

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 23.11.2016

Judgment pronounced on : 29.11.2016

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.446 of 2003

1. V.Thambiah Reddy (deceased)
2. T.Saraswathi
3.T.Hemachandran
4. T.Mahesh Kumar
(Plaintiffs 2 to 4 brought on record as LR's.
of deceased 1st plaintiff, as per order
dt. 18.09.2007 in Application No.6289 of 2007)
... Plaintiff

Versus

1. E.Kumar
2. E.Banu
3. E.Savithri
4. E.Kalpana
5. Thulukkanam @ Rajendran (deceased)
6. R.Thavamani
7. R.Hariharan (minor)
8. R.Pavithra (minor)
(Defendants 6 to 8 impleaded as LR's of the
deceased D5, as per order dated 29.08.2011
in application nos.4785 and 4788 of 2010)
... Defendants

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The plaint is filed and numbered as Civil Suit under order IV Rule 1 of OS Rules r/w Order VII Rule 1 of CPC, praying for a judgment and decree:

- a) directing the defendants to quit and deliver vacant possession of the suit property bearing door no.45, Thambiah Reddy Road, West Mambalam, Chennai - 60 033, more fully described in the schedule hereunder, after removing the hut unlawfully put up by them;

b) directing the defendants jointly and severally to pay a sum of Rs.72,000/- towards damages for use and occupation for a period of three years preceding the plaint.

c) directing the defendants to pay Rs.2,000/- per month, jointly and severally, from the date of suit till the date of decree and thereafter also at the same rate, till the date of delivering vacant possession to the plaintiff;

d) directing the defendants to pay the costs of the suit.

For Plaintiff : Mr.P.Balaji
For Defendants : Mr.M.Santhanaraman

JUDGMENT

This suit is filed for delivery of possession and for damages caused by the first defendant, by name Elumalai and on plaintiff's death, other plaintiffs were impleaded.

2.The brief facts of the plaintiff's case is are follows:

The suit property absolutely belongs to the first plaintiff, by virtue of the partition deed dated 27.10.1948, registered on the file of SRO, T-Nagar, Chennai. The first plaintiff originally permitted Elumalai, the father of the defendants to use a portion

of the land for his cattle shed. The said Elumalai is also residing there. On his refusal to quit and deliver

the vacant possession of the land, when required by the plaintiff, the suit in O.S.No.2481 of 1970 was filed on the file of the I Assistant Judge, City Civil Court, Chennai, against the said Elumalai, for recovery of possession and the said suit was decreed on 31.07.1974. Thereafter, execution petition also taken out in E.P.No.3236 of 1978. Pending the said Execution Petition, Elumalai died, therefore his legal heirs were impleaded. The defendants took a stand that they are entitled to protection under Section 9 of the Madras City Tenants Protection Act. Eventhough the execution petition was dismissed by the Execution Court, in CRP.No.997 of 1982, execution petition was restored. Pending the proceedings, the Tamil Nadu Slum Clearance Board took into consideration the rearing cattle in the human habitants, which was very unhygienic, and Tamil Nadu Slum Clearance Board havd taken steps to evict the hut dwellers. In that process, the defendants were also evicted from the suit property. They were allotted separate tenement No.4, Block No.22 by the Tamil Nadu Slum Clearance Board under Brindavan Scheme and they were evicted from the suit property on 18.07.1983. Immediately, the plaintiff fenced the property and took possession of the suit property. When the matter stood thus, the wife of said Elumalai and the defendants 2 to 4 filed suit in O.S.No.2474 of 1995 for permanent injunction. During the pendency of the suit, the defendants trespassed into the

suit property on 27.05.1996 and put up a small hut. The plaintiff lodged a police complaint on the next day itself. In the meantime, the suit filed by the defendants in O.S.No.2474 of 1995 was closed on 24.08.1998, for non prosecution. The 5th defendant after dismissal of the earlier suit, filed a suit in O.S.No.568 of 2002 not to evict them, except by due process of law. Thus, the contention of the plaintiff is that the defendants are rank trespassers, without unlawful occupation and entered into the suit property illegally. The suit property is a valuable property. Hence, the present suit is filed for recovery of possession and also for damages.

