

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:17.02.2017

Pronounced on:01.03.2017

Coram

The Hon'ble Dr.Justice G.Jayachandran

Second Appeal Nos.657 of 1999 and 657 of 2007

Kirupakaran .. Appellant in S.A.No.657/1999

Arulmighu Kannapurathamman
Thirukoil, represented by its
Hereditary Trustee
R.Kirubakaran

.. Appellant in S.A.No.657/2007

/versus/

1.A.Uthaman

2.Chairman

Tamil Nadu Slum Clearance Board,
Chennai.

.. Respondents in S.A.No.657/1999

1.A.Uthaman

2.R.Arumugam

3.M.Sivakumar

4.N.Natarajan

5.K.Lakshmanan

6.N.Mohammed Punnihmin

7.The Chairman,

Tamil Nadu Slum Clearance Board,
Chennai.

.. Respondents in S.A.No.657/2007

Prayer in S.A.No.657 of 1999: Second Appeal filed under Section

100 of the Civil Procedure Code against the decree and judgment dated 18.12.1997 rendered in A.S.No.9 of 1997 on the file of the VI Additional Judge, City Civil Court, Madras confirming the decree and judgment dated 26.09.1994 rendered in O.S.No.815 of 1992 on the file of the III Assistant Judge, City Civil Court, Madras.

Prayer in S.A.No.657 of 2007: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 22.09.2006 rendered in A.S.No.363 of 2005 on the file of the Additional District Judge(Fast Track Court No.4), Chennai confirming the judgment and decree dated 21.02.2005 made in O.S.No.7708 of 1997 on the file of the I Assistant City Civil Judge at Madras.

For Appellant :Mr.S.Subbiah(both appeals)

For Respondents :Mr. C.Hanumantha Rao for R1
Mr.S.Prabhu for R2(S.A.No.657/99)
Mr.S.Prabhu for R1,3 to 5
(S.A.No.657 of 2007)
R2-died
Mr.S.Prabhu for R7 and
R6-No appearance

COMMON JUDGMENT

S.A.No.657 of 2007

The first defendant in O.S.No.815 of 1992 is the appellant in S.A.No.657 of 1999. The suit filed for permanent injunction restraining the defendants men or agents or any other person from collecting any rent or donation or any fee for the suit property.

2. The case of the plaintiff in O.S.No.815 of 1992 is that, the first defendant Kirubakaran is claiming himself as trustee of Kannapaurathamman Temple threatening the plaintiff and forcing to donate money. Earlier, on a similar situation, the plaintiff Uthaman filed a suit in O.S.No.6420/1985 on the file of the XII Assistant City Civil Court, Chennai and got a decree against the first defendant. The plaintiff was allotted the suit premises by the 2nd defendant/Slum Clearance Board in his proceedings dated 23.03.1984. He has put up pucca construction on the suit premises. Posing himself as trustee of Kannapurathamman Temple. The plaintiff has already taken possession of many patta holders through eviction petitions. Those persons namely Jagannathan, Lakshmipathi, Ponnammal have filed suits for injunction in O.S.Nos.755 of 1990, 756 of 1990 and 1312 of 1990 respectively on the file of City Civil Court, Chennai and the same are pending. The first defendant with rowdy persons attempted to extract rent for the suit property. The first defendant who is neither the owner of the property nor has any right over the suit property, is demanding rent from the plaintiff. The suit property does not belong to the temple. The suit property was allotted to the plaintiff by the 2nd defendant/Slum Clearance Board, Hence, the suit.

3. The first defendant in the written statement contented that the suit land and the superstructure thereon belong to Kannapurathamman Koil Devasthanam. His father V.M.K.Rajamanickam Chettiar was the hereditary trustee of the temple. The plaintiff is a tenant under the temple paying monthly rent of Rs.20/-p.m. Against the tenants, who were not paying the rent, Kannapurathamman Koil Devasthanam filed an Ejection suit in Ejt.S.No.70 of 1975. In that suit, the defaulted tenants denied the title of the plaintiff and contented that the property belongs to the Slum Clearance Board. The Court held that the property belong to the temple and the defaulters are liable to vacate the premises. Since the temple is the owner of the property, the suit is bad for non-jointer of necessary party.

