelled the plaintiffs to file the present suit for the relief as stated supra.

5.The suit relief was seriously contested by the defendants by denying the sale of entire portion in favour of Nagarajan Chettiar. According to the defendants, only the front portion was sold and the back portion was retained and the defendants continue to reside in the back portion and when the plaintiffs started to obstruct the pathway of 8 feet width leading to Church Road, they were compelled to file the suit in OS.No.4848 of 1988 and the plaintiffs are not entitled to any declaration and injunction as sought for in the suit.

6.The parties have in support of their respective contentions examined one witness each as PW1 and DW1 and marked Exs.A1 to A11 and Exs.B1 to B11 documents. The Trial Court on the basis of the available documents, found that Ex.A3 dated 27.10.1959 is in respect of the entire superstructure measuring 40x60 along with the lease hold right in the land and the property under Ex.A3 is the suit property and the sale deed was executed in favour of the first plaintiff husband Nagaraja Chettiar and he exercised full ownership over the same by obtaining electricity connection and by paying kist and by carrying on business in the same and the same was also referred to in OS.No.4848 of 1988 and the continuous occupation of

the defendants in the same is unauthorised and without the permission of the plaintiffs and on the basis of such findings, held the plaintiffs to be entitled to the suit relief. Aggrieved against the same, the defendants preferred AS.No.184 of 1999.

7. During the pendency of the appeal, the defendants appeared to have purchased the land measuring 838 sq.ft from Arch Diocese of Madras on 09.03.2001 and they come forward with CMP.Nos.1085 and 1260 of 2001 in AS.No.184 of 1989 for adducing the same documents as additional evidence and to permit the petitioners to raise additional ground to the effect, that in view of the subsequent development i.e., sale of the land in their favour the suit is not maintainable. The lower appellate court after going through the entire evidence and after analysing the findings and reasonings of the Trial Court and the ground raised in the memorandum of appeal, was inclined to reject the ground raised on the side of the appellants and dismissed the appeal, thereby confirming the judgment and decree of the trial Court. Hence, this Second Appeal by the defendants before this Court.

8. The Second Appeal is admitted on the following substantial questions of law :-

(1) Whether the lower Courts are right in delivering judgment without framing the points for consideration in the appeal?

(ii) Whether the lower Courts are right to not taking into consideration the happening of subsequent events of purchase by the appellants after the suit was decreed

(iii) Whether the lower Courts are right in not permitting the appellants to raise the additional grounds and to adduce additional evidence by dismissing the CMP.Nos.1085 and 1265 of 2001 in the appeal?

9. Heard the rival submissions made on both sides and perused the records.

10. In this second appeal the objection raised on the side of the appellants/defendants is that as the superstructure was no longer available on the land and as the land was purchased by the defendants from the Church/original owner nothing survives in this Second Appeal.

11. The appellants/defendants have also in order to ascertain the existence or non existence of superstructure filed CMP.No.441 of 2014 seeking appointment of an Advocate Commissioner. After complying with the warrant, the Advocate Commissioner filed his report containing four pages, two plans and 14 photos relating to suit property and the copy of the complaint lodged by the first plaintiff/Parvathammal against John and Mary Jeorld for demolishing the superstructure, the warrant and other documents and the same are received as Ex.X1.

12.It is categorically held by both the courts below that the defendants predecessors were the tenants in respect of the land belonging to the Church and they were the owners of the superstructure measuring 60x40 and the entire superstructure along with the leasehold right in the land were sold to Nagarajan Chettiar by them and the suit item 1 has been in the occupation of the original predecessors and thereafter by the defendants for nominal rent and suit item 2 has been in the occupation of the plaintiffs. Both the Courts below on the basis of such findings granted the suit reliefs as sought for. The findings of the Court below on the validity of the sale deed in favour of Nagarajan Chettiar in respect of the superstructure and the lease hold right of the land and the possession of suit item 1 with the defendants and the possession of suit item 2, with the plaintiffs, which are based on sufficient evidence and supported by proper reasoning, need not be, in the absence of any valid ground interfered with.

13.The two points urged before this court by the appellants are as follows : the superstructure is not in existence and the land which is the subject matter of the lease hold right is already purchased by the defendants during the pendency of the proceedings and the substantial questions of law raised herein are based on the same objections. Regarding the first objection, the Advocate Commissioner Report which is not opposed by way of any objection, by either of the parties would not support the defendants case about the non existence of superstructure. The superstructure has been in existence but in dilapidated condition which is as per the complaint given by the first plaintiff caused due to the alleged unlawful activity of the defendants in demolishing the same.

14.As far as the plea regarding subsequent purchase of the land is concerned, it is true that the defendants filed two CMPs for receiving the documents relating to such purchase as additional evidence and for raising additional grounds regarding their purchase of the suit land during the pendency of the second appeal. As rightly argued by the learned counsel for the plaintiffs, the subsequent purchase of the lease hold land by the defendants from the owner Church will in no way affect the plaintiffs right to seek any relief to enforce their right in respect of the superstructure. The plaintiffs having become the owners of the superstructure and leasehold right under EX.A3 through the original purchaser, are entitled to the suit reliefs in respect of the suit super structure on the strength of their title and such title cannot be disputed on the strength of title over the land. The lower appellate court rightly dismissed the CMPs for receiving additional evidence and for raising additional plea regarding the defendants' purchase of the land as the same is not likely to improve the case of the defendants in any manner. As rightly argued by the leaned counsel for the plaintiffs in the event of their purchase of the land, they only step into the shoes of the church insofar as the land is concerned and they cannot make any claim over the superstructure belonging to the

plaintiffs. As the additional documents may not be of any help to decide the issue relating to the superstructure which does not belong to the church and as the defence raised in the additional written statement in respect of the purchase of the land is not likely to affect the right of the plaintiffs to seek the suit reliefs in respect of the superstructure, the lower appellate court has rightly dismissed the CMPs and there is no illegality or perversity in such course adopted by the lower appellate Court and the substantial questions of law are accordingly answered against the appellants and the well reasoned judgments of both the courts below do not call for any interference by this Court.

15.The learned counsel for the respondents/plaintiffs at this juncture cited the authority of the Supreme Court reported in AIR 2001 SC 2942 - Mohan Lal v. Nihal Singh, wherein the Supreme Court has reiterated the well laid down principle that the positive finding recorded by the trial court based on the oral and documentary evidence and as confirmed by the lower appellate Court which is the final court of facts, cannot be lightly interfered with by the high court and there is hardly any scope for the High Court to interfere with the findings concurrently recorded by the Courts below within the limited parameters of Section 100 of CPC. As in the case decided by the Supreme Court, no serious substantial questions of law are involved in the present case and the appellants are hence disentitled to get any relief in this second appeal.

16.In the result, the second appeal stands dismissed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Additional District-cum-Sessions Judge
(Fast Track Court No.I), Chennai
The II Assistant, City Civil Court, Chennai.

+1 cc to Mr.N.Doraikannan, Advocate sr.18975

SA.No.1424 of 2003

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