3.The brief facts of the defendants' case are as follows:

The defendants have admitted that the 1st plaintiff is the owner of the suit property. It is the contention of the defendants that they were not aware of the previous proceedings initiated against the father i.e., Elumalai. The plaintiff, in collusion with the Tamil Nadu Slum Clearance Board, illegally attempted to evict them from the suit property. However, the same was thwarted by them. The plaintiffs taking advantage of the dismissal of O.S.No.2474 of 1995 tried to disturb the possession of these defendants. Therefore, they were constrained to file another suit in O.S.No.568 of 2002 on the file of the IV Assistant City Civil Court,

Chennai. The allegation that the defendants are rank trespassers and re-entered the suit property, are denied by them. The defendants are continuing in the possession of the property as legal heirs of the father of late Elumalai, who was admittedly inducted as tenant in the suit property by the plaintiff. As the defendants are in occupation of the suit property as tenant at sufferance, the question of paying for the damages to the plaintiff does not arise and the defendants are continuing in possession of the suit property for several decades, the suit is not maintainable. On the basis of the pleadings of both sides, the following issues were framed:

- i. Whether the plaintiffs are entitled to a decree of possession of the suit property as prayed for?
- ii. Whether the defendants are jointly and severally liable to pay damages for use and occupation and if so, at what rate?
- iii. Whether the defendants are successors of tenancy in respect of the suit schedule property or encroachers thereon?
- iv. Are the defendants liable to pay damages to the plaintiff as claimed?
- v. Whether the plaintiffs are entitled to cause damages at Rs.72,000/- towards use and occupation of the suit property from the defendants as prayed for?
- vi. Whether the plaintiffs are entitled to future mense profits at Rs.2,000/-p.m. from the date of suit till the date of decree and thereafter, delivery of vacant possession to the plaintiff as prayed for from the defendants?
- vii. To what relief, the plaintiffs are entitled to?

4. On the side of the plaintiff, PW1 was examined and Exs. P1 to P10 were marked and on the defendants side, DW1 and DW2 were examined and EXs. D1 to D9 were marked.

5. According to the learned counsel for the plaintiff, the suit property is absolutely belonging to the 1st plaintiff (since deceased) and this fact is not in dispute. In a portion of the suit property, Elumalai, the father of the defendants was permitted to rear the cattle. The plaintiff, though demanded the vacant possession of the suit property, the said Elumalai has adopted the delay in tactics. Therefore, the first plaintiff (since deceased) filed a suit in O.S.No.2481 of 1970 for recovery of possession on the file of the City Civil Court, Chennai. The above suit was decreed, directing the said Elumalai to handover the vacant possession, after demolishing the superstructure put up by the defendants. Subsequently, the 1st plaintiff has taken up execution proceedings. Though the execution proceedings were originally dismissed in the lower court, subsequently, it was restored in C.R.P.No. 997 of 1982. When the above execution proceedings were pending, the Tamil Nadu Slum Clearance Board, taking into consideration of the unhygienic condition due to cattle rearing in the human habitants, have allotted separate flats for the slum dwellers and cattle rearers.

Accordingly, the defendants' father was also allotted

tenement no.4, block no.22 under the Brindavan Scheme by the Tamil Nadu Slum Clearance Board. When the 1st defendant's father did not vacate the suit property, immediately after such allotment, the Tamil Nadu Slum Clearance Board has evicted the defendants from the suit property on 18.07.1983. Thereafter, the plaintiff took control over the suit property and fenced the property. When the matter stood thus, long after the eviction from the suit property, the defendants have filed false injunction suit in O.S.No.2474 of 1995. The defendants have illegally re-entered and squatting on the suit property and the same is evident from the evidence of the DW1, DW2 and Ex.P3. The written statement filed by the Tamil Nadu Slum Clearance Board in a previous suit, clearly shows the fact that the defendants were evicted from the suit property in the year 1983 itself. Further, the evidence of DW1 and DW2, particularly, proof affidavit filed by them, would disclose the fact that they have not been residing in the suit property and they are residing in the plot allotted to them by the Tamil Nadu Slum Clearance Board. As the documents filed by the defendants not relate to the years 1983 and 1996, the same cannot be given any importance. Fact remains that the title is not in dispute, the only contention of the defendants is that they are continuing in long possession. Mere long possession, whatsoever, will not confer title adverse to the owner. It is the further

contention of the learned counsel for the plaintiff that alleged pleadings as to the tenancy, also had not been established. Hence, prayed for decreeing the suit.

6. The contention of the defendants' counsel is that admittedly defendants' father resided in the suit property for long back. They are in possession of the suit property from the year 1971 continuously without any interruption. Exs.D1 to D9 filed on the side of the defendants side, clearly establish that they are in possession of the suit property continuously. Ex.D7, community certificate was issued only in the year 24.01.1995. The alleged eviction of the Tamil Nadu Slum Clearance Board has not been established, the same has been pressed into service only for the purpose of filing the suit. Hence, the learned counsel has submitted that as the suit is filed beyond 12 years for recovery of possession, it is not maintainable in law. Hence, prayed for dismissal of the suit.