4. The trial Court held in favour of the plaintiff and decreed the suit and the same was confirmed by the first appellate Court.

S.A.No.657 of 2007

5. The plaintiff in the suit in O.S.No.7708 of 1997 is the appellant in S.A.No.657 of 2007. The suit was filed for delivery of possession of the suit properties which are in occupation of the defendants for arrears of rent and future mesne profits.

6. The case of the plaintiff in O.S.No.7708 of 1997 as averred in the plaint is that, the suit property belongs to the plaintiff temple and he is the hereditary trustee of the temple. The first defendant is a tenant of the suit property under the plaintiff's temple paying rent of Rs.20/- per month. Till February 1982, the first defendant had paid the rent to the plaintiff. Thereafter, he defaulted in payment of rent and setting up title for himself. The other defendants are sub tenants under the first defendant carrying on trade in the 'B' to 'F' of the suit schedule property.

7.The first defendant denying the averment that he was a tenant under the plaintiff temple contended that the plaintiff has suppressed the earlier litigation O.S.No.6420 of 1985 and O.S.No.815 of 1992 wherein decree has been passed against the plaintiff Temple and those suits act as res judicata for the present suit in O.S.No.7708 of 1997.

8. According to the 1st defendant, he purchased the suit property from the Slum Clearance Board for valuable consideration on 13.08.1993. The correctness and genuineness of this sale deed never challenged by the plaintiff Temple in spite of knowledge about the transaction. By being in occupation of the suit premises for more than

25 years, he has perfected his title by adverse possession. The rental receipts relied by the plaintiff are not genuine and valid document. At no point of time there prevailed landlord tenant relationship between him and the plaintiff-temple. Hence, the suit for recovery of possession with a relief of declaring the sale deed executed by the Slum clearance Board void, is not maintainable.

9. The Courts below after considering Ex.B1-sale deed executed by Slum Clearance Board in favour of the first defendant and the decree passed in O.S.No.815 of 1992 as confirmed in A.S.No.9 of 1997 held that the plaintiff is not the owner of the suit property and the Courts in previous proceedings have heard and decided finally that there was no landlord tenant relationship between the parties. For the said reason and on the point of limitation, dismissed the suit in O.S.No.7708 of 1997.

10. Aggrieved by the dismissal of the suit in O.S.No.7708 of 1997 filed by the temple and by the decree passed in O.S.No.815 of 1992 filed by the 1st respondent, the appellants have preferred two Second Appeals. At the time of admission, this Court has formulated the following Substantial Questions of Law in both appeals:

S.A.No.657 of 1999

(1)Whether the Court has got any jurisdiction to go into the question of title of the landlord in a suit filed by the tenant against the landlord?

(2)Is it legal on the part of the lower appellate Court to decide the title over the suit property against a person who is not a party to the suit?

S.A.No.657 of 2007

(1)Whether the Courts below have failed to appreciate that the relationship between the plaintiff and the first defendant is that of landlord and tenant and that was not severed legally and the judgments are vitiated?

(2)Whether the finding of the Courts below that the suit is barred by the principle of res-judicata because of the earlier suit in O.S.No.815 of 1992 is erroneous, since the subject matter of the earlier suit is pending adjudication in Second Appeal?

11. The learned counsel appearing for the appellants in both appeals submitted that the so called acquisition by the Slum Clearance Board and sale of the properties to the tenants is held to be illegal by

this Court in the C.R.P.Nos.3155 to 3141 of 1992. The present 1st respondent through the same proceedings claims title, though Ex.B14 is not a valid document. The vendor of the respondent had title to convey. Therefore, even if there is a document in the name of the 1st respondent, it will not convey any title. There is no legal necessity to challenge this document separately, while the Court has declared the sale transaction based on the proceedings in G.O.Ms.No.1117, Housing and Urban Development Department, dated 27.06.1979 is void.

