

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2017

PRONOUNCED ON : 05.04.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

C. S.No.768 of 2011

M.Srinivasan	...	Plaintiffs
	Vs.	
1.M.V.Mohammed		
2.M.V.Ali Ahammed		
3.M.V.Mohammed & Co.,		
Represented by its proprietor		
M.V.Mohamed,		
Having business at No.8, Walltax Road,		
Chennai – 600 021.	...	Defendants
For Plaintiff	: Mr.A.K.Raghavalu	
For Defendants	: Mr.Raja Kalifullah	
	Senior Counsel	
	for M/s.M.Muniruddin Sheriff	

JUDGMENT

The suit has been laid by the plaintiff for possession, perpetual injunction and mesne profits.

2. The averments contained in the plaint are briefly stated as follows:

The suit properties are the ancestral joint family properties and the subject matter of the suit for partition in C.S.No.947 of 1990 on the file of the High Court, Madras. The said suit was ultimately

compromised and the schedule-II property along with other properties were allotted to the plaintiff's share under the compromise decree passed in the above suit dated 30.10.1990. The Corporation assessment and EB Connection, in respect of the schedule-II property, stand in the name of the plaintiff. The plaintiff became entitled to all the properties allotted to him in the compromise decree as aforementioned and the defendants were the tenants originally under the father of the plaintiff in respect of the schedule-1 property marked as A,B,C,D and coloured red in the plan attached to the plaint. The plaintiff as the landlord filed a suit in O.S.No.6182 of 1992 on the file of the VIII Assistant City Civil Court, Chennai, for recovery of possession of the schedule -1 property from the defendants and the defendants applied for the benefits under Section 9 of the City Tenants Protections Act, 1921 and by the same, the defendants have accepted and acknowledged the title of the plaintiff in respect of the said property. But, on no objection by the plaintiff to the application filed by the defendants under the City Tenants Protections Act, the defendants were granted an order to purchase the property originally leased to them and eventually, the sale deed was executed in Document 410/1995 on 22.02.1995 in the Sub Registrar Office, Royapuram. The property described in Schedule III marked E,F,G,H,I,J coloured yellow measuring about 3,200 sq.ft was under

the occupation of another tenant by name Arumugam and the plaintiff as the landlord filed eviction proceedings against him and eviction had been ordered in the said proceedings and possession had been taken by the plaintiff with the police assistance in respect of the above said property. After taking possession, when the plaintiff wanted to use the said property along with the schedule II property i.e. the suit property, the defendants obstructed the plaintiff and claimed that they are in occupation of the suit property. The defendants have trespassed into the schedule-II property measuring an extent of 3840 sq.ft marked as B,D,H,G,F,E and coloured green in the plaint plan. The defendants have recently put up a car shed on a portion of the suit property, but the defendants have no right to do so and liable to remove the same. No permission was given to them to put up any structure. The occupation of the suit property by the defendants is illegal. When the plaintiff questioned, the defendants claimed that they have acquired the lease hold right from Venugopal and Kuppuswamy and also claimed that they have purchased a portion of the said property from one Arumugam to an extent of 1440 sq.ft. The defendants are not clothed with any legal right and not acquired any rights as claimed by them from the real owners of the property. Hence, the suit.

3. The averments contained in the written statement filed by

the defendants are briefly stated as follows:

The suit is not maintainable either in law or on facts. The defendants are the absolute owners of the superstructure and the land measuring about one ground marked as ABCD in the plaint plan and they had purchased the same under the sale deed dated 22.02.1995 from the plaintiff for a valuable consideration. Prior to the same, they were in possession of the above said land under a lease agreement taken from the plaintiff's father Madanagopal. The defendants have also purchased the superstructure in the adjacent land with lease hold right measuring 1440 sq.ft from Arumugham Chettiar, who had the lease hold right in the land for 50 years, which expires on 2027 and the same had been purchased by the defendants under the registered sale deed dated 16.03.1988. The defendants have entered into a lease agreement with the legal heirs of Kuppusamy Chettiar and Elumalai Chettiar in respect of the land and shed measuring about 1200 sq.ft respectively totaling 2400 sq.ft. The above said Kuppusamy Chettiar and Elumalai Chettiar are the original lessees under the plaintiff's father Madanagopal. The lease period is for 50 years in respect of the portion marked as B,D,H,G,F,E. The plaintiff obtained decree in respect of 10 grounds in his favour and obtained another decree for eviction of persons in occupation of other lands and

taken possession through the execution petition as mentioned in the plaint. The plaintiff did not make any attempt to evict the defendants or caused any disturbance in respect of the land under the occupation of the defendants. The police complaint lodged by the plaintiff is closed as the matter pertains to civil dispute. The defendants are in possession and enjoyment of the schedule-II property under valid documents from 1978 onwards and their possession had been open, exclusive and hostile to the true owner and thus, the defendants have perfected their title to the same by adverse possession. The plaintiff is not entitled to lay the suit and seek any relief as regards the suit property and the plaintiff is not entitled to claim any mesne profits and hence, the suit is liable to be dismissed.