7. In the light of the above submissions, this court has to decide the issues one by one.

Issue No. 3

8. It is the contention of the plaintiff that the suit property originally belonged to the first plaintiff Thambiah Reddy, by virtue of the plaintiff deed dated 25.08.1948. This fact is not in dispute. Ex.P10 certified

copy of the partition deed is also filed. The contention of the plaintiff is that Elumalai, father of the defendants, was permitted to occupy a portion of the land for his cattle shed. He was also residing there. Since he refused to quit and deliver the vacant possession, when required by the plaintiff, the 1st plaintiff has filed the Original Suit No.2481 of 1970 on the file of the I Assistant Judge, City Civil Court, Chennai. On a careful perusal of Ex.P1, the decree passed in O.S.No. 2481 of 1970, it can be seen that there cannot be any doubt in the mind of this Court to come to the conclusion that the first plaintiff (now deceased) has already filed a suit for eviction of Elumalai Naicker (the father of the defendants). The above suit was decreed in as early as on 31.07.1974. On a careful perusal of the decree, it makes it clear that the said Elumalai Naicker was treated as trespasser in the suit property and he was directed to hand over the suit property after removing the superstructure put up by him. Now, the defendants have shown ignorance of the above decree and also proceedings. It is to be noted that if any decree and judgment is passed against any party to the suit, the party who claims any right over the property under the party to the original suit, he is bound by the decree and judgment of the prior suit. Therefore, this Court is of the view that the contention of the defendants that they are in possession of the suit property from the very beginning

as a tenant by sufferance, as pleaded by them in para 10 of the written statement, does not stand to the legal scrutiny. It is however to be noted that no evidence whatsoever was adduced on the side of the defendants to show that their father was originally a tenant and continued to pay rent. Subsequently, they failed to pay the rent and continued in possession. Even now, the evidence of the DW1 and DW2 viz., D1 and D4, clearly show that they were not even aware, as to whether any rent whatsoever has been paid, in respect of the suit property. In the absence of any evidence to establish that there is a landlord and tenant relationship, they cannot merely on surmise and conjecture contend that they are tenants by sufferance. Therefore, the contention of the defendants that they continued in possession as tenant by sufferance, has no legs to stand.

9. It is the specific contention of the plaintiff that the father of the defendants was rearing cattle in the suit property. In the year 1983, the Tamil Nadu Slum Clearance Board has allotted tenement No.4 Block No.22 to the defendants' father. Subsequently, all the slum dwellers including the defendants were removed from the suit property on 18.07.1983. The specific pleading in the suit is that the defendants were evicted by the Tamil Nadu Slum Clearance Board on 18.07.1983 and it is not specifically denied in the written statement filed by the

defendants. Except the evasive denial in para 5 of the written statement, no specific denial whatsoever is made with regard to the specific allegation of eviction of the defendants from the suit property on 18.07.1983.

10. In this regard, it is useful to refer, Order 8 Rule 5 of CPC, which reads as follows:

"Every allegation of the fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability"

11. In this case also, the specific fact that the eviction of the defendant from the suit property on 18.07.1983 has not been denied. Further the fact pleaded in the plaint as to the allotment of separate plot by the Tamil Nadu Slum Clearance Board also neither denied nor admitted by the defendant in the entire written statement. Further this Court, on looking into the other documents, can easily come to the conclusion that the defendants were residing in the plot allotted to them by the Tamil Nadu Slum Clearance Board at the relevant point of time, i.e., from 1983 to 1996. It is to be noted that DW1, the first defendant and DW2, the fourth defendant have been examined before the Court in the year

2013. The 1st and 2nd defendants have tendered their evidence in chief examination on 10.01.2013 and 18.04.2013, respectively. In the chief examination, they have stated that they are residing in tenement No.4, Block No.22, Tamil Nadu Slum Clearance Scheme, Brindavan street. This fact has further fortified by the stand taken by the Tamil Nadu Slum Clearance Board in the written statement filed by them in O.S.No.2474 of 1995. In the said O.S., Gangamma, wife of Elumalai Naicker, 3rd defendant Savithri, 4th defendant E.Kalpana, 1st defendant Kumar, 4th defendant Kalpana, 2nd defendant E.Banu and 3rd defendant E.Savithri, filed a suit for bare injunction against the first plaintiff and the Tamil Nadu Slum Clearance Board, wherein the Tamil Nadu Slum Clearance Board was arrayed as 2nd defendant and they have filed a written statement about the allotment of tenement no.4, Block No.22 to the defendants, besides they have also pleaded that the defendants were evicted from the suit property in 1983. The above written statement is marked as Ex.P3. The said suit filed by the aforesaid defendants was dismissed for default, as could seen from the certified copy of the decree, which is marked as Ex.P4. and Ex.P6. Thereafter, application was filed by the above said defendants to restore the suit to file, with a delay of 710 days. The above application, after contest, was dismissed. From the above documents, it clearly established that the defendants had filed a bare