12. The 1st respondent claims title over the suit property, based on the sale deed executed by the Slum Clearance Board. The sale deed refers only the proceeding in G.O.Ms.No.1117, dated 27.06.1979 and nothing about the acquisition proceedings which ought to have followed by the proceedings dated 27.06.1979. Therefore, Ex.B1 is non est in law. The 1st respondent in his deposition has admitted that he came into possession of the suit property as tenant under the plaintiff temple. Therefore, he is estopped from setting up title on others and deny the title of the landlord under whom he entered into the premises. Further, the learned counsel for the appellant submitted that the Courts below erred in holding that the decree in O.S.No.815 of 1992 is bar for the present suit on the ground of res-judicata. In fact, O.S.No.815 of 1992

is not for title or possession, but for injunction. Further, it was not heard and decided finally. The second appeal S.A.No.657 of 1999 is preferred and pending.

13. Per contra, the learned counsel appearing for the respondents in O.S.No.815 of 1992 provided the list of allottees enumerated in Ex.B17. The name of the plaintiff temple and the name of Kirubakaran, who claims to be trustee, are shown in serial number Nos.85,108,109,107 and 110 respectively. He contended that this will clearly show the extent of land, the temple is allotted and the 1st respondent is allotted. As per this document the Door No.1 in Plot Number 210 which is the subject matter of the suit property allotted to the 1st respondent and sale deed also executed after receiving the price fixed. The appellant cannot take advantage of the High Court order passed in a revision petition in which neither the 1st respondent nor the Slum Clearance Board is a party.

14. No doubt, in the revision petitions referred above neither the 1st respondent nor Slum Clearance Board is a party. However, in this suit, the Slum Clearance Board was impleaded as a party and it remained ex parte. The 1st respondent claims Slum Clearance Board as

his vendor and denying the title of the appellant. However, in the cross examination, he admits that he came into possession as tenant under the temple in the year 1976 and was paying rent to the plaintiff temple till 1982. He also admits his signatures found in the rental receipts marked as Ex.A1. He also admits the second appeal filed against the decree passed in his suit in O.S.No.815 of 1992 is pending before this Court. He also admits that he put up construction after he obtained the sale deed Ex.B1 from the Slum Clearance Board.

15. This Court in C.R.P.Nos.3139 to 3141 of 1992 had held that:

"4. All the sale deeds by the Slum Clearance Board have been executed on the basis of two notifications namely G.O.Ms.No.1117 dated 27.06.1979 and amended notification G.O.Ms.No.1190 dated 29.08.1980. The most important of these two G.Os is the first one dated 27.06.1979. In the order it is said that for the purpose of improving the slum areas, a Scheme has been prepared and the occupants of the slum areas must be given right over the same. It is further said that the Government had also consulted with the Madras Metropolitan Development Authority and after consulting them, the procedure of listing is also to be taken in a phase manner.

5. In para 3 of the G.O. dated 27.06.1979 it is said.

"In the first instance, poramboke lands of the State Government and Corporation public lands, in which improvements have been carried out, will be transferred to the Tamil Nadu Slum

Clearance Board free of cost for the purpose of giving the lands to the slum dwellers on hire purchase basis and issue of patta on the stipulated conditions. As regards the Corporation private lands, temple and wakf board lands, separate action will be taken to get them transferred to the TamilNadu Slum Clearance Board on payment of reasonable cost. The remaining portion of the paragraph is not relevant and hence it is not extracted. So, from this G.O.Notification, it is clear that if the land belonging to the temple is taken back by Slum Clearance Board, it only says that they will take separate procedure on payment to the temple and the wakf board.

6.In this case, a decree has been obtained by the temple wherein, the title of the property has been declared. If so, on the basis of G.O.the Slum Clearance Board can get a right over the property only on payment to the temple and the temple itself should assign the right to the Slum Clearance Board, or some other procedure under the Land Acquisition Act should be taken.”

and concluded that there is no evidence to show that the temple has assigned the right to Slum Clearance Board voluntarily or the Slum Clearance Board acquired the land through Land Acquisition Proceedings. Therefore, no evidence to show the subject matter of the sale deed vested with the Slum Clearance Board.