4. On the basis of the above pleadings, the following issues are framed for determination:

" 1. Whether the possession of the defendants is illegal as they have trespassed into the land more fully described in the suit Schedule II?

2. Whether the alleged purchase of the super structure from the plaintiff's

lessee one Mr.Arumugham Chettiar by the defendants is valid when the said lessee has been subsequently evicted through Court proceedings by the plaintiff?

3. Whether the defendants are entitled to claim adverse possession over the property more fully described in the suit schedule II?

4. Whether the plaintiff is entitled to recover the property more fully described in the suit schedule II from the defendants?

5. Whether the plaintiff is entitled to seek damages from the defendants for their illegal occupation and use of the encroached land as prayed for?

6. To what other reliefs the plaintiff is entitled to?"

5. In support of the plaintiff's case, PW1 has been examined and Exs.P1 to 6 were marked. On the side of the Defendants, DW1 has

been examined and Exs.D1 to 14 were marked.

6. ISSUE NOS. 1 & 2

From the case of the parties and the evidence adduced in the matter, it is found that the plaint schedule - II property is the suit property. The plaintiff claims title to the suit property under the compromise decree dated 30.10.1990 passed in C.S.No.947 of 1990 on the file of the High Court, Madras and the same has been marked as Ex.P1. A perusal of Ex.P1 would go to show that as per the compromise decree entered in the said suit, the plaintiff had been granted the property measuring 10 grounds in R.S.No.1802 out of 18 grounds and 326 sq.ft within specific boundaries and other properties. According to the plaintiff, the three properties described in schedule-I, II and III of the plaint pertain to the properties allotted to him under Ex.P1 compromise decree and thus, according to the plaintiff, he has title to the suit property as such.

7. The defendants, in their written statement, have clearly admitted that the plaintiff had obtained decree in respect of the 10 grounds in his favour. Till date, the compromise decree marked as

Ex.P1 is not set aside and therefore, it could be seen that the suit property, as such, belonged to the plaintiff.

8. In respect of the plaint schedule-III property is concerned, no doubt, the same is not the subject matter of the suit, according to the plaintiff, the same was in the occupation of the tenant Arumugam and the plaintiff as the landlord initiated eviction proceedings against him and obtained eviction order and ultimately also taken possession through the police of the said property leased to Arumugam. As regards the above case of the plaintiff, the defendants, in their written statement, have also admitted that the plaintiff obtained decree for eviction of persons in occupation of the other lands and taken possession through the execution petition as mentioned in the plaint. Therefore, it could be seen that the plaintiff's title to the plaint schedule-III property has also not been controverted by the defendants and it has been specifically admitted as referred to supra that the same had been taken possession by the plaintiff from the tenant Arumugham through the Court proceedings.

9. As regards the plaint schedule-I property is concerned, it has been admitted by the defendants that the same was in their occupation as lessees under the plaintiff's father Madanagopal and further, according to them, in the suit laid by the plaintiff for recovery

of possession of the same in O.S.No.6192 of 1992 on the file of the City Civil Court, Chennai, they had sought the benefit under the City Tenants Protection Act and the same having not been resisted by the plaintiff, according to the defendants, the suit property had been purchased by them under the sale deed dated 22.02.1995 which has been marked as Ex.P2. The plaintiff has also in his plaint admitted the above claim of the defendants as regards the plaint schedule-I property is concerned and accordingly, it is found that the defendants are the owners of the plaint schedule-I property.

10. At this juncture, it is pertinent to note that in Ex.P2, while obtaining the sale deed from the plaintiff in respect of the plaint schedule-I property, the defendants have specifically admitted the title of the plaintiff in respect of the plaint schedule-II property i.e. the suit property and admitted the same is situated to the west of the property acquired by them under Ex.P2. As regards the above recitals, the same has not been controverted. However, the second defendant, who has been examined as DW1, would claim that the same had been wrongly given in the sale deed and that, they had taken steps to rectify the same. But till this point of time, no material is forthcoming on the part of the defendants to show that any endeavour has been taken by them to rectify the above mentioned

boundary recitals found in Ex.P2, specifically mentioning the suit property as belonging to the plaintiff. It is not in dispute that the property situated to the West of the plaintiff schedule-I property is the suit property, which is shown as the plaintiff schedule -II property.

