



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2016

CORAM:

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A(MD)Nos.639 & 640 of 2016

&

C. M.P(MD)9697 of 2016 in S.A. (MD)No.639 of 2016

S.A(MD)No.639 of 2016

M.Mariyappan

... Appellant/Appellant/1st Defendant

-Vs-.

K.Chandradevi (Died)

1.Santha

2.Padmalatha

3.Ananthakumar

Mohana Sundari (Died)

4.Varalakshmi

5.B.Rajagandhi

6.Kalaiselvi

7.G.Krishnamoorthy

8.K.Kalaiarasi

9.K.Anbalagan

...

Respondents/Respondents/Plaintiffs

10.K.Kumaraguru

... Respondent/Respondent/2nd defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the decree and Judgement of the Principal District Judge, Trichy, in A.S.No.183 of 2010 dated 12.03.2012 affirming the decree and judgment of the Principal Subordinate Judge, Trichy, in O.S.No.193 of 2000 dated 14.07.2010 and consequently dismiss the suit.

S.A(MD)No.640 of 2016

M.Mariyappan

... Appellant/Appellant/Plaintiff



Ganapahty (Died)

1.K.Kumaraguru

2.B.Rajagandhi

3.Kalaiselvi

4.Santha

5.Padmalatha

6.Anandakumar

7.Mohanasundari

8.Varalakshmi

... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the decree and Judgement of the Principal District Judge, Trichy, in A.S.No.184 of 2010 dated 12.03.2012 affirming the decree and judgment of the Principal Subordinate Judge, Trichy, in O.S.No.706 of 2003 dated 14.07.2010 and consequently dismiss the suit.

For Appellant

in both appeals

: Mr.Raguvaran Gopalan

For Respondents

in both appeals

:Mr.N.Vallinayagam for R1 to 3
R5 & R6 in S.A(MD)No.639 of 2016

:Mr.N.Vallinayagam for R2, R4 to 6
in S.A(MD)No.640 of 2016

COMMON JUDGMENT

The plaintiff in the suit in O.S.No.706 of 2003 (Originally O.S.No.2904 of 1989) on the file of the Principal Sub-Court, Trichy and the first defendant in the suit in O.S.No.193 of 2000, is the appellant in the above second appeals.

2. The case of the plaintiff in O.S.No.706 of 2003 is that he is in possession and enjoyment of the suit property from March 1971 and that he has been paying the property tax etc., as an exclusive owner of the suit property. Though the plaintiff admitted that originally, the suit property belonged to one Padmavathy, the said Padmavathy died in the year 1964 by committing suicide. It is his further case that the suit property which is a residential building was left unoccupied for several years and that no one was prepared to enter into the house, because the suit property was considered to be uninhabitable on account of haunting of ghost.

3. The plaintiff in O.S.No.706 of 2003 contended that he negotiated with the legal representatives of the original owner, namely, Padmavathi ammal and prepared to purchase the property. In that context, the appellant pleaded that one Krishnamoorthy had received a sum of Rs.10,000/- (Rupees Ten Thousand only) and asked him to take possession of the suit property in March 1971. Though



the legal representatives of Padmavathi Ammal had promised to regularize his ownership, they did not execute any sale deed.

4. The plaintiff in O.S.No.706 of 2003 also pleaded that he also made improvements and made the house fit for human habitation by doing poojas to drive out the ghosts. It is pertinent to mention that the plaintiff pleaded that the payment of Rs.10,000/- (Rupees Ten Thousand only) is a part of consideration and in the later point of time, in the plaint, the said transaction has been described as a oral sale, contradicting himself. It was not his case that the plaintiff had purchased the property directly from the heirs of Padmavathi. It is not even pleaded how the said Krishnamoorthy is related to the suit property. According to the plaintiff, the said Krishnamoorthy was dodging and that by virtue of a long and continuous enjoyment of the suit property he become the owner by prescription.

5. The suit in O.S.No. 706 of 2003 is only for permanent injunction restraining the defendants, namely, the respondents herein, from in any manner interfering with the peaceful possession and enjoyment of the suit property by the plaintiff/appellant. Merely after 11 years from the date of filing of the suit for permanent injunction, the defendants in the suit filed another suit in O.S.No.193 of 2000 for recovery of possession of the suit properties from the plaintiff in O.S.No.706 of 2003 who is the first defendant in the suit in O.S.No.193 of 2000.

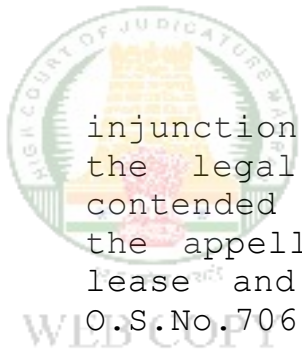
6. In the written statement filed in the first suit in O.S.No.706 of 2003 and the plaint in O.S.No.193 of 2000, it was the common case of respondents in these appeals that the suit property was inherited by the respondents as the legal representatives of the original owner, Padmavathy Ammal.