injunction suit and not prosecuted the same and it reached finality. Not stopping with that, they have filed another suit through 5th defendant, who was not a party in the previously filed suit in O.S.No.2474 of 1995, against the plaintiffs for permanent injunction, as could be seen from Ex.P7. It is the contention of the plaintiff that though the first plaintiff obtained a decree for possession as early as in 1974 under Ex.P1., in the Execution Proceedings, the defendants took a stand under Section 9 of the Madras City Tenants Protection Act, it culminated into dismissal of the execution proceedings. However, in Civil Revision Petition filed before this Court, the execution petition is restored. Ex.P9 is the copy of the Civil Revision Petition No.997 of 1982, which clearly shows that the Execution Petition was restored to file. It is the contention of the plaintiff that the Tamil Nadu Slum Clearance Board evicted the defendants from the suit property, hence they did not pursue the execution petition, in view of the subsequent development of the eviction by the Tamil Nadu Slum Clearance Board, above contention of the plaintiff is well founded. As discussed above and considering pleadings, Ex.P3 and also the evidence of the DW1 and DW2, about the address of the defendants 1 and 4, same probablise the plaintiffs' case that the defendants have trespassed into the suit property once again on 27.05.1996. On the very next day, plaintiffs also filed FIR, Ex.P2. Ex.P5 shows that the

direction was given by this Court to act on the complaint given by the plaintiff. The above evidence clearly probablise the plaintiffs' case that only in the year 1996, the defendants again trespassed into the suit property. This is further probablised by the evidences of DW1 and DW2. DW1 & DW2 gave their address as tenement no.4, Block No.22, which was allotted by the Tamil Nadu Slum Clearance Board. Further, DW1 had shown ignorance of all the previous facts and even denied that he is presently residing in the Brindavan Street. DW2, in the same manner has given evidence. DW2, however admitted in the cross examination that she did not know whether they were evicted by the Tamil Nadu Slum Clearance Board in the 1983. Apart from the above cross examination, the document filed on the side of the defendants, show that they are not relate to the relevant period. Ex.D1, Voter's Identity Card issued to Gangammal on 05.08.1999; similarly, Ex.D2 was issued on 05.08.1999; Ex.D3 was issued only in the year 2003; Ex.D4, the passbook was of the year 1981; Ex.D5, xerox copy of the ration card was issued for the year 2005-2009; Ex.D6 is the death certificate, which is a xerox copy, is also issued in the year 2000; Ex.D8 is the birth certificate issued in the year 2006; Ex.D9, community certificate was issued in the year 2009; Ex.D7, is xerox copy of the community certificate, original of which has not been placed, though said to have been issued on 24.01.1995, the

address mentioned in the above document is not legible. It is not only a xerox copy, the compliance of the secondary evidence has also not been complied and hence it cannot be given any importance. At any event, the community certificate would be issued only on the basis of the address given by the person. Therefore, the same cannot be a valid document to show that the defendants are in possession of the suit property from the date of their eviction, i.e., on 18.07.1983, by the Tamil Nadu Slum Clearance Board, till re-entry on 27.05.1996. Therefore, the suit filed by the plaintiff for recovery of possession is well within the period of limitation. Admittedly, the title is not in dispute. The defendants have also not pleaded and proved the plea of adverse possession. That apart, their contention that they are tenants at sufferance, has not been established. To establish their contention that they are tenants by sufferance, they should first establish the factum of tenancy from the very inception. In this case, no piece of paper, whatsoever, available even to infer the tenancy from the very beginning, whereas in the decree in O.S.NO.2481 of 1970, it is clearly established that Elumalai Naicker was found to be trespasser in the property. The defendants being the legal heirs cannot take contrary stand as against the judgment and decree passed against the said Elumalai. Hence, the contention that the defendants are tenants by sufferance has no legs

to stand. When the possession is not lawful, than their possession is nothing but unlawful and defendants can be termed only as trespassers of the property. Admittedly, the property is situated in T-Nagar, Revenue Division, Mambalam-Guindy Taluk, Chennai, without any semblance of right over property, defendants can only be considered as a rank trespassers, as far as the aforesaid suit property is concerned. Accordingly, the issue 3 decided, and answered.

