

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 01.02.2017

Date of Verdict : 07.02.2017

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.Nos.157 to 159 of 2007
and C.M.P.No.17640 of 2016

1. A.Rosaline
2. C.Elizabeth Rani
3. C.Vasantha Kumari
4. C.Ruthmethibe(died)Appellants in all S.A.Nos.
157 to 159 of 2007/
Defendant OS in 52 of 1997/
Plaintiff in OS 65 of 2000

Vs.

1. The Church of South India
Vellore Diocese by its
Secretary and Treasure
by Power of Attorney Agent
Off at No.1/A, Officers Line,
Vellore.Respondent in S.A.Nos. 157 and 159 of 2007/
Plaintiff in OS 52 of 1997

1. Rev.Mobel Kambeeram
2. Sim on Titus Rajkumar
3. Sathiyathan
4. Earnest Jayakaran
5. M.Devanesan
6. C.S.I. Vellore Diocese
Ranipet, by its Secretary
and Treasurer
Off at No.1/A, Officers Line,
Vellore.Respondents in S.A.No.158 of 2007/
Defendants in OS 65 of 2000

Prayer in S.A.Nos.157 of 2007 :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree of the learned Principal District Judge, Vellore in dismissing A.S.No.11 of 2005 and cross Appeal No.11 of 2005 dated 26.04.2006 by confirming the judgment and decree of the learned Subordinate Judge, Ranipet made in O.S.No.52 of 1997 dated 31.01.2005.

For Appellant : Mr.R.Balakrishnan

For Respondent : Mrs.T.Jayalakshmi

Prayer in S.A.No.158 of 2007 :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree of the learned Principal District Judge, Vellore in dismissing A.S.No.12 of 2005 dated 26.04.2006 by confirming the judgment and decree of the learned Subordinate Judge, Ranipet made in O.S.No.65 of 2000 dated 31.01.2005.

Prayer in S.A.No.159 of 2007 :- This Second Appeal is filed under section 100 of civil procedure code against the Judgment and decree of 10 learned principal District Judge, Vellore in allowing the cross Appeal No.11 of 2005 dated 26.04.2006 in reversing the Judgment and Decree of 100 learned Subordinate judge, Ranipet made in O.S.No.52 of 1997 dated 31.01.2005.

For Appellant : Mr.R.Balakrishnan
in all Appeals.

For Respondents: T.Jayalakshmi for Paul & Paul
For R1 in S.A.157,159 of 2007 and
R6 in S.A.158 of 2007 R1 & R3
givenup, R3 & R5 NA, and
R4 of ready notice
in S.A.158 of 2007.

COMMON JUDGMENT

These three appeals are directed against the common judgment of the first appellate court passed in AS 12/2005, AS 11/2005 and in the cross objection filed in AS 11 of 2005.

2. The appellants who are in occupation of the suit premises, when tried to put new construction in the area shown as ABCDEF in the suit plan attached to OS 52/ 1997, it was objected by CSI , Vellore Diocese on the ground that the property is owned by the diocese and let out to one Joseph long back for a rent of Rs 15/- considering his service to the church. After his demise his son Chandrasekaran continue to occupy the premises and was paying rent till June 1985. Later he defaulted in payment of rent and also subsequently died.

3. The appellants who are now in occupation liable to

vacate the premises and hand over the vacant possession. Instead, without any right or permission from the land lord they started putting up additional construction in the land adjacent to the house rented. Hence suit in OS 52/1997 for declaration of title, consequential relief of possession and mandatory injunction to demolition the unlawful construction newly put up in the portion marked as ABCDEF in the suit plan and for damages for use and occupation at the rate of Rs. 250/- pm.

4. On their part the appellants filed OS 410/96 later re-numbered as OS 65/2000, for permanent injunction alleging attempt to disturb their peaceful possession and enjoyment of the suit property against certain private individuals. The CSI, Vellore Diocese was later impleaded as 6th defendant in this suit.

5. In the joint trial of both the suits O.S 52/97 and OS 65/2000, the trial court allowed the suit in OS. 52/97 partly granting declaration, possession and mandatory injunction of demolition of the structure standing over the ABCDEF marked portion and disallowed the claim for damages for use and occupation.

6. Against the dismissal of their suit OS 65/2000 filed for permanent injunction the appellants preferred AS 12 /2005 and against the trial court granting the relief of declaration, possession and mandatory injunction of demolition of the structure standing over the ABCDEF marked portion they filed AS 11/2005. As far as the disallowed portion of the suit regarding the claim for damages for use and occupation cross objection was filed by the respondents claiming damages for use and occupation.

