

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 02.02.2015

CORAM

THE HONOURABLE MS. JUSTICE K.B.K. VASUKI

S.A. No.859 of 2006

The Commissioner,
Kancheepuram Municipality,
Gandhi Road, Kancheepuram

... Appellant/Defendant

Vs.

Nagabooshanam

... Respondent/Plaintiff

Prayer:- Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 19.12.2005 made in A.S. No.22 of 2005 on the file of Subordinate Judge, Kancheepuram reversing the judgment and decree dated 14.02.2005 made in O.S. No.11 of 2002 on the file of Principal District Munsif Court, Kancheepuram.

For appellant : Mr.M.Sriram

For respondent : Mr.P.Srinivasan

JUDGMENT

The defendant Municipality is the appellant herein. The suit is filed by the plaintiff for permanent injunction restraining the defendant from in any manner interfering with the possession and enjoyment of the plaintiff under perpetual lease.

2. The plaintiff has come forward with the present suit for the relief as stated above on the strength of the lease granted in favour of her grandmother by name Baggiammal, which is according to the plaintiff, perpetual or permanent lease. It is her contention that the lease having been permanent and the lease having been ratified by the Municipality was succeeded by the plaintiff's mother, Pattammal, who is none other than the sister of Baggiammal, under the registered Will dated 02.08.1995. After the plaintiff's mother, the plaintiff has succeeded to the same and the defendant has no manner of right to interfere with the plaintiff's possession and enjoyment of the suit property.

3.The suit is seriously resisted by the defendant by denying the existence of any lease granted in favour of Baggiammal. According to the defendant Municipality, lease granted in favour of Baggiammal was assignment for one year, subject to conditions and Baggiammal violated the condition, thereby, the Municipality acquired the right to re-possess the land and her possession thereafter amounted to encroachment and the possession claimed by the plaintiff to be in as her successor in right is also to be treated as encroachment and is liable to be cleared by initiating appropriate legal action for recovery of possession.

4.The Trial Court negatived the plaintiff's claim and dismissed the suit. Aggrieved against the same, the plaintiff preferred A.S.No.22 of 2005 before the the First Appellate Court. The First Appellate Court reversed the finding of the Trial Court by holding that on the failure of the Municipality to take steps to recover possession from Baggiammal even after breach of the conditions of the assignment, thereby allowing her to continue in the occupation and the possession of her daughter and grand daughter/plaintiff along with the Baggiammal and the continues to be in possession and enjoyment of the property and hence to the relief for possession is sought for herein. Another finding based on which the Lower Appellate Court granted injunction is that the failure on the part of the Municipality to take steps to recover possession will convert the lease into that of permanent lease, as per the judgment of the Hon'ble Apex Court. Aggrieved against the same, the defendant has preferred the present Second Appeal before this Court.

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

- "1.Whether the Lower Appellate Court is justified in treating the encroachment as permanent lease in the facts and circumstances of the case?
- 2.Whether the plaintiff is entitled to approbate and reprobate in his stand claiming originally title over the property and subsequently turn around and state that the appellant is the owner of the property?
- 3.Whether the Lower Appellate Court is correct in decreeing the suit without taking into consideration the settled proposition of law that the payment of penalty charges would never confer title on the respondent/plaintiff coupled with the fact that no property tax was levied for the suit property?"

6.This Court has also in the course of arguments, on the basis of the available records, raised the Additional substantial questions of law:

- "1)Whether the plaintiff's claim for leasehold right on the strength of Wills, Ex.A4 and Ex.A5 without proving

the same in the manner known to law ?

2)Whether the decree for permanent injunction granted against the Municipality is legal and the decree for permanent injunction in favour of the occupant of the Poromboke land against the Municipality is legally sustainable?"

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

8.The fact that the plaintiff's grandmother Baggiammal was granted conditional assignment and one of the conditions imposed in the same was that the assignee shall not put up any permanent structure in the same. Whereas the assignee by erecting permanent structure committed an act of breach. While so, Baggiammal died in the year 1998 and her sister, who is the plaintiff's mother died in the year 1999. Though the plaintiff claims that her mother succeeded to the suit property under the Will dated 02.08.1985, executed by Baggiammal, the plaintiff except producing two Wills Ex.A4 dated 24.07.1978 and Ex.A5 dated 02.08.1995. The plaintiff has not adduced any evidence to prove the same in the manner known to law. In that event, the plaintiff's claim for possession through Baggiammal, cannot be accepted. Further the claim that originally Baggiammal and thereafter the plaintiff have been in possession and enjoyment of the suit property is also not satisfactorily established before this Court through Exs.A1 to A43.

9. While according to the plaintiff, she cannot be evicted from the property on the strength of permanent lease, according to the defendant, the possession and enjoyment of the same is to be treated as encroachment and the same cannot be protected through any legal order. The Lower Appellate Court has recognised the plaintiff's possession as one under permanent lease only by reason of the failure of the Municipality to take any step for recovery of possession. In my considered view, finding of the Appellate Court based on such ground is legally and factually unsustainable. First of all, the Municipality has already, by reason of Baggiammal's breach of the assignment conditions, acquired right to re-possess the land, however, Baggiammal was permitted to be in possession on payment of penalty charges as evident from the plaintiff's side Exhibits. As rightly argued the payment of penalty charges and the theory of permanent lease, cannot be permitted to go together. In that event, possession of Baggiammal was itself not recognised as one under the lease. If that is so, the plaintiff cannot claim any better right than the original occupant. When the materials available would only prove the possession of the plaintiff and not the plaintiff's title and right to be in possession under any permanent lease the findings of the Lower Court that the lease is one of permanent lease is baseless, when the nature of possession of the plaintiff is not found to be under Baggiammal, but, by way

of encroachment, the plaintiff is dis-entitled to claim any blanket injunction against the true owner that is the Municipality. The Municipality continues to be the owner of the property and that the right available to the same is to evict the encroacher under due process of law. The Lower Appellate Court considering the nature of the property, nature of the possession of the plaintiff and the right of the Municipality ought to have restricted the relief of permanent injunction against the Municipality. The Lower Appellate Court ought not to have granted the permanent injunction thereby perpetually restraining the owner from taking action against the encroacher for recovery of possession. To that extent, in my view, the judgment and decree of the Lower Appellate Court warrants modification. The substantial questions of law are accordingly decided.

10. In the result, the judgment and decree of the Lower Appellate Court dated 19.12.2005 made in A.S. No.22 of 2005 is modified by granting the relief of permanent injunction restraining the defendant Municipality from interfering with the plaintiff's possession and enjoyment of the suit property except under due process of law. The second appeal is accordingly disposed of. No order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vga

To

- 1.The Subordinate Judge,
Kancheepuram
- 2.The Principal District Munsif,
Kancheepuram.

Copy To

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

+1cc to Mr.M.Sriram, Advocate, S.R.No.5625

S.A. No.859 of 2006

KU(CO)
CA(15/06/2015)