7. It is also the specific case of the respondents herein that the first defendant was put in possession of the suit property as a tenant for a monthly rent of Rs.30/-. It was further contended by them that in the year 1985, the respondents herein filed an eviction petition against the appellant in R.C.O.P.No.90 of 1985 on the file of the Rent Controller, Tiruchirappalli. The said petition was contested by the appellant. Thereafter, the appellant herein had filed the first suit for permanent injunction in O.S.No.706 of 2003.

8. It is not in dispute that the eviction petition in R.C.O.P.No.90/85 filed by them was dismissed for non-prosecution. When the respondents herein filed a petition to restore the eviction petition, the said petition was dismissed on the ground that the suit property is not lying within the municipal limits and as such, the Tamil Nadu Buildings (Lease and Rent Control) Act, 1954 is not applicable.

<https://hccs.courts.gov.in/hccs/jsp/>

9. Since the appellant had filed the first suit for permanent



injunction specifically denying the title of the respondents as the legal heirs of Padmavathi Ammal, the respondents herein contended that they are entitled to recovery of possession from the appellant as denial of title will amount to forfeiture of lease and the lease came to an end by filing the suit in O.S.No.706 of 2003 (Originally O.S.No.2904 of 1989).

10. The trial Court after framing necessary issues dismissed the suit filed by the appellant in O.S.No.706 of 2003 and decreed the suit filed by the respondents in O.S.No.193 of 2000 for recovery of possession.

11. Aggrieved by the same, the appellant filed A.S.No.183 of 2010 as against the judgment and decree in O.S.No.193 of 2000 and another appeal in A.S.No.184 of 2010 as against the judgment and decree in O.S.No.706 of 2003.

12. The first appellate Court also after framing points for determination touching all the legal and factual issues raised by the appellant, decided all the points against the present appellant in line with the trial Court.

13. As against the concurrent judgment and decree of the Courts below, the present second appeals have been filed by the appellant.

14. The following substantial questions of law have been raised in S.A.(MD)No.639 of 2016:

1. whether the suit for recovery of possession as against a tenant is maintainable when no finding on denial of title has been recorded in the previous eviction petition under Tamil Nadu Buildings (Lease and Rent Control) Act, 1960?

2. Whether the suit for recovery of possession as against a tenant is maintainable when the suit property falls under the territorial jurisdiction of the Rent Controller?

3. Whether the suit is barred by limitation under Article 67 of the Limitation Act, 1963?

4. Whether the defendant/appellant has prescribed title to the suit property through adverse possession?"

15. The following substantial questions of law have been raised in S.A.(MD)No.640 of 2016:

"1. Whether the appellant has prescribed title to the suit property through adverse possession?

2. Whether the appellant herein is entitled to the relief for permanent injunction as against the respondents?"

<https://hcservices.ecourts.gov.in/hcservices>

16. The bare facts which could be culled out from the



pleadings and evidence before the trial Court, can be summarised as follows:

16.1. The appellant has entered into the suit property only as a tenant as seen from his own case pleaded in the counter affidavit filed by the appellant in the Rent Control Proceedings. However, it appears that even in the counter affidavit therein, the appellant has pleaded that the respondents herein, namely, the legal representatives of the original owner, namely, Parvathi Ammal, are not the landlords as he was inducted as a tenant by Krishnamoorthy, who is the husband of the first plaintiff in O.S.No.193 of 2000.

16.2. At the time when the Rent Control Proceeding was initiated in the year 1985 in R.C.O.P.No.90 of 1985 the same was dismissed for default and the petition to restore the same was also dismissed, by specifically observing that the Tamil Nadu Buildings (Lease and Rent Control) Act, is not applicable in view of the admitted position that the suit property at that time did not fall within the Municipal limits.

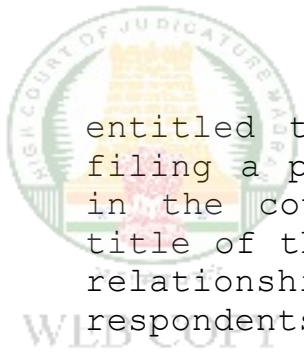
17. The learned Counsel for the appellant strenuously argued that the suit for recovery of possession from the appellant is not maintainable as the appellant has denied the title of the respondents in the second appeal even in the eviction petition filed by them in the year 1985. Since the denial of title was even in the year 1985, it is the case of the appellant that the suit filed by the respondents for recovery of possession in the year 2000 is barred by limitation by virtue of Article 67 of the Limitation Act.

