

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.12.2016

PRONOUNCED ON :10.01.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.525 of 2011

&

M.P.No.1 of 2011

Chinnappan @ M.N.Rangasamy ... Appellant/Defendant

Vs.

Valliammal ... Respondent/Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 30.09.2010 passed in A.S.No.29 of 2010 on the file of the Subordinate Court, Sathyamangalam confirming the judgment and decree dated 27.07.2007 passed in O.S.No.71 of 2005 on the file of the District Munsif Court, Sathyamangalam.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.MA.P.Thangavel

J U D G M E N T

Challenge in this second appeal is made by the defendant against the Judgment and decree dated 30.09.2010 passed in A.S.No.29 of 2010 on the file of the Subordinate Court, Sathyamangalam confirming the judgment and decree dated 27.07.2007 passed in O.S.No.71 of 2005 on the file of the District Munsif Court, Sathyamangalam.

2.The suit has been laid by the plaintiff for declaration, possession and arrears of rent.

3.The plaintiff derives title to the suit property based upon the Settlement Deed dated 25.01.1952 executed by A.S.Krishnamoorthy in favour of her father Chokkalingam. According to the plaintiff, after her father's death, the suit property has been inherited by her and she has also obtained the

blue print plan approved by town panchayat for demolition and reconstruction of the suit property on 04.03.1982 and also the town panchayat has granted permission to her to construct a building.

4.It is the further case of the plaintiff that the defendant is the tenant in the suit property and originally the defendant's father Nanjappan was the tenant and after his death, the defendant became the tenant. Further, the case of the plaintiff is that the defendant did not pay the rent regularly and committed wilful default. Hence, according to the plaintiff, she has been necessitated to lay the suit as above mentioned.

5.The defendant on the other hand, would contend that the suit property was enjoyed by one Soora Naicker and with his permission, the defendant's father Nanjappan had put up a small thatched house in the suit property and running a tea stall and subsequently, at the request of the defendant's father, the said Soora Naicker applied for the electricity service connection for the thatched house and after the death of his father, the defendant has been running the tea stall and the defendant had also with the permission of Palaniammal, on whom the suit property was settled by Soora Naicker, has removed the thatched house and put up a tiled house and enjoying the suit property as such and therefore according to the defendant, the plaintiff is not entitled to the suit property and there is no landlord, tenant relationship between the plaintiff and the defendant as such the plaintiff is not entitled to seek the reliefs sought for.

6.The plaintiff claims title to the suit property based upon the Settlement Deed dated 25.01.1952, which has been marked as Ex.A1. Ex.A1 is stated to be executed by A.S.Krishnamoorthy in favour of the plaintiff's father Chokkalingam. Now, according to the defendant, the suit property was enjoyed by Soora Naicker. However, it has not been mentioned in the written statement or during the course of evidence as to how Soora Naicker came to acquire the suit property as such. On the other hand, as per the recitals and the description of the property found in Ex.A19, the sale deed dated 04.04.1936, it could be seen that A.S.Krishnamoorthy had retained the suit property and sold the remaining extent in the suit survey number to one Soora Naicker and his brother Subbanaicker and the Courts below have found that A.S.Krishnamoorthy had retained an extent of 0.03 cents in the suit survey number and alienated the remaining extent in favour of Soora Naicker and his brother based upon the boundary recitals found in Ex.A19. Similarly, the Courts below have also found that on the basis of the description and the boundary recitals of the property found in Ex.A1, the title

of the suit property in favour of Chokkalingam as well as in favour of A.S.Krishnamoorthy and equally the alienation made to Soora Naicker and his brother Subbanaicker under Ex.A19, is also found to be established.

7. Therefore, based upon the above said facts, the Courts below have rightly found that A.S.Krishnamoorthy had settled the suit property in favour of the plaintiff's father Chokkalingam and accordingly as the sole heir of Chokkalingam, the plaintiff had derived title to the suit property. The approach of the Courts below in tracing the title of the plaintiff to the suit property as above detailed, cannot be faulted with and it could be seen that the courts below have rightly found that the plaintiff has title to the suit property. That apart, the Courts below have also found that the plaintiff being the owner of the suit property has applied for demolition and reconstruction of the suit property to the town panchayat and accordingly she has also been granted the suitable orders by the town punchayat and the same could be evidenced from Ex.A2 and A3. Further, the tax receipts standing in the name of the plaintiff are also marked as ExA4 to A12, A16 to A18. Therefore, on the basis of the above said documents cumulatively it could be seen that the Courts below have accepted that the plaintiff has title to the suit property.

