

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09 / 08 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.545 OF 2007

M.Sivalingam

... Plaintiff

Versus

1.Mrs.Rajini Mahalingam
2.Manikandan

... Defendants

PRAYER: Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 CPC praying for a judgment and decree against the defendants for the following:

(a) declaring that the plaintiff is the sole and absolute owner of the suit property, Flat No.G-3, No.43, Old No.18 and 19, 1st Avenue, Indira Nagar, Adyar, Chennai - 600 020, morefully described in the Schedule hereunder and consequently direct the defendants to vacate and hand over vacant possession of the same to the plaintiff.

(b) pay a sum of Rs.5,10,000/- towards damages for use and occupation of the premises for the period from June 2004 to March 2007.

(c) Pay Rs.40,000/- towards damages for use and occupation of the premises for two months i.e., April and May 2007.

(d) Pay Rs.20,000/- per month towards future damages at the rate of from 01.06.2007 till the date of decree and thereafter also at the same rate till the date of the defendants vacating and handing over the suit property to the plaintiff.

(e) For granting such other reliefs.

For Plaintiff : Mr.P.B.Balaji
For Defendants : Ms.C.Sangamithirai
(No appearance)

J U D G M E N T

The suit is filed by the plaintiff against the defendants for the following reliefs:

(a) to declare that the plaintiff is the sole and absolute owner of the suit property at Flat No.G-3, No.43, Old No.18 and 19, 1st Avenue, Indira Nagar, Adyar, Chennai - 600 020, more fully described in the Schedule and for a consequential direction to the defendants to vacate and hand over vacant possession of the same to the plaintiff.

(b) to pay a sum of Rs.5,10,000/- towards damages for use and occupation of the premises for the period from June 2004 to March 2007.

(c) to pay a sum of Rs.40,000/- towards damages for use and occupation of the premises for two months i.e., April and May 2007.

(d) to pay Rs.20,000/- per month towards future damages at the rate of from 01.06.2007, till the date of decree and thereafter also at the same rate till the date of the defendants vacating and handing over the suit property to the plaintiff.

(e) to grant such other reliefs.

2. The averments made by the plaintiff in the plaint are as follows:

(a) The plaintiff is the absolute owner of the suit property. The first defendant is the wife of the plaintiff's brother-in-law and the second defendant is the son of the first defendant.

(b) The plaintiff permitted the defendants to occupy the suit property on permission basis, consequent to the unnatural demise of the first defendant's husband in January 2000. The plaintiff neither collected any advance nor claimed any rent for the occupation of the suit property by the defendants. In fact, the suit property is fully furnished by the plaintiff at his cost at the time of

permitting the defendants to occupy the same.

(c) While so, on 22.02.2007, the plaintiff terminated the permissive possession of the defendants with time up to 31.03.2007 and the plaintiff called upon the first defendant to vacate the premises on or before 01.04.2007.

(d) The first defendant sent a reply notice to the same, claiming ownership of the suit property. The first defendant also filed a suit in O.S.No.2149 of 2007 before the City Civil Court, Chennai, for bare injunction, making false allegations, as if the plaintiff was trying to unlawfully disturb her possession.

(e) The plaintiff sent a notice dated 20.05.2007 claiming damages for use and occupation at the rate of Rs.15,000/- per month from the date of occupation, till 31.03.2007 and Rs.20,000/- per month, from 01.04.2007 till the date of decree and thereafter also, at the same rate, till the date of the defendants vacating and handing over the suit property to the plaintiff.

(f) Though the plaintiff is the sole and absolute owner of the suit property, by way of abundant caution, especially since the first defendant denied the plaintiff's title, the plaintiff had filed the present suit for the relief of declaration of title, with consequential relief of vacant possession and damages for use and occupation of the suit property.

3. The first defendant filed written statement to the suit. In the written statement it is stated that the entire sale consideration for purchase of the suit property was paid out of the sale proceeds of the joint family plot at Raja Colony, Trichy, which stood in the name of the plaintiff's wife. The plaintiff is only the name lender of the suit property and he cannot claim exclusive ownership of the suit property. It is further stated that the first defendant's husband M.Mahalingam was the elder son of Mr.O.P.Muthiah. Her husband was acting as the Manager of all the joint family venture of O.P.Muthiah & Co., concern, which runs several Theatres in Tamil Nadu, besides doing distribution of Cinema films in Trichy, Tanjore and Pudukottai area. It is the specific case of the first defendant that there was a family mediation, in which, it was agreed that the first defendant would be provided a

secured residence at Chennai and that she was advised to reside in the suit property as security for the same. It is stated further that the plaintiff is not the absolute owner of the suit property.

4. The second defendant is the son of the first defendant and he had adopted the written statement filed by the first defendant.

5. Based on the above pleadings, on 07.07.2011, the following issues were framed by this Court:

"1. Whether the plaintiff is the owner of the suit property?

2. Whether the claim of the defendants that the plaintiff was only a name lender and the suit property does not belong to him can be sustained?

3. Whether the defendants are permissive occupants of the suit property?

4. Whether the plaintiff is

entitled to a decree declaring his title to the suit property?

