

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 02.01.2017

Pronounced On : 05.01.2017

CORAM

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Second Appeal No.778 of 1998

and

C.M.P.No.7609 of 1998

The Nungambakkam Muslim
Welfare Association
having their office at
No.17, Krishna Iyer St.,
Nungambakkam, Chennai 34.
rep.by its President.

.. Appellant

Versus

1.Arulmigu Agastheeswarar
Prasanna Venkatesa Perumal
Devasthanam,
by Hereditary Trustee

2.V.G.Ramalingam

.. Respondents

Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 27.09.1996 made in A.S.No.87/1993 on the file of VIII Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 29.11.1991 made in O.S.No.8690 of 1982 on the file of the XV Asst.Judge, City Civil Court, Chennai.

For Appellant :Mr.R.Abdul Mubeen

For Respondents :Mr.A.K.Sriram for
Mr.A.S.Kailasam and Asso. for R1
No appearance – R2

J U D G M E N T

The second defendant is the appellant herein. This appeal is directed against the concurrent finding of the Courts below.

2. The parties are described as per their rank and status shown in the original suit.

3. The brief facts leading to this appeal are as follows:-

The plaintiff is the hereditary trustee of Arulmigu Agastheeswarar Prasanna Venkatesa Perumal Devasthanam. The 1st defendant, who got the property through Section 9 of the Madras City Tenants' Protection Act, 1921 was originally tenant under the plaintiff and thereafter, he sold the property to the second defendant by way of the compulsory registration. The 3rd defendant is the Registrar of Small Causes Court, who executed the sale deed in favour of the first defendant on behalf of the plaintiff. The 4th defendant is the Commissioner Corporation, Chennai. The 5th defendant is the Chairman of Madras Metropolitan Development Authority, Madras.

4. The admitted fact in this case is that the suit property is the property owned by the plaintiff's temple and the same was let out

to the 1st defendant. The superstructure in the said land was put up by the 1st defendant and he was paying rent to the plaintiff. When ejectment suit No.136 of 1971 was filed against the first defendant, the first defendant resorted the right of purchase under Section 9 of the Madras City Tenants' Protection Act, 1921, and succeeded. However, he was not able to pay the cost of the land within a period of three years from the date of decree. So, he filed M.P.No.203/1980 to condone delay in making payment and that petition was allowed without notice to the plaintiff and the first defendant was directed to pay the cost of the land with interest at the rate of 6% p.a.

5. Aggrieved by that order directing him to pay interest, the 1st defendant preferred ejectment appeal in E.A.No.12 of 1980 before the Chief Judge, Small Causes Court, Chennai and the said appeal was dismissed with costs. Thereafter, the 1st defendant has filed an execution petition in E.A.No.686 of 1980 for execution of sale deed in which, without notice to the plaintiff landlord, the Court passed an order in favour of the 1st defendant and also executed sale deed on behalf of the plaintiff. When the plaintiff came to know about the execution of the sale deed by the 3rd defendant, Registrar, Small Causes Court, Chennai without giving an opportunity and notice to the plaintiff, immediately,

notice was issued to the Sub Registrar, T.Nagar. The plaintiff came to know that the 1st defendant, after getting a sale deed from the Small Causes Court, behind his back has alienated the property to the 2nd defendant. Based on that sale deed, the 2nd defendant is trying to put up the mosque. The suit being situated in residential area predominantly by Hindus, construction of mosque in the temple land without permission of the Corporation is illegal and liable to be removed. The 4th and 5th defendants being the officials responsible for removing the illegal structure, they are arrayed as parties defendants. Therefore, the suit filed to declare the sale deed executed by the 3rd defendant/Registrar, Small Causes Court, Chennai in favour of the 1st defendant on 11.11.1980 as null and void. Consequently, permanent injunction restraining the 2nd defendant from putting up any construction in the suit land and mandatory injunction to remove the superstructure.

