

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.01.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

A.S.No.36 of 2010 and M.P.No.1 of 2010

1. Natanam
2. Ramalingam
3. Kannappan
4. Sivakumar
5. Venkatesan
6. Manikandan
7. Minor.Balamurugan
8. Lakshmi
Appellants

...

vs

1. Valleesan
2. Thiruvaduthurai Adheenam rep by
its Adeemalartja
Sri.La.Sri.Sivaprakasa Pandara Sannathi Avargal
Thiruvaduthurai
Mayiladuthurai Taluk

..Respondents

Appeal filed Under Clause 96 of the Code of Civil Procedure
against the judgment and decree dated 30.07.2009 made in O.S.No.4
of 2006 on the file of Principal District Court, Cuddalore.

For Appellants : Mr.Srinath Sridevan

For R.1 : Set ex-parte
For R.2 : Mr.K. Chandrasekaran

JUDGMENT

[Judgment of the court was delivered by **N. AUTHINATHAN, J.**]

The plaintiffs in O.S.No.4 of 2006 on the file of District Court, Cuddalore are the appellants. They have filed the suit for partition and possession of their half share in the suit property, a building bearing Door No.56, Ward No.4, S.P. Koil Street, Chidambaram ("B "Schedule Property).

2. Moorthy Pillai, Ekambaran and Valleesam Pillai (first defendant) are the sons of one Kannappa Pillai. Ekambaram died intestate. He was unmarried. Moorthy Pillai died leaving behind the plaintiffs and a daughter by name Santhi. Santhi died leaving behind her son 7th plaintiff.

3. According to the plaintiffs, the suit building originally belonged to Vembu Pillai. He mortgaged a portion of the property in favour of one Muthukumarasamy Pillai by means of a document dated 01.06.1953. The remaining portion was occupied by tenants. Subsequently, Muthukumarasamy Pillai surrendered portion of the

mortgaged property to Vembu Pillai. The tenants also vacated subsequently. As Vembu Pillai could not discharge the said mortgage he sold the property to Moorthy Pillai, S/o Kannappa Pillai by means of a Sale Deed dated 21.09.1962 for Rs.1,600/-. However, the sale deed was kept unregistered waiting for the tenants to vacate. In the meanwhile, Vembu Pillai died, as a result, the sale deed could not be registered. Moorthy Pillai was in possession. He was the Manager of a Joint Hindu Family comprising of himself and his two younger brothers, Ekambaram and Valleesan, the first defendant herein. Ekambaram died intestate. He was unmarried. Moorthy pillai having died, the plaintiffs as his legal heirs are entitled to half share while the first defendant is entitled to the other half share. There has been no division till date.

4. The first defendant, while executing a lease deed in respect of landed properties, has also included the vacant site of the suit property in favour of the second defendant Mutt. The plaintiffs are not parties to the said deed. The second defendant obtained a decree for possession as against the first defendant. The plaintiffs are not parties to it. Hence the present suit for partition.

5. The first defendant remained ex-parte. The second

defendant filed a written statement. According to the Mutt, the first defendant is a tenant in respect of the suit property under the Mutt. The second defendant filed a suit in O.S No.89 of 1989 on the file of Subordinate Court, Chidambaram to evict the first defendant and for damages. The Court granted a decree for possession. As the Court rejected the relief for mesne profits and damages. An appeal in A.S.No.114 of 1995 has been filed by the second defendant Mutt. The first defendant filed an Appeal in A.S.No.46 of 1995 against the decree for possession. The first defendant's appeal was dismissed. The appeal in A.S.No.114 of 1995, filed by the second defendant Mutt was remanded to trial Court to ascertain whether the first defendant was entitled to the benefits of the City Tenants Protection Act. Aggrieved by the Order, Second Appeals were preferred before this Court in S.A.Nos.1763 of 1997 and 863 of 2005 against the judgment in A.S.No.46 of 1995 and 114 of 1995. The Second Appeal, filed by the first defendant, was dismissed. This Court directed the first defendant to deliver possession and to pay a sum of Rs.1,500/- per annum from 1969 onwards to the second defendant towards damages for use and occupation till delivery of possession. Thereafter, the first defendant instigated his brother's children (plaintiffs) to file the present suit.

6. Before the trial Court the first defendant remained ex-

parte. The second defendant contested the claim of the appellants.

7. The trial Court framed six issues. The plaintiffs marked 67 exhibits and examined five witnesses including the first plaintiff. The second defendant examined one witness and 12 exhibits were marked.

8. The trial Court, on appreciation of evidence, held that the plaintiffs have not established their case and dismissed the suit. Aggrieved by the same, the plaintiffs filed the above appeal.

9. The points arise for consideration are:

1. Whether the appellants were entitled to half share in the suit property?
2. Whether the Judgment and Decree of the trial Court are liable to be set aside?