11. Now, according to the plaintiff, after obtaining possession of the plaintiff schedule-III property through the court proceedings from the lessee Arumugham, it is stated that plaintiff wanted to enjoy the said property along with the suit property, but the same was resisted by the defendants on the footing that the suit property is in their possession and enjoyment and according to the plaintiff, the defendants claim to have acquired the suit property under two modes. The defendants have also in their written statement claimed that they have acquired the right in respect of the plaintiff schedule-II property i.e. the suit property under two modes i.e. according to the defendants, they had purchased the land measuring 1440 sq.ft from Arumugham Chettiar along with the lease hold right of the said land and the structure under the registered sale deed dated 16.03.1988 and further, according to the defendants, they have entered into a lease agreement with the legal heirs of Kuppusamy Chettiar and Elumalai Chettiar in respect of the land and shed measuring 1200 sq.ft respectively totaling 2400 sq.ft. Thus, according to the

defendants, they have legally acquired the suit property and hence, they claimed to be in possession of the suit property as full owners thereof.

12. It has been admitted by the defendants in the written statement itself that Kuppusamy Chettiar and Elumalai Chettiar were the original lessees under the plaintiff's father Madanagopal. As regards 2400 sq.ft stated to have been acquired by them from the legal heirs of Kuppusamy chettiar and Elumalai Chettiar, it has been admitted that they were the lessees under the plaintiff's father, therefore, it could be seen that in other words, the defendants have admitted the title of the plaintiff i.e. The plaintiff's father, in respect of 2400 sq.ft. However, the claim of the defendants that they had acquired the said extent of 2400 sq.ft from the legal heirs of Kuppusmy Chettiar and Elumalai Chettiar is not buttressed by any acceptable proof. In this connection, DW1, during the course of cross examination, though would claim that he is having documents to show that the eastern portion belonged to Venugopal Chettiar and Kuppusamy Chettiar, according to him, since they are unregistered documents, he has not filed the same in the Court. Therefore, it could be seen that there is no record placed on the part of the defendants to establish their claim that they had acquired any right over the land

measuring an extent of 2400 sq.ft from Kuppusamy Chettiar and Elumalai Chettiar (same stated as Venugopal Chettiyar in the deposition of DW1). It is thus found that the claim of the defendants that they have title to the above said extent is unacceptable. As adverted to earlier, it has admitted in black and white that Kuppusamy Chettiar and Elumalai Chettiar are the original lessees under the plaintiff's father in respect of the said extent. Therefore, when the title of the plaintiff's predecessor had been admitted in respect of the said extent of 2400 sq.ft and when the defendants have not placed any material to show that they have any right over the said extent legally, it is found that it is only the plaintiff, who is title holder of the said extent and the defendants have no legal right to lay any claim over the same.

13. As regards the extent of 1400 sq.ft stated to have been purchased by the defendants under the sale deed 16.3.1988 inclusive of the lease hold right of Arumugham over the said land and structure, according to the defendants, the same is fortified by the document marked as Ex.D1. In this connection, DW1, in his evidence during the course of cross examination, has admitted that he is not aware of the transaction covered under Ex.D1 and only his father

knew the details of the said transaction and the negotiations with reference to the same with Arumugham Chettiyar. Therefore, it could be seen that DW1 would not be competent to speak about Ex.D1. According to the defendants, they have acquired the lease hold right and the structure from Arumugham under Ex.D1. However, a perusal of Ex.D1 would go to show that there is no reference thereunder as to from whom Arumugham had taken the lease of the property described therein. DW1 has also admitted in his evidence that in Ex.D1, there is no mention about from whom their vendor had taken the lease hold right over the land and therefore, according to him, he does not know, from whom, the vendor Arumugham chettiar got the lease hold right over the land. However, he has admitted that Arumugham Chettiar had taken the lease from Madanagopal by means of sale agreement, which is unregistered. Madanagopal is the father of the plaintiff. Therefore, the defendants have admitted that the owner of the said extent of 1440 sq.ft is only the plaintiff's father. Though a sale agreement is claimed to have been taken in respect of the same by Arumugham, the same has not seen the light of the day. Only if the said document is produced, it could be understood as to what is the actual extent of land leased out to Arumugham by Madanagopal and whether the land alone was demised under the said document or the land along with structure was demised under the said document. But

conveniently, the said lease agreement has been suppressed. Though, according to DW1, the same could not be produced on account of non registration, still endeavour should have been made by the defendants to show that they had acquired legal right in respect of 1440 sq.ft from Arumugham as claimed by them in the written statement.