8. As seen earlier, though the defendant claims that his father had with the permission of Soora Naicker put up a thatched shed in the suit property and running a tea stall and thereafter, with the permission of Palaniammal, the defendant had put up a tiled house in the suit property, the defendant has not averred and established as to how come Soora Naicker and Palaniammal had title and right over the suit property in question. It could therefore, be seen that without any basis the defendant has pleaded that the original owner of the suit property is Soora Naicker. If that be so acceptable documents to evidence the same would have been produced by the defendant. On the other hand, as adverted supra, the plaintiff has established that A.S.Krishnamoorthy, being the original owner of the suit property had settled the property upon her father under Ex.A1 and thereafter the suit property had been enjoyed by the plaintiff as a full owner by paying house tax and also obtained necessary blue print and permission from the town panchayat for putting up the new construction in the suit property. If really, as pleaded by the defendant, his father or the defendant as the case may be, had obtained the electricity service connection in the suit property and also built up a tiled house, to establish the same, the defendant would have endeavoured to examine Palaniammal in support of his case. However, Palaniammal has not been examined in support of the defendant's case. That apart, the plea of the defendant as claimed in the

written statement that he has been residing in the suit property by running a tea stall etc, has not been established by acceptable and convincing evidence. As rightly found by the Courts below, the evidence of DW2 and 3 are not helpful to sustain the defendant's case.

9.It is argued by the learned counsel for the defendant that the plaintiff has not established the landlord, tenant relationship between her and the defendant and therefore the plaintiff's case should fail.

10.However, as rightly argued by the plaintiff's counsel as the plaintiff has established her title to the suit property beyond reasonable doubt and also in the nature of preponderance of probabilities by producing acceptable and convincing evidence, it is therefore evident that the plaintiff is the owner of the suit property. The defendant claims to be in the possession and enjoyment of the suit property upon a particular set of facts. However, the same has not been established by the defendant. The documents marked on behalf of the defendant being only the electricity bill receipts by itself would not establish that Soora Naicker and thereafter Palaniammal had title to the suit property. It is therefore evident that as rightly determined by the Courts below, the defendant had been inducted into the suit property only by the plaintiff after his father's death and accordingly the defendant has been running a tea stall in the suit property as a tenant. Therefore, it could be seen that the defendant is a tenant of the plaintiff in the suit property and as such liable to pay the rent as pleaded by the plaintiff. The approach of the Courts below in coming to the conclusion that the plaintiff is entitled to recover the possession of the suit property from the defendant and also the arrears of rent as claimed by the plaintiff cannot be faulted with and no interference is called for in the findings and conclusions of the Courts below for upholding the plaintiff's case.

11.The principles of law enunciated in the decision relied upon by the defendant reported in 2014(2)SCC 269(Union of India and Others Vs. Vasavi Co-operative Housing Society Limited and Others) are taken into consideration and followed as applicable to the facts and circumstances of the present case at hand.

12.As seen supra, the plaintiff has established her title to the suit property and also her entitlement to recover the possession of the suit property from the defendant and also the arrears of rent. Therefore, it could be seen that the plaintiff has not relied upon the defence shortcomings or the loop holes in the defence version to sustain her case and on the other hand individually by producing acceptable and reliable evidence,

established her case to the satisfaction of the Courts below.

13.At the end, no substantial question of law is found to be involved in this second appeal. Hence, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

sd/
Assistant Registrar(CS VI)

/true copy/

Sub Assistant Registrar

dn

To

1. The Subordinate Court,
Sathyamangalam
2. The District Munsif Court,
Sathyamangalam

+1cc to Mr.N.Manomkaran, Advocate SR.No.2564.
+1cc to Mr.P.Thangavel, Advocate SR.No.2866.

Pre-delivery Order in
S.A.No.525 of 2011

UG(CO)
GN(07/02/2017)

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