6. The 1st defendant in the written statement has contended that the plaintiff participated in the Ejectment Appeal No.12 of 1980 and therefore, he cannot plead that the condonation of delay in making payment of cost was ordered behind the back of the plaintiff. If at all, the plaintiff is aggrieved by any order of the Court in the earlier proceedings, he should have only agitated against that order and

separate suit to declare the sale deed in favour of the 1st defendant is not maintainable. Therefore, the execution of sale deed dated 11.11.1980 in his favour is valid. After obtaining the sale deed through Court, the 1st defendant has sold the property to the 2nd defendant on 16.04.1981 and the 2nd defendant is constructing mosque as per law and there is no illegality in it. The 2nd defendant has filed a memo adopting the written statement of the 1st defendant. The 5th defendant/the Commissioner of Corporation has filed the written statement stating that the 1st defendant has put up construction after obtaining permission in PPA.No.3305 of 1976 dated 07.01.1981.

7. The trial Court framed 9 issues; examined one witness as P.W.1; marked 12 documents as Exs.A1 to A12 on the side of the plaintiff and examined one witness as D.W.1; marked 1 document as Ex.B1 on the side of the defendants and also marked 7 documents as Exs.C1 to C7 on the side of the Court.

8. After appreciating the oral and documentary evidence let in by the respective parties, the trial Court has allowed the suit holding that the 3rd defendant lacks jurisdiction to execute the sale deed in favour of the 1st defendant and therefore, Ex.A6-sale deed dated

11.11.1980 is null and void, as a consequent, the subsequent alienation made by the 1st defendant to the 2nd defendant is non est in law. Accordingly, the defendants 1 and 2 were directed to vacate the premises and hand over the vacant possession to the plaintiff within a period of two months. Aggrieved by that, the defendants 1 and 2 preferred an appeal and the same was dismissed by the first appellate Court confirming the judgment and decree of the trial Court. Hence, this second appeal has been preferred by the 2nd defendant.

9. At the time of admission, this Court has formulated the following Substantial Questions of Law for consideration:-

(1)Whether the lower Appellate Court was right in confirming the judgment and decree of the trial Court when the facts and circumstances and the legal issue clearly show that the judgment and decree of the trial Court is perverse to law?

(2)Is not the lower Appellate Court wrong in confirming the judgment and decree of the trial Court when the suit itself is not maintainable due to the provision enshrined in the Tamil Nadu City Tenants Protection Act, 1991?

(3)Whether the orders of the Registrar of the Small Causes Court can be questioned by way of an independent suit without exhausting the remedies available under the said Act?

(4)When the said Act clearly provides for compensation for the superstructure put up by the tenant are not the courts below wrong in decreeing the suit and also ordering for demolition of the superstructure without awarding compensation? And

(5)Whether the lower Appellate Court was correct in ordering demolition of the super structure and delivery of possession when the suit filed by the landlord is already been dismissed?"

10. The learned counsel appearing for the appellant submitted that the suit in E.S.No.136 of 1971 was filed by the Hereditary Trustee for ejectment and in that suit, petition M.P.No.2624 of 1971 under Section 9 of the Madras City Tenants' Protection Act, 1921 was filed by the 1st defendant and succeeded. Under Section 9(1)(b) of the Madras City Tenants' Protection Act, 1921, the Court has fixed the value of the land and ordered the tenant to pay the value within a period of