14. To cap it all, it has also been admitted by DW1 that Arumugham Chettiar is not having tangible right over the suit property. Therefore, it could be seen that even as per the admission of DW1, Arumugham Chettiar has no right whatsoever over the said extent of 1440 sq.ft in the suit property. Further, according to DW1, he has not gone through any document showing that the structure was owned by Arumugham Chettiar before the purchase under Ex.D1. Further, there is no document produced to show that the structure in the property demised under Ex.D1 had been enjoyed by Aumugham as full owner thereof. Though DW1 would claim to be in possession of said document issued by the Corporation conveniently, he had not produced the same. So, as rightly argued, adverse inference has to be drawn against the defendants with reference to the same. In the absence of any document to show as to what is actual extent of land taken on lease by Arumugham in the suit property, it could be seen

that the claim of the defendants that they had acquired the lease hold right of Arumugham and the right over the structure from Arumugham under Ex.D1 as such cannot be countenanced in any manner. The plaintiff has denied that Arumugham was a tenant in respect of any portion of the suit property. According to the plaintiff, Arumugham was a tenant in respect of the plaint schedule-III property and he had levied eviction proceedings against him and taken possession of the same from Arumugham in the Court proceedings. As seen earlier, the same has also been admitted by the defendants in the written statement. Therefore, the claim of the defendants that under Ex.D1, they had acquired the lease hold right of Arumugham and the right over the superstructure cannot be accepted in any manner and therefore, it could be seen that the defendants are attempting to lay a claim over a portion of the suit property with structure from Arumugham who has no legal right at all in the said property. In such view of the matter, when the defendants have failed to establish that Arumugham had any legal right over the property mentioned in Ex.D1 or equally when the defendants have failed to establish that Kuppusamy and Elumalai Chettiar had any right over any portion of the suit property, it could be seen that the defendants have set up a false case that they have acquired the right over the suit property from the above mentioned person and in such

view of the matter, the defence projected by the defendants that they are the full owners of the suit property cannot be countenanced. However, as discussed above, the defendants have admitted that the persons, from whom, they have acquired the right were the lessees under the plaintiff's father. In other words, the defendants have admitted the title of the plaintiff in respect of the suit property.

15. As discussed above, the plaintiff has traced his title to the suit property and the other plaint schedule properties through the compromise decree marked as Ex.P1. The same has also been admitted by the defendants in the written statement as adverted supra. Therefore, it could be seen that the defendants though are aware of the plaintiff's title to the suit property, have set up a false case claiming to have acquired some right over the suit property from strangers and however, failed to establish their false claim.

16. To establish that the plaintiff has title to the suit property under the compromise decree, Ex.P1 has been pressed into service, which remains not controverted. That the defendants have admitted the title of the plaintiff in respect of the suit property, the boundary recitals mentioned in Ex.P2 is projected. Further, the plaintiff has also produced the property tax demand card as Ex.P4 and EB

connection card as Ex.P5 in respect of the suit property. That the above said mentioned documents also refer to the suit property, is admitted by DW1.

17. As adverted to above, according to the plaintiff, when he attempted to enjoy the suit property along with the plaint schedule-III property, after taking possession of the same from Arumugham, the same had been resisted by the defendants on the footing that they had acquired the right over the suit property. Now, as seen from the discussion made above, the defendants have failed to establish that they have any legal right over the suit property. Therefore, it could be seen that as put forth by the plaintiff, the defendants have illegally trespassed into the suit property and falsely resisting the claim of the plaintiff.

18. In the light of the above discussions, I hold that the defendants have illegally and unlawfully trespassed into the plaint schedule-II property without any authority and hence, the possession of the suit property by the defendants is illegal and I further hold that alleged purchase of the structure and the lease hold right from the plaintiff's lessee Arumugham chettiar by the defendants is invalid and I further hold that the alleged lease arrangement said to have been

entered into with the legal heirs of Kuppusamy and Elumalai in respect of a portion of the suit property is false. Accordingly, issue Nos.1 & 2 are answered.