Issues 2, 4, 5 and 6

12. Admittedly, the suit property is situated in T.S.No.8, Block No.2 of T-Nagar, Revenue Division, Mambalam-Guindy Taluk, Chennai. The suit property comprising about an extent of 1 ground and 314 sq.ft (just short of 6 cents), is situated in the prime locality. As per the evidence of the DW1, they never paid any amount whatsoever to the plaintiff at any point of time, no rent was paid whatsoever and he further stated that market value of the property is about more than Rs.5 crores in the locality. DW1 admitted the above aspect in his cross examination. Since the defendants are found to be trespassers and were squatting on the property without any rights of whatsoever, they are liable to pay the damages . Taking into consideration the market value of the area, this Court is of the view that the defendants are certainly liable to pay the damages. The plaintiff

has also restricted the damages only to a sum of Rs.2,000/- per month, which is reasonable in the view of this Court.

13. Accordingly, the damages for 3 years is allowed. Since the defendants are in occupation of the property in prime locality, they are liable to pay damages of Rs.2,000/- per month, till they quit and deliver the vacant possession of the suit property to the plaintiff. Accordingly, the issues are answered.

Issues 1 and 7

14. As discussed in issue No.3, the plaintiffs are the lawful owners of the property and the defendants are rank trespassers and the suit is also filed within time, the plaintiffs are entitled to a decree for the vacant possession of the suit property, after removing the hut put up by the defendants. Accordingly, the issues are answered.

15. In the result, the suit is decreed and there will be a direction to the defendants to quit and deliver the vacant possession of the suit property, after removing the hut put up by them, within two months from the date of receipt of a copy of this judgment. The suit is decreed as prayed for with costs.

PLAINTIFFS

Sl.N o.	Exhibi ts	Description of Documents	Date
1	P-1	Certified copy of the decree in O.S.No.2481/1970, City Civil Court, Madras.	31.07.1974
2	P-2	Xerox copy of FIR registered with R3 Ashok Nagar Police Station.	28.05.1996
3.	P-3	Xerox copy of written statement filed in O.S.No.2474/1995, City Civil Court, Madras	---
4.	P-4	Certified true copy of the decree in O.S.No.2474/1995, City Civil Court, Madras	24.08.1998
5.	P-5	Xerox copy of the order in W.P.No.13599/1996, High Court, Madras	14.07.2000
6.	P-6	Certified copy of the order in I.A.No.13560/2000 in O.S.No.2474/1995, City Civil Court, Madras	20.08.2001
7.	P-7	Xerox copy of plaint filed in O.S.No.568/2002, City Civil Court, Madras	28.01.2002
8.	P-8	Xerox copy of written statement filed in O.S.No.568/2002, City Civil Court, Madras	06.10.2002
9.	P-9	Xerox copy of judgment in CRP.No.997/1982, High Court, Madras	11.02.1983
10.	P-10	Certified copy of partition deed	25.08.1948

LIST OF DOCUMENTS MARKED ON THE SIDE OF THE DEFENDANTS

Sl.N o.	Exhibi ts	Description of Documents	Date
1	D-1	Voter's Identity Card of Gangaammal	--
2	D-2	Voter's Identity Card of Thulukkanam	--
3	D-3	Driving License of Rajendran	--

Sl.N o.	Exhibi ts	Description of Documents	Date
4	D-4	Savings Bank Account Pass Book of Gangaammal	--
5	D-5	Xerox copy of family card	--
6	D-6	Xerox copy of death certificate of Gangammal	--
7	D-7	Xerox copy of community certificate of Rajendran	--
8.	D-8	Birth Certificate of K.Abinaya	--
9.	D-9	Community Certificate of K.Abinaya	--

EVIDENCE

Witness	Evidence	Date	Page
T. Mahesh Kumar - PW1	Chief	05.11.2012	1-2
T. Mahesh Kumar - PW1	Cross	06.12.2012	3-5
E.Kumar - DW1	Chief	10.01.2013	6
E.Kumar - DW1	Cross	31.01.2013	7-8
E.Kalpana - DW2	Chief	18.04.2013	9-10
E.Kalpana - DW2	Cross	12.06.2013	11-12

sd/.N.S.K.J

29.11.2016

//Certified to be a true copy//

Dated this the day of 2017.

P.M./13.06.2017

COURT OFFICER

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