7. The first appellate court considering the evidence afresh, dismissed both the appeals and allowed the cross appeal filed in AS 11/2005. Thus, the appellants are before this court challenging the judgment and decree of the first appellate court by way of three appeals. Two against the dismissal of the appeals filed by them and one against the cross appeal.

8. The point went for trial is whether the suit property was gifted to the appellants predecessors by the American Arcot Mission 90 years back, if not whether they have perfected the title by adverse possession. If not whether CSI, Vellore Diocese is entitled for declaration of title and

possession.

9. The courts below disbelieved the case of the appellant that the suit property was gifted to one Joseph by American Arcot Mission. The reasons for this conclusion are, Ex A-2 is the transfer deed dated 6.12.1962 executed by American Arcot Mission in favour of CSI. Under this document, along with other properties, American Arcot Mission has transferred 77 cents of land in Ranipet to CSI. The suit property falls within that 77 cents. If really, the suit property was gifted to the appellants predecessors by the mission 90 years back, then that would have been reflected in the transfer deed executed by the mission in the year 1962. Only in the year 1996 when the appellate filed suit for injunction, for the first time they pleaded ouster. Therefore, the limitation for adverse possession commences only from that point of time and their title cannot be perfected by adverse possession. Contrarily, CSI has made out their case for title by producing title deed Ex A-2, tax receipts and the acknowledgement of tenancy through the letter of one Yesupatham Ex A-1 dated 23.01.1985 and the letter of CSI dated 30.03.1985 to the father of the appellants demanding vacant possession of the suit property. The admission of the first appellant on the receipt of this letter and further admission that her father did not reply to this letter denying the content of the letter. Therefore the courts below dismissed the suit filed by the appellant and allowed the suit filed by the defendant.

10. At the time of admission, this court has formulated the following substantial question of law which is common to SA 157/2007 and 158/2007 :-

1. Whether the Courts below are correct in decreeing the suit in O.S.No.52 of 1997 for declarative possession and mandatory injunction on the basis of Ex.A.1 which was not written by Chandrasekaran @ Chandran but by his brother-in-law Yesupatham?
2. Whether the Courts below are correct in rejecting the title of the defendants/appellants on the basis that appellants have not proved the Gift from American Arcot Mission, nine decades ago, when the value of the suit property was below Rs.100/- and when delivery of possession was effected by the Mission to forefathers of the appellant possession was effected by the Mission to forefathers of the appellant?

In respect of SA 159/2007 in addition to the above two question

of law the following addition substantial question of law for formulated:-

1. Whether the Courts below are correct in allowing the cross objection filed by the respondent, when they have not prayed for decree for "mense Profits" as defined u/s 2(12) of CPC?

11. In the course of the argument, the learned counsel appearing for the appellants submitted the below question of law should also be taken for consideration:-

Whether the court below are correct in decreeing the suit for possession on the ground that the suit building is exempted under G.O.Ms.No.2000, Home, dated 16th August 1976, when the suit building is owned by Chirstian Religious Institution, and not by Religious Public Trust and Public Charitable Trust, which is contemplated under the G.O.Ms.2000?

12. The learned counsel for the apellant at the out set submitted that the courts below ought not to have entertained the suit holding that the suit building is owned by Christian Religious Institution and rent control act is exempted under G.O.Ms 2000 dated 16.08.1976. Therefore this additional substantial question of law has to be considered before the other question of law formulated.

13. The court could clearly see the shallowness and fallacy in the submission of the appellant counsel. The suit against the appellant is for a composit relief for declaration of title, consequential injunction and manadatory injunction for removal of the superstructure put up unlawfully. The suit filed by the appellant is for bare permanent injunction assuming title with them. For both the suits, the relief sought can be granted only by the civil court having territorial jurisdiction. Neither Act 18/1960 nor G.O 2000 dated 16.08.1976 applicable to the facts of the case. Hence the plea of the appellant has no merit in law.