three years from the date of order. Accordingly, in this case, Section 9 petition was allowed on 26.02.1972 and was permitted to pay the cost of Rs.10,325/- in 30 instalments of Rs.344/-. The first defendant could not pay the cost within the time fixed and therefore, he filed the petition in M.P.No.203 of 1980 in M.P.No.2624 of 1971 in E.S.No.136 of 1971 to condone the delay in making payment of cost and to direct the plaintiff to convey the sale deed as per the order passed in M.P.No.2624 of 1971. After the Court condoned the delay in paying instalments, the sale deed was executed by the 3rd defendant as per the law and there is no illegality in executing the sale deed. The appellant/2nd defendant cannot be deprived of his right of property. He has purchased the property from the lawful owner. Further, the learned counsel appearing for the appellant/2nd defendant contended that in the earlier proceeding the 1st respondent/plaintiff's temple actively participated and contested Section 9 petition. He did not challenge the order passed under Section 9 petition. While so, he cannot allege fraud against the appellant/2nd defendant, who is the bonafide purchaser and he is not aware of what transpired between the plaintiff and the 1st defendant. When the Madras City Tenants' Protection Act, 1921, which is a complete Code by itself, the subsequent suit filed by the 1st respondent under common law remedy, is barred. Hence, suit is not maintainable. However, the Courts

below over looked the legal impediment in entertaining the suit and allowed the suit without jurisdiction.

11. The learned counsel appearing for the appellant to support of his case, relied upon the following judgments:

(1) N.Vasudeva Gramani & 4 others v. S.jagadeesan & another *reported in* 2009-2-L.W. 537

(2) *M.Arasan Chettiar and others v. Sri S.P.Narasimhalu Naidu's Estates Trust, Comibatore, by the Manager and Executor, C.M.Abbal Naidu represented by the Secretary, B.Ramamoorthi, Advocate, Coimbatore and others reported in 92 LW 392.*

12. Per contra, the learned counsel appearing for the 1st respondent submitted that it is on record and also scrutinized by the Courts below that the 1st defendant, while obtaining order in M.P.No.203 of 1980 regarding condonation of delay in payment of cost, did not serve notice to the 1st respondent and without notice, the delay was condoned, which is per se illegal and thereafter, the sale deed was executed by the 3rd defendant without notice to the plaintiff's temple and such sale deed executed by the 3rd defendant is without any authority and legal sanctity.

Hence, the sale deed executed behind the back of the plaintiff, even if it is done by the judicial officer, it is without authority and therefore, it is a fraud on the Court, which can be challenged at any stage in any proceeding.

13. The learned counsel appearing for the appellant to support of his case, relied upon the following judgments:

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14. The short point involved in this case is whether the payment made beyond the statutory limit of three years period is condoned as per the law with the knowledge and notice of the landlord/plaintiff? and as a consequence, whether the sale deed executed by the 3rd defendant without notice to the plaintiff is legally correct?.

15. Both the Courts below, after considering the records of the lower Courts, which is marked as Ex.C1 to C7, has concluded that while Section 9 (1)(b) of the the Madras City Tenants' Protection Act, 1921, mandates the tenants to make payment of the cost of the land within a period of three years and if payment is not made even for one instalment, the petition shall stands dismissed.

16. Section 9 (2) of the Madras City Tenants' Protection Act, 1921, reads as under:-

"9(2) In default of payment by the tenant of any one instalment, the application (under clause (a) of Sub-Section (1) shall stand dismissed, provided that on sufficient cause being shown, the Court may excuse the delay and pass such orders as it may think fit, but not so as to extend the time of payment beyond the three years above mentioned. On the application being dismissed, the Court shall order the amount of the instalment or instalments, if any, paid by the tenant to be repaid to him without any interest."

17. In this case, admittedly, the appellant/2nd defendant did not pay the instalment within the period of three years. Ex.C1 is the petition filed by the 1st defendant. The order passed in his petition M.P.No.2624 of 1971 is marked as Ex.A8 and it is dated 25.01.1972.

While the instalment commenced on 26.02.1972, the 1st defendant did not pay even the first instalment. Contrarily, the 1st defendant has taken out the petition in M.P.No.620 of 1980 to waive interest at 6% p.a. imposed on the cost of the land. The said petition was dismissed and the order passed in that petition is marked as Ex.C5. Against which, the 1st defendant has preferred an appeal in E.A.No.12 of 1980 and the same was also dismissed, which is marked as Ex.B1 dated 3.10.1980. Since the time for making payment expired long back, the 1st defendant has taken out a petition in M.P.No.203 of 1980 for condonation of delay in making payment. In the said petition, the delay has been condoned and the 1st defendant has deposited the land cost without interest and he has taken out a petition in M.P.No.620 of 1980 pleading that after condoning the delay for making payment, there is no question for payment of interest. However, that petition has been dismissed, which was marked as Ex.C6.