5. Whether the plaintiff is entitled to the relief of recovery of possession?

6. Whether the defendants are liable to pay damages for use and occupation and if so, at what rate?"

6. The plaintiff examined himself as P.W.1 and marked 21 documents as Exs.P1 to P21. On the side of the defendants, the first defendant examined herself as D.W.1 and the second defendant examined himself as D.W.2 and 17 documents were marked as Exs.D1 to D17.

7. It is contended by the learned counsel for the plaintiff that the plaintiff is only a son-in-law of the defendants' family and he can never become a coparcener or owner of any joint family property belonging to the defendants' family. It is evident from the sale deed filed by the plaintiff as Ex.P3 and also the agreement of sale and construction filed as Exs.P8 to P12, P17 and P18 that the plaintiff is the owner of the suit property. Further, P.W.1 in his cross examination had clearly stated that he has been

in lorry business since 1985 and he had substantial income more than sufficient to purchase the suit property. He is also not a signatory to any of the family arrangements between the members of the defendants' family. Under the provisions of the Transfer of Property Act, the plaintiff had without a doubt, established his title over the suit property and also the circumstances, under which the defendants' came into possession of the property, namely, the children of the first defendant were studying in Chennai at the time of death of her husband, which fact is admitted by the defendants' themselves in cross examination. Out of pure sympathy only, the plaintiff had permitted the defendants to occupy the suit property.

8. It is contended further that though the first defendant claimed that the suit property was purchased out of joint family sale proceeds of a plot, standing in the name of the plaintiff's wife, in the plaint filed by herself in the City Civil Court, Chennai, in O.S.No.2149 of 2007, which is marked as Ex.P13, she claimed that the suit property was purchased out of the sale of theatre, viz., Balaji Theatre, Trichy, which stood in the name of plaintiff's wife. In fact, both the defendants are

signatories to Exs.P20 and 21 - copies of family arrangements, in which, the plaintiff is neither a party nor a witness to the said family arrangement.

9. In this regard, it is relevant to reproduce clause 9 of Ex.P20 dated 01.10.2003, which reads as follows:

" 9) We confirm that there are no joint family properties or properties common to all or any of us and that all properties, whether movable or immovable, which are not the subject matter of this understanding belongs and shall continue to belong as hereinbefore to such person among us in whose name such property or properties stand(s)."

10. In the above Memorandum of Family Arrangement marked as Ex.P20, though the first defendant is a party, the plaintiff, who is an outsider to the family is not a party and the said arrangement had come into existence on the 1st of October 2003. The first defendant as D.W.1 for the first

time in her chief examination in the proof affidavit has stated that she was forced to sign that there are joint family properties. However, she admits in her cross examination that she had not challenged the said family arrangement as obtained out of coercion. The property tax receipts which are marked as Exs.D3, D4, D5 and D6 are the random payments made by the first defendant and they are subsequent to the filing of the suit. The other contention of the first defendant that furnishing of the flat was done by her is also not established by any substantial proof. As stated earlier, by virtue of Exs.P1, P2 and P3, the plaintiff has established the title for the suit property. Hence, issue nos. 1, 2 and 4 are answered in favour of the plaintiff.

11. It is admitted case of the plaintiff that he is the owner of the suit property and he had permitted the defendants to occupy the suit property as the defendants are wife and son of the plaintiff's brother-in-law. The said permission was given to them consequent to the unnatural death of the first defendant's husband in January 2000. The flat was already fully furnished by the plaintiff which fact was established by the plaintiff. As stated earlier, to

establish the possession and ownership, the defendants had produced property tax receipts which were after the suit. Besides, those receipts were produced by them because admittedly they were in occupation of the suit property.

12. The plaintiff's bank accounts and statements have been marked as Exs.D11, D12 and D13, which established that money for purchase of the suit property went from his own funds and not from anybody else. Thus, the plaintiff had by oral and documentary evidence, clearly established his title over the suit property and by way of marking Exs.P4 and P6, he has proved that the permission occupation of the defendants has been terminated.

13. On the contrary, the defendants have raised issues, which even go to the root of the plaintiff's title and had miserably failed to prove any of the contentions by way of oral or documents evidence. In fact, the oral evidence referred herein above, only support the claim of the plaintiff.

14. The plaintiff had placed his reliance on Ex.D17, which was marked through the second defendant on his own, which relates to the Minutes of the Apartment

Association meeting which was signed by the first defendant on behalf of the plaintiff. A perusal of the said document would go to show that the first defendant has signed against G-3 and written in brackets "for Mr.Sivalingam". Therefore, the defendants themselves admitted the ownership of plaintiff at all point of time and behaved only that of a permissive occupant.

15. Though the defendants had admitted that the property is located in a posh and prime locality and would fetch a rent of not less than Rs.20,000/- per month, are trying to take advantage of the rent free accommodation. The first defendant is also unable to establish that she is the owner of the property nor the tenant of the property, however, has denied the title of the plaintiff for the purpose of prolonging the rent free accommodation for a longer time.