10. The plaintiffs claim title under Vembu Pillai. According to the plaintiffs, the property originally belonged to Vembu Pillai and he sold the property to Moorthy Pillai. It is not in dispute that Moorthy Pillai, Ekambaram and the first defendant are the sons of one Kannappa Pillai. Ekambaram died unmarried. According to the plaintiffs, Moorthy Pillai and the first defendant belonged to a joint hindu family and after the death of the said Ekambaram, Moorthy

Pillai and the first defendant became entitled to half share each in the property. The plaintiffs are the legal heirs of Moorthy Pillai.

11. Ex.A.63 is the unregistered sale deed with the challan and letter of Revenue Divisional Officer for having received the penalty and impounded it. Ex.A.1 is the photocopy of the unregistered sale deed executed by Vembu Pillai in favour of Moorthy Pillai. Admittedly, there is no registered sale deed in favour of Moorthy Pillai. The Plaintiffs claim title under an unregistered sale deed. However, in view of Sec.17 of the Registration Act, the unregistered Sale Deed will not confer the right given in the document. Therefore, the appellants cannot be relied on Ex.A.63 to claim title.

12. The second defendant claims title to the property. According to them, the first defendant took the property from them on lease land he unauthorisedly sublet the property to several persons. Ex.B.11 is the Original Property Register maintained by the second defendant. In this Register, there is a reference to the suit property and the reference has been marked as Ex.B.12.

13. According to the second defendant, the first defendant took the suit property on lease. Ex.B.1 is the certified copy of the

lease deed and it is of the year 1948. The second defendant leased out the property under Ex.B.1 to one Sambandam Pillai. Ex.B.2 is a copy of the decree in O.S.No.267 of 1949. The second defendant herein is the plaintiff in the said suit. Sambandan Pillai is the fifth defendant and Vembu Pillai is the fourth defendant. The suit was filed for recovery of possession of the suit property. The decree was passed in terms of a compromise. As per the decree, the defendants therein, admitted the title of the Mutt.

14. It is pertinent to note that Vembu Pillai admitted the title of the second defendant to the suit property. As per the Decree, the defendants therein were to surrender the property by 14.02.1965. Therefore, the case of the plaintiffs that the suit property originally belonged to Vembu Pillai cannot be accepted.

15. Ex.B.4 is a copy of the lease deed dated 16.6.1972. It was executed by the first defendant in favour of the second defendant. In respect of this lease deed, the suit in O.S.No.89 of 1989 has been filed on the file of Subordinate Court, Chidambaram. Ex.B.5 is the copy of the decree in O.S.No.89 of 1989 and Ex.B.6 is the copy of the judgment of Subordinate Court, Chidambaram. Against the judgment and Decree in O.S.No.89 of 1989, A.S.Nos.46 of 1995 and 114 of

1995 have been filed before District Court, Cuddalore. Against the judgment and decree in A.S.No.46 of 1995 and 114 of 1995 Second Appeals were filed in S.A.No.863 of 2005. Ex.B.9 is the copy of the judgment in S.A.No.863 of 2005.

16. A perusal of the judgment of this Court (Ex.B.9) would show that the first defendant herein was a tenant under the Mutt. Decree for possession has been passed against the first defendant and the subtenants. The first defendant was directed to pay damages for use and occupation of the suit property till delivery of possession. Thus, it is seen that the first defendant was the tenant under the second defendant Mutt.

17. The second defendant cannot deny the title of the Mutt. As already noticed the plaintiffs claim title under Vembu Pillai, but, Vembu Pillai admitted the title of the Mutt in respect of the property as it could be seen in Ex.B.2 decree.

18. As per Ex.A.60 Encumbrance Certificate, the first defendant executed a lease deed in favour of the first appellant in respect of a portion of the suit property. Therefore, it is clear that the plaintiffs have no title to the suit property.

19. The learned counsel for the plaintiffs would submit that the plaintiffs' possession was adverse from 14.02.1965 onwards and they acquired title by adverse possession. As already pointed out the first defendant was a tenant under the second defendant and the first plaintiff was a subtenant under the second defendant in respect of a portion of the property. As already pointed out Vembu Pillai admitted the title of the second defendant in respect of the suit property. The first defendant is a tenant under the second defendant. He has not handed over possession of the property to the second defendant. As a tenant, he is estopped from denying the title of the second defendant Mutt. The Hon'ble Supreme Court in Hemaji Waghaji Jat vs Bhikhabhai Khengarbhai Harijan (AIR 2009 SC 103) has held thus:

The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. There is, therefore, an urgent need of fresh look regarding the law on adverse possession."

20. In view of the above and in the light of the dictum laid down by the Hon'ble Supreme Court, we hold that the appellants have not acquired title by adverse possession.

21. For the reasons stated above, we hold that the appellants have failed to prove their title to the property and that therefore, they are not entitled to any relief. Points are answered accordingly.

22. In the result, the appeal is dismissed with costs and the judgment and decree made in O.S.No.4 of 2006 are confirmed. Consequently, connected MP is closed.

(S.N.J.,) (N.A.N.J.,)
24-01-2017

Index:yes/no
Internet:Yes/no

sr

To

The Principal District Court, Cuddalore

S.NAGAMUTHU,J.
And
N. AUTHINATHAN,J.,

sr

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