14. Further, the appellant submission is that, the case of the appellants was dis believed on the basis of Ex A-1. Contrarily, the fact is, the lower appellate court has threadbear gone into all the exhibits relied by both the parties and had arrived at the conclusion that CSI is the title holder of the suit property. More particularly, the first appellant own admission in the cross examination that her father received the letter Ex B-6 but not replied has weighed the mind of the courts

below to negative the case of the appellant. The land lord through letter Ex B-6 had reprimanded the tenant for carrying out repair without the owners permission. In the same letter the vacant possession for future development program also sought. If really, the suit property was gifted to his father Joseph , Chandrasekaran who is the receipt of the letter would have immediately replied denying the claim found in Ex B-6. Admittedly, Chandrasekaran has not replied denying the averments made in Ex B-6. In the said circumstances, the legal heirs of Chandrasekaran cannot set up title based on ouster or continuous enjoyment of the property hostile to one and all including the real owner which is the basic requirement to claim adverse possession.

15. In our country, transfer of Property is governed and regulated by Transfer of property Act 1882. Under Section 9 of the Act, transfer of property may be made without writing in every case in which a writing is not expressly required by law. Under section 123 of the Act, for the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

16. Thus a gift of an immovable property should not only be reduced into writing and duly attested by at least two witnesses , it should also be registered irrespective of its value. In the absence of a registered instrument of gift, mere assertion of fact without any corroboration as required under law is to be rejected outright. Therefore the title set up by the appellants claiming oral gift not worth to take note. The question of law is answered accordingly.

S.A.No.159 of 2007 :-

17. It is contented by the learned counsel for the appellant that, the first appellant court ought not to have granted liberty to file separate proceedings by adducing suitable oral and documentary evidence for quantum of damages for use and occupation since there was no prayer for mesne profit as defined under section 2(12) of CPC. Section 2 (12) of CPC defines 'mesne profit'. It relates to the profit actually received or might have received by a person from the property which he is in possession wrongfully. The respondent case is not that the appellants and their predecessors made profit out of the suit property. Their specific case is that, they are in use and occupation of the suit property for rent. Later they failed to pay rent and refuse to vacate. So they are liable to pay damages for use and occupation of the property. For the said relief, they have paid court fees under Section 22 of the TN Court fees and suit valuation Act. While the trial court though

granted other reliefs but denied the claim for damages and costs of the litigation. The respondent herein had preferred Cross Appeal in AS 11/2005.

18. In the said cross appeal, the contention of the respondent herein was that, the suit filed by the plaintiff/cross appellant in the trial court for the relief of declaration of title and for possession and for mandatory injunction and damages. The suit was decreed in respect of the relief of declaration of title and for possession and also for mandatory injunction. However, the suit was dismissed erroneously with reference to the relief of damages by way of rent and also with reference to costs of the proceedings. They are therefore entitle for the same. The cross appeal has been filed with requisit court fees. Under these circumstances, the lower appellate court has found that the contention in the cross appeal is legally correct and allowed the cross appeal.

19. Once the courts have held that the occupation of the property is illegal and the occupant is liable to vacate. Payment of damages for the period in occupation hat to natural follow, if specifically pleaded with requisit court fees, but subject to law of limitation. In this case, the respondent herein in their plaint itself had made a specific plea for damages and had paid the court fees. When the said relief was disallowed not on the ground of limitation but for reasons extreneous, the respondent had filed Cross appeal in AS 11/2005. Same has been allowed granting liberty to prove the quantum of damages by letting evidence in the separate proccedings. The claim of the respondent is "damages for use and occupation" not 'mesne profit'. After appreciating the evidence and law, the lower appellate court has granted the relief. The appellant herein through this second appeal make a veil attempt to project as if the lower court has granted relief for 'mense profit' without pleading, which is not factually correct. The judgment of the lower appellate court in this reegard is perfectly in accordance to law and there is no error in it. Hence this appeal is liable to be dismissd.

20. For the afore said reasons, S.A 157 / 2007 to S.A 159 /2007 are liable to be dismissed and the common judgment and decree of the lower appellate court passed in A.S 11 /2005, A.S 12/ 2005 and in the Cross Appeal in A.S 11/2005 are to be confirmed.

21. In the result, the second appeals in S.A.Nos.157 to 159/2007 are dismissed with cost throughout. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The Principal District Judge, Vellore
2. The Subordinate Judge, Ranipet

Copy to

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.Paul & Paul, Advocate, S.R.No.8036
+3cc to Mr.Balakrishnan, Advocate, S.R.No.7696 to 7698

SSI (CO)
Rs (15/03/2017)

Common Judgment
in S.A.Nos.157 to 159 of 2007
and C.M.P.No.17640 of 2016

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