19. ISSUE NO.3

Though the defendants claimed to have acquired the suit property, as above discussed, it has been found that the defendants have failed to establish their claim with reference to the same. Further, the defendants have also laid a claim over the suit property on the ground of adverse possession. According to the defendants, they have perfected title to the suit property also by adverse possession on account of their long, hostile, exclusive possession of the same beyond the statutory period. Considering the fact that the defendants have claimed title to the suit property by adverse possession, it could be seen that the defendants have admitted the title of the plaintiff in respect of the same. Only on admitting the title of the plaintiff, the defendants would be legally competent to make a claim over the suit property by way of adverse possession. However, as regards the plea of adverse possession set up by the defendants, it is found that no proof whatsoever has been placed by the defendants to sustain their above claim. In this connection, the defendants have pressed into service Ex.D4 to 14. Exs.D4 to 14 are not shown to be

pertaining to the suit property as such. Therefore, it could be seen that on the basis of the said documents, the claim of the defendants to the suit property on the plea of adverse possession cannot be countenanced. Therefore, it could be seen that the defendants have also set up a false claim that they have perfected the title to the suit property by adverse possession also. I, therefore, hold that the defendants have miserably failed to establish that they have perfected title to the suit property by adverse possession. Accordingly, Issue No.3 is answered.

20. ISSUE NO.4.

In the light of the answers given to Issue Nos. 1 to 3 and the discussions made thereunder, it is found that the plaintiff is the title holder of the suit property. Accordingly, it is found that the plaintiff being the absolute owner of the suit property is entitled to recover the possession of the same from the defendants, who are strangers and trespassers in respect of the same.

21. The plaintiff, in support of his case, relied upon the decisions reported in **1998 (3) CTC 25 (K.M.Rajendran Vs. Arul Prakasam and another), AIR 1977 SC 1724 (Thiru John Vs. The Returning Officer and Ors), AIR 1940 Mad 450 (Thyagarajan Chetty and Anr. Vs. Narayana Thevan).** The

principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

22. Counsel for the defendants contended that the plaintiff without seeking the relief of declaration cannot maintain the suit simpliciter for possession, particularly, when the defendants had disputed the title of the plaintiff and in this connection, the decisions reported in **2015 (1) MWN (Civil) 118 (Kuppusamy Udayar (died) and three others Vs. E.Ayyasamy Udayar), 2014 (5) CTC 801 (N.Kaliamoorthy and others Vs. Vairavan Chettiar), 2010 (1) MWN (Civil) 683 (Durai Vs. Kamala and another)** are relied upon. However, considering the case of the parties and on the basis of the evidence adduced in the matter and also considering the false claim put up by the defendants over the suit property, although admitting that the persons, from whom, they had acquired the said rights were the lessees under the plaintiff's father, it could be seen that, in such view of the matter, the plaintiff is not necessitated to seek the relief of declaration and the suit simpliciter for recovery of possession on the basis of the title is maintainable. Therefore, the above mentioned three decisions put forth by the plaintiff would not apply to the facts and circumstances of the present case.

23. Further, the defendants also placed reliance upon the decision reported in **1959 SCR 1111 (Razia Begum Vs. Sahebzadi Anwar Begum and others)**. The Principles of Law enunciated in the above said decision is taken into consideration and followed as applicable to the facts and circumstances of the present case.

I, therefore, hold that the plaintiff is entitled to recover the possession of the suit property from the defendants as claimed in the plaint. Accordingly, issue No.4 is answered.

24. ISSUE NO.5.

The plaintiff has also laid a claim for mesne profits from the defendants as regards their unlawful enjoyment of the same for the preceding three years at a sum of Rs.20,000/- per month. However, as regards the said relief sought for by the plaintiff, though the plaintiff is legally entitled to claim mesne profits from the defendants, the same is ordered to be determined by a separate enquiry and accordingly, the question of determination of the mesne profits, to which, the plaintiff is entitled to from the defendants is relegated to a separate proceedings Order 20 Rule 12 of the Code of Civil Procedure. Accordingly, Issue No.5 is answered.

25. Issue No.6.

Inasmuch the defendants have no title over the suit property, they are not entitled to put up any structure or otherwise alter the suit property. Therefore, it is found that the plaintiff is entitled to obtain the relief of perpetual injunction as against the defendants as claimed in the plaint.

26. In conclusion, I hold that the plaintiff is entitled to recover the possession of the suit property after the removal of the shed in the suit property and also further hold that the plaintiff is entitled to obtain the relief of perpetual injunction restraining the defendants from any way putting up any structure in the suit property or otherwise altering the suit property. As regards the claim of mesne profits, the same is ordered to be relegated to a separate proceedings under Order 20 Rule 12 CPC. Accordingly, the suit is decreed in favour of the plaintiff as prayed for with costs.

05.04.2017

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T.RAVINDRAN,J.

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