

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2016

CORAM

THE HONOURABLE MR. JUSTICE **M. SATHYANARAYANAN**

**C.S.No.601 of 2014**

Mrs.S.Vijaya

... Plaintiff

Vs.

1. Ms.S.Saraswathi

2. S.Dhanajayudu

... Defendants

**PRAYER:** This Civil Suit filed under Order VII Rule 1 CPC r/w Order IV Rule 1 of the High Court O.S. Rules praying for the following reliefs:

(a) Granting a decree for delivery of possession directing the defendants to deliver vacant possession of the flat in their occupation bearing Door No.21/5, First Floor, Meenakshi Street, Perambur, Chennai - 600 011, measuring 850 sq.ft., which is more particularly described in the schedule hereunder to the plaintiff

(b) Directing the defendants to pay a sum of Rs.12,750/- per month by way of damages for use and occupation to the plaintiff from the date of the plaint till the date of delivery of possession by the defendants to the plaintiff

(c) Awarding the costs of the suit

(d) Granting any such further or other reliefs.

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For Plaintiff : Mr.R.Manickavel

For Defendant : No appearance

**J U D G M E N T**

The plaintiff would aver as follows:-

The suit schedule property originally belongs to the 1<sup>st</sup> defendant and he has mortgaged the same in favour of the Purasaiwalkam Dhanavardhana Saswatha Nidhi Limited. Since he did not repay the loan, the said Nidhi, brought the said property which was under mortgaged by way of auction sale and in the public auction held, the plaintiff became the successful bidder and registered sale deed dated 21.07.2011 (registered as Document No.2794 2011 on the file of Sub Registrar Office, Purasaiwalkam) was also executed in favour of said Nidhi.

2. The plaintiff on purchase of the said property requested the defendants to vacate and deliver the vacant and peaceful possession. However, they did not do so and in order to avoid further dispute, the plaintiff recognised them as tenant and they also agreed to pay monthly rent at the rate of Rs.12,750/- per month from the month of July, 2011 onwards. However, the defendants, as promised, did not pay the rent and

therefore, the plaintiff sent a legal notice dated 09.11.2012, for which, they sent a reply on 14.11.2012 making false and untenable allegations. The plaintiff also filed R.C.O.P.No.2480 of 2012 seeking eviction before the learned XII Judge Small Causes Court, Chennai on the ground of default and the said petition, after contest, came to be dismissed on 17.12.2013 holding that there is no landlord tenant relationship. The grievance put forth by the plaintiff was that the defendants continue to squat over the property without paying anything and once again issued legal notice on 04.03.2014 calling upon the defendants to vacate and deliver the vacant possession of the suit property, for which, reply was sent on 23.03.2014 denying the factum of ownership of the plaintiff and further they are not liable to vacate the suit property and hence plaintiff came forward to file the present suit.

3. The defendants inspite of the service of notice did not enter appearance. They took an application No.6200 of 2015 for condonation of delay of 266 days in filing the written statement and it was ordered subject to the terms and since it was not complied with, the said application was dismissed and thereafter, this Court vide Order dated 22.09.2015 has

directed the learned Additional Master No.I to record the evidence and accordingly the plaintiff has filed the proof affidavit in lieu of chief examination and marked Exs.P.1 to Ex.P.12.

4. A perusal of the order dated 22.09.2015 discloses the fact that the defendants were not set exparte. Since the conditional order passed by this Court for condonation of delay in filing written statement was dismissed, the defendants were called absent and set exparte today, i.e, 01.02.2016.

5. The learned counsel appearing for the plaintiff would draw the attention of this Court to the oral and documentary evidence and would submit that there is no denial of fact that in pursuant to the auction sale conducted by the Purasaiwalkam Dhanavardhana Saswatha Nidhi Ltd., registered sale deed dated 21.07.2011 in Ex.P.3 was executed in favour of plaintiff and thereafter in order to avoid further controversy, the defendants were inducted as tenants and since they did not pay the rent, the plaintiff was constrained to file R.C.O.P.No.2480 of 2012. Under Ex.P.8 and under Ex.P.9, the said R.C.O.P was dismissed holding that there was no landlord-tenant relationship and thereafter plaintiff executed legal notice, for which, on behalf of the

defendants, reply has been sent denying the title and it was also indicated that the defendants have not undertaken to vacate from the said premises and hence plaintiff is constrained to file the said suit and in the light of the oral and documentary evidence, the learned counsel appearing for the plaintiff prays for decree of the suit with costs.

5. This Court has considered the submission of the learned counsel appearing for the plaintiff and also perused the pleadings, oral and documentary evidence.