16. This Court in total agreement with the finding of the Hon'ble Justice S.S.Subramani, given in C.R.P.Nos.3139 to 3141 of 1992 in

G.O.Ms.No.1117 dated 17.06.1979, it is specifically stated that *"As regards the Corporation, private lands, temple and Waks Board lands separate action will be taken to get them transferred to the Tamil Nadu Slum Clearance Board on payment of reasonable cost."*

17. There is no record to show any action taken for transfer of temple land to Slum Clearance Board. Further, the subsequent G.O.Ms.No.1100, dated 29.08.1980 issued in partial modification of the earlier order also does not speak about the transfer of temple land to Slum Clearance Board, it only say "eviction of tenants by the owner of the superstructure after 1st October, 1978 is treated as irregular and the evicted tenants should be put back in the same house/hut". By this clarification, it appears even evictions pursuant to a Court decree will get nullified. Whether the state have such power to nullify a Court decree by way of a Government order and Whether it will not be a colourable exercise of power to defeat court decree is a question for debate.

18. Section 116 of the Indian Evidence Act, 1872 reads as below:

"116. Estoppel of tenant; and of licensee of person in possession:- No tenant of immovable property, or person claiming through

such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

19. The 1st respondent in his deposition admits that he was a tenant under the plaintiff temple and paying rent till 1982. Therefore, he is estopped under Section 116 of Indian Evidence Act, 1872 to plead the plaintiff was not his landlord. Further, he failed to establish his title under Ex.B1 since his vendor has not got the property transfer in its name in the manner known to law. The Courts in the other proceedings have already held that the suit property is owned by the temple and ordered eviction of the occupant. Under such circumstances, the temple right of property cannot be deprived without the following process of law.

20. In the absence of evidence that the temple property was transferred to the Slum Clearance Board through process established

under law, Ex.B1 is invalid and no right will flow to the respondent. Through Ex.B1 the plea of adverse possession is also not sustainable in the light of the fact that the respondent admitted payment of rent till 1982. The litigation between the parties regarding title and possession had started in the year 1985 by the respondent herein by filing the suit in O.S.No.6420 of 1985 and the suit in O.S.No.815 of 1992 filed against the appellant/defendant seeking injunction restraining from collecting the rent or donation. The suit has been filed in the name of Kirubakaran who also claimed to be the trustee of Kannapurathammal temple. If the demand of rent is on behalf of the temple as hereditary trustee, Kirubakaran cannot be restrained from demanding rent. If such demand is on his behalf personally, there is every reason to interfere it. Unfortunately, in this case, the plaintiff in O.S.No.815 of 1992/the first respondent herein has not come out with clean facts. Under the grab of seeking injunction against the individual, he has made an attempt to avoid payment of rent to the temple and set up his own title. Since he has approached with the Court with unclean hands, he does not deserve the relief of injunction restraining the lawful owner from claiming rent from him.

21. As pointed out earlier, though the second appeal arising from

O.S.No.815 of 1992 was pending, the courts below has erred in concluding that the said suit will act as res judicata to the subsequent suit.

22. ***The second appeal in S.A.No.657 of 1999 against O.S.No.815 of 1992 is allowed.*** The question of res-judicata is no more relevant as stated earlier.

23. The respondents have denied the title of the landlord which is estopped under Section 116 of the Indian Evidence Act, 1872 and in addition he has claimed title based on Ex.B1 which found to be unsustainable. For all these reasons, ***the second appeal in S.A.No.657 of 2007 is allowed.*** No order as to costs.

01.03.2017

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Index:Yes/No

Internet:Yes/No

To

The VI Additional Judge, City Civil Court, Madras

The III Assistant Judge, City Civil Court, Madras

Dr.G.Jayachandran, J.

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Pre-delivery judgment made in
S.A.Nos.657 fo 1999 and
657 of 20007

01.03.2017