16. On the other hand, the plaintiff, having established his purchase of the suit property and also admitted the permissive occupation of the defendants, is entitled to recovery of possession of the same as the defendants had claimed ownership for the suit property. The

plaintiff also has sent notice on 22.02.2007 - Ex.P4 terminating the occupancy of the defendants till the end of 31.03.2007 calling upon them to hand over possession of the same. Ex.P4 notice has specifically terminated the permissive occupation of the defendants till 31.03.2007, for which, the defendants had issued a reply notice dated 25.03.2007 denying the title of the plaintiff and claiming ownership of the same. In response to the same, the plaintiff had issued a reply notice dated 20.05.2007 demanding damages for the past three years at the rate of Rs.15,000/- per month i.e. from 01.04.2007 till handing over of possession at the rate of Rs.20,000/- per month. In view of the reply notice dated 25.03.2007 given under Ex.P5 by the defendants denying the title of the plaintiff and claiming ownership of the same, has resulted in the suit and in the absence of any substantial evidence to prove that the defendants are the owner of the property and the plaintiff having established the same, is entitled for recovery of possession of the same from the defendants.

17. As admittedly the plaintiff had allowed the defendants to be in permissive occupation without payment of rent and the tenancy was terminated, till 31.03.2007, the

plaintiff is not entitled for the damages for use and occupation of the premises prior to the said date. However, from April 2007, till vacating and handing over delivery of a property, the plaintiff is entitled for damages at the rate of Rs.20,000/- per month.

18. In the light of the above findings,

(i) The plaintiff is entitled for a declaration that he is sole and absolute owner of the suit property. Consequently, the defendants are directed to vacate and hand over possession of the same to the plaintiff.

(ii) The plaintiff **is NOT** entitled for damages for use and occupation for the period from 2004 to March 2007.

(iii) The plaintiff is entitled for damages for use and occupation at the rate of Rs.20,000/- per month from 01.04.2007, till the date of defendants vacating and handing over possession of the suit property.

(iv) No costs.

19. The suit is decreed as indicated above. No costs.

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF

P.W.1 - M.Sivalingam

Sl.N o.	Exhib its	Description of documents	Date
1	P-1	Agreement of sale	21.09.2000
2	P-2	Construction agreement	28.09.2000
3	P-3	Sale deed	04.04.2002
4	P-4	Xerox copy of letter sent by the plaintiff to the defendant	22.02.2007
5	P-5	Xerox copy of reply letter sent by the defendant to the plaintiff	25.03.2007
6	P-6	Xerox copy of legal notice sent by the plaintiff's counsel to the defendant	20.05.2007
7	P-7	Legal notice issued by the defendant's counsel to the plaintiff's counsel	14.07.2007
8	P-8	Provisional assessment notice	07.02.2003
9	P-9	Property tax demand card	-
10	P-10	Name transfer order issued by the TNEB	17.05.2003
11	P-11	Water and sewerage tax cum charges card	-
12	P-12	(Series) Water and sewerage tax payment receipt	25.08.2003
13	P-13	Xerox copy of plaint filed in O.S.No.2149/2007	-
14	P-14	Xerox copy of written statement filed in O.S.No.2149/2007	-
15	P-15	Xerox copy of proof affidavit filed in O.S.No.2149/2007	-
16	P-16	Xerox copy of proof affidavit filed in O.S.No.2149/2007	-
17	P-17	Property tax receipt	22.07.2011

Sl.N o.	Exhib its	Description of documents	Date
18	P-18	Water and sewerage tax payment receipt	22.07.2011
19	P-19	Certified copy of judgment and decree in O.S.No.2149/2007	18.01.2012
20	P-20	Certified copy of family arrangement	01.10.2003
21	P-21	Certified copy of deed of family arrangement	10.11.2003

LIST OF WITNESSES EXAMINED ON THE SIDE OF THE DEFENDANTS

D.W.1 - Rajini Mahalingam

D.W.2 - M.Manikandan

Sl.N o.	Exhib its	Description of documents	Date
1	D-1	Xerox copy of family card	-
2	D-2	Xerox copy of telephone bill	07.06.2009
3	D-3	Statement of account	-
4	D-4	(Series) statement of account along with receipts	-
5	D-5	Xerox copy of property tax receipt	25.11.2011
6	D-6	Xerox copy of property tax receipt	28.08.2010
7	D-7	Statement of account	04.12.2012
8	D-8	Statement of account	04.12.2012
9	D-9	Statement of account	-
10	D-10	Statement of account	-
11	D-11	True copy of bill	-
12	D-12	True copy of statement of account	-
13	D-13	Certified copy of bank statement	-

Sl.N o.	Exhib its	Description of documents	Date
14	D-14	(Series) xerox copy of electricity bill receipts	-
15	D-15	The cover along with the contents redirected to the suit property address	-
16	D-16	The acknowledgment card signed by grandmother	-
17	D-17	The certified copy of the said minutes	-

sd/.P.S.N.J

09.08.2016

//Certified to be a true copy//

Dated this the day of 2016

S.S/15.11.2016

COURT OFFICER

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

सत्यमेव जयते

WEB COPY