18. It is patently evident from the records that both the payment with delay as well as execution of sale deed by the 3rd defendant in favour of the 1st defendant have been done behind the back of the plaintiff. The Courts below have rightly declared the sale deed Ex.A6 as null and void, because it has been obtained by fraudulent means. The 3rd defendant being a person executed the disputed sale deed,

though being the Registrar of Small Causes Court has been rightly impleaded as party defendant to provide him an opportunity to justify his action of executing the sale deed without notice to the landlord/plaintiff.

19. It is suffice to quote the words of the Hon'ble Justice Kuldeep Singh in ***S.P.Chengalvaraya Naidu v. Jagannath*** reported in ***1994 AIR 853*** wherein it is said:- "*Fraud avoids all judicial acts, ecclesiastical or temporal*" observed Chief Justice Edward Coke of England about three centuries ago. *It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/decreed by the first Court or by the highest Court has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings."*

20. Therefore, the trial Court has rightly allowed the suit pointing out the fraudulent sale deed obtained by the 1st defendant and also pointing out the order passed is contrary to Section 9(2) of the the Madras City Tenants' Protection Act, 1921. The condonation of delay without notice to the plaintiff being a perverse order, it has led to execute the illegal sale deed.

21. Once the tenant failed to pay instalment within the time stipulated, his right gets extinguished as per Section 9(2) of the Madras City Tenants' Protection Act, 1921. In this case, the payment has been made by the order passed by the Court without due notice to the plaintiff. Therefore, the 1st defendant has no legal status to rely upon the provision of the Madras City Tenants' Protection Act, 1921. The order passed in the condone delay petition MP.No.203 of 1980 is against the principle of natural justice and also against the established provision of law. Therefore, there is no necessity for the plaintiff to resort the Madras City Tenants' Protection Act, 1921 for his remedy.

22. The 1st defendant, who obtained sale deed fraudently has alienated the property to the 2nd defendant. The 2nd defendant has not pleaded new facts. Contrarily, he has adopted the written statement of the 1st defendant and he has no independent cause to agitate. Even if not pleaded and if there is any iota of evidence in support of the 2nd defendant, the Courts would have considered his case, but it is evidently established by the plaintiff that the 2nd defendant was served with suit notice and the same was received by him on 05.08.1981. The 2nd defendant has not chosen to reply or plead that he is the bonafide purchaser. Having purchased the property, after notice and suit the 2nd

defendant has put up construction, pending the suit, despite receiving notice. Therefore, he is not entitled for any compensation under any law. Whatever construction made in the suit property pending litigation had been done at own cost and risk of the 2nd defendant. Therefore, it is appropriate to direct the 2nd defendant to demolish the whatever construction made in the suit property and hand over the same to the plaintiff. This Court finds that there is no reason to interfere with the judgments of the Courts below and it is liable to be dismissed.

23. In the result, ***the Second Appeal is dismissed*** .

The 2nd defendant/appellant is directed to vacate and hand over the suit property to the plaintiff/first respondent, within a period of six months from the date of receipt of a copy of this Judgement. No costs. Consequently, connected miscellaneous petition is closed.

05.01.2017

Index:Yes/No
Internet:Yes/No
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To

1. Additional Judge, City Civil Court, Chennai.
2. XV Assistant Judge, City Civil Court, Chennai.

Dr.G.JAYACHANDRAN,J.

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**Judgment made in
S.A.No. 778 of 1998**

**05.01.2017
<http://www.judis.nic.in>**