6. The following issues are framed for adjudication:-

(i) Whether the plaintiff became owner of the property under Ex.P.3 dated 21.07.2011 ?

(ii) Whether by virtue of the order passed under Ex.P.9, this Suit is maintainable?

(iii) Whether the stand of the defendants under Ex.P.12, is tenable?

(iv) Whether the plaintiff is entitled to a decree as prayed for and to what other reliefs the plaintiff is entitled to?

7. The first defendant has availed loan from

Purasaiwalkam Dhanavardhana Saswatha Nidhi Limited and



also executed a mortgage deed in their favour and since the defendants did not pay the dues, the property was brought for auction under Ex.P.1, Auction Notice dated 18.06.2011. The plaintiff has participated in the said auction sale and became successful bidder and the said Nidhi has executed sale deed under Ex.P.3 in their favour and also issued letter of confirmation under Ex.P.4 dated 23.07.2011. The defendants had also filed the suit for permanent injunction in O.S.No.5865 of 2011 on the file of learned XIII Assistant Judge, City Civil Court, Chennai and it was also dismissed, as evidenced under Ex.P.5. In the light of the above said factual position, this Court is of the view that the plaintiff is the owner of the suit schedule property and Issue No.i is answered in affirmative and in favour of the plaintiff.

8. It is the case of the plaintiff that after her purchase, she called upon the defendants to vacate and handover the possession and they did not do so and in order to avoid further controversy, they were inducted as tenants on agreeing to pay rent at the rate of Rs.12,750/- per month and since they did not pay the rent, she was constrained to initiate petition for eviction in R.C.O.P.No.2480 of 2012 under Ex.P.8 and after contest, the same was dismissed on the ground that

there is no landlord-tenant relationship. In the light of the facts given under Ex.P.9, the suit as against the defendants is maintainable. Issue No.ii is answered in favour of the plaintiff.

9. The defendants did not challenge the auction conducted by Purasaiwalkam Dhanavardhana Saswatha Nidhi Ltd., as well as the sale under Ex.P.3 dated 21.07.2011 extended in favour of the plaintiff and on the date, was no longer the owner of the property and therefore the stand taken by them in Ex.P.12 that they are owner of the property and not liable to be evicted is wholly untenable. Therefore, the Issue No.iii is answered in favour of the plaintiff.

10. In the light of the overwhelming oral and documentary evidences, this Court is of the view that the plaintiff is entitled to a decree as prayed for with costs.

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11. In the result, there shall be a Judgment and decree directing the defendants to vacate and deliver vacant and peaceful possession of the suit schedule property. The defendants are directed to pay a sum of Rs.12,750/- per month by way of damages for use and

occupation to the plaintiff from the date of the plaint till the date of delivery of possession to the plaintiff. The plaintiff is entitled to the costs of the suit.

**List of Witnesses:**

P.W.1 - Mrs.S.Vijaya

**List of Exhibits:**

1. Ex.P1 - The Auction Notice dated 18.06.2011 issued on behalf of Purasawalkam Dhanavardhana Swaswatha Nidhi Limited
2. Ex.P2 - (Series 4 Nos) The Photographs showing the auction of sale of schedule property.
3. Ex.P3 - Original sale deed dated 21.07.2011 executed by Nidhi in favour of the plaintiff.
4. Ex.P4 - The confirmation letter dated 23.07.2011 by Nidhi in favour of the plaintiff.
5. Ex.P5 - The photocopy of the judgment dated 07.03.2012 delivered by learned XIII Assistant Judge, City Civil Court in O.S.No.5865 of 2011.
- 6.Ex.P.6 - The photocopy of the legal notice dated 09.11.2012 issued by the plaintiff's counsel to the defendant in Eviction Petition.
- 7.Ex.P.7 - The photocopy of the reply sent by the defendant's counsel in Eviction Petition.
- 8.Ex.P.8 - The photocopy of the eviction petition filed in R.C.O.P.No.2480 of 2012.
- 9.Ex.P.9 - The certified copy of the order in R.C.O.P.No.2480 of 2012.
- 10.Ex.P.10 - The legal notice dated 04.03.2014 issued by the plaintiff's counsel to the defendant.
- 11.Ex.P.11 - The acknowledgement received for receipt of Ex.P.10.



12.Ex.P.12 - The reply notice dated 23.03.2014 issued by the defendant's counsel to the plaintiff's counsel.

sd/.M.S.N.J

01.02.2016

//Certified to be a true copy//

Dated this the day of 2016

R.s/31.03.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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