18. The second submission of the learned Counsel for the appellant is that the suit for recovery of possession against the appellant is not maintainable, when the suit property falls within the territorial jurisdiction of the Rent Control Authority, because of the fact that the suit property had come within the Municipal limits when the suit for recovery of possession was filed in the year 2000.

19. With regard to the first submission, it is necessary to state that whether there was a termination of tenancy by forfeiture even in the year 1985, when the appellant filed a counter in the eviction petition filed by the respondents. Ex.A4 is the counter filed by the appellant in R.C.O.P.No.90 of 1985. The trial Court in its judgment has dealt with the counter affidavit. As seen from the facts, the appellant has denied his tenancy under the respondents. However, he admitted that he is a tenant under one Krishnamoorthy who is none other than the husband of the first plaintiff in O.S.No.193 of 2000.

<https://hcservices.ecourts.gov.in/hcservices/>

20. It is to be seen that under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, even a person, who is



entitled to collect the rent is a landlord for the purpose of filing a petition for eviction. The stand taken by the appellant in the counter affidavit cannot be construed as denial of the title of the respondents, but, can be construed as denial of jural relationship as landlord and tenant between the appellant and the respondents.

21. It is to be seen that in the same counter, the appellant's case was that he had paid the rent upto December 1988 through Money Order. From this, I am of the view that the stand taken by the appellant does not amount to forfeiture of lease. However, in the suit in O.S.No.706 of 2003 filed on 13.12.1989, the appellant claimed title in himself on the basis of the oral sale alleged to have been obtained by paying a sum of Rs.10,000/- (Rupees Ten Thousand only) to one Krishnamoorthy. Having regard to the specific stand in the suit, the appellant loose his privileges and rights as a tenant by forfeiture.

22. The stand taken by the appellant in the suit is contrary to his earlier judicial admission in the counter affidavit filed in the eviction proceedings. In the plaint, the appellant also said that he derived title by adverse possession. In such circumstances, I find that the lease comes to an end by forfeiture as contemplated under Section 111(g) of the Transfer of Property Act, 1882.

23. It is a well settled position of law that clear and absolute denial of title will have the effect of forfeiture of one's right as tenant. In the present case, the denial of title by the appellant in an unambiguous/unequivocal expression resulted in forfeiture of tenancy and the tenancy comes to an end from the presentation of plaint in O.S.No.706 of 2003.

24. Article 67 of the Limitation Act, 1963 prescribe a period of limitation of 12 years to file a suit by a landlord to recover possession from a tenant. In a suit for possession, if it is proved that the relationship between the landlord and tenant came to an end, the limitation for the suit could be regulated by Article 67 of the Limitation Act, 1963. By the own admission of the appellant in the previous proceedings, the contention of the respondents that the appellant came to be in possession as a tenant, stands proved.

25. Merely because he did not admit the jural relationship even earlier this Court does not see that there is any merit in the submission having regard to the specific admission of the appellant in previous proceedings about the ownership of the suit property by Padvathi Ammal and succession to the property by the legal representatives of the Padmavathi Ammal, who are only the

26. It is only the appellant herein, with an intention to grab



the suit property has been taking inconsistent stands just to defeat the rights of the respondents herein who are the lawful owners of the property in dispute. In such circumstances, the appellant cannot be allowed to take advantage of his own inconsistent stands just to defeat the rights of the respondents.

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27. In that view of the matter, the first submission of the learned Counsel for the appellant does not hold water and the suit filed for recovery of possession within 12 years of the date presentation of the plaint in O.S.No.706 of 2003 is not barred by limitation.

28. In view of the findings of this Court on the first legal issue, the second legal submission of the appellant do not merit consideration. Since the tenancy comes to an end by the denial of the title and this Court has already found that the tenancy is determined, there is no scope for considering the second legal submission of the learned Counsel for the appellant that the suit for recovery of possession is not maintainable and the respondents can only file a petition for eviction before the rent controller.

29. I have already held that the suit is not barred by limitation under Article 67 of the Limitation Act, 1963, since the suit has been filed within 12 years from the date of assertion of title by the appellant. There is no scope for considering the plea of title by adverse possession.

30. In view of the aforesaid reasons, I find no merit in these second appeals and in the considered opinion of this Court, no other question of substantial question of law, arises for consideration in these second appeals.

31. In the result, both the Second Appeals are dismissed. No costs. Consequently, the connected Miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

gsr

To

1.Principal District Judge, Trichy.

2.The Principal Subordinate Judge, Trichy.

+2cc to Mr.K.PRABHAKAR,Advocate Sr.No. 62749,62750

+1cc to Mr.S.VALLINAYAGAM, Advocate Sr.No. 62842

JAM/03.01.17/PV/7P-6C

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