

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:15.11.2016

DATE OF DECISION: .02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.194 of 2001

and

Tr.A.S.No.261 of 2003

A.S.No.194 of 2001

1.Saradha V.Ram (Deceased)
2.Vaijayanthimala @ V.Jayanthi ... Appellants/Plaintiff and D3
(R3 transposed as 2nd appellant
vide order of Court dated 12.12.2013
made in CMP.No.745/2012

Vs

1.R.Ramabai
2.K.Kolathumani ... Respondents/D1 & D2

This appeal is filed under Section 96 of C.P.C. against the judgement and decree dated 18.07.1994 made in O.S.No.1190 of 1987 on the file of the IInd Additional Subordinate Judge, Coimbatore.

Tr.A.S.No.261 of 2003

Vaijayanthimala @ V.Jayanthi ... Appellant/3rd Defendant

-Versus-

1.Kolathu Mani
2.Krishnappa (died)
3.S.Saradha ... Respondents/Plaintiff/
Defendants 1 and 2

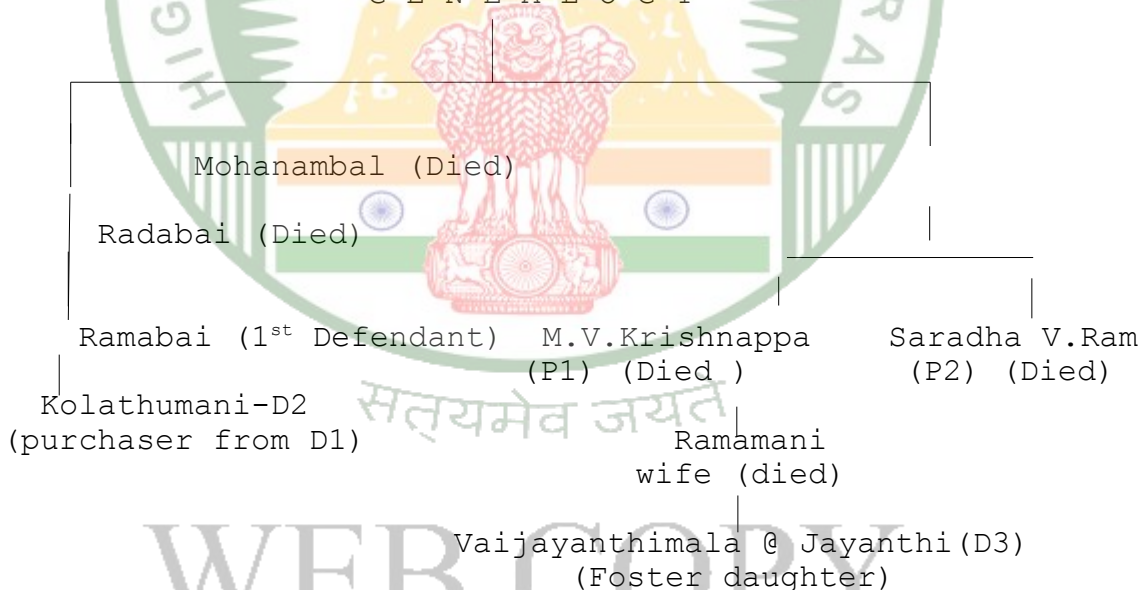
This appeal is filed under Section 96 and Order XLI, Rule 1 C.P.C. against the judgement and decree in O.S.No.1572 of 1993 on the file of the II Additional Subordinate Judge, Coimbatore dated 18.07.1994.

For Appellants : Mr.T.M.Hariharan
 For Respondents : M/s.Hema Sampath
 Senior Counsel
 for Mr.S.Gunalan for R2
 in AS.No.194/2001 and
 and for R1 in Tr.A.S.No.261/2003

C O M M O N J U D G E M E N T

The appeal in A.S.No.194 of 2001 was filed by the 2nd plaintiff Saradha V.Ram. She having died pending appeal, 3rd respondent/3rd defendant has been transposed as 2nd appellant in this appeal. The said suit was filed for declaration that the deceased 1st plaintiff M.V.Krishnappa was the absolute owner of the suit properties, that the 1st defendant has no right over the suit properties, that the sale deed dated 14.02.1974 in favour of the 1st defendant is sham and nominal document and for the consequential injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the property by the plaintiff and other reliefs. The genealogy showing the relationship of the parties is as follows:

G E N E A L O G Y



The case of the plaintiff in O.S.No.1190 of 1987 is as follows:

2. The mother of the plaintiff and the mother of the 1st defendant are sisters. 1st defendant remained unmarried. The plaintiff and his sister namely, Saradha V.Ram are only close relations of the 1st defendant. The plaintiff owned certain immovable properties at Madurai and he was also a Chief Artist

in a Drama Group. The 1st defendant was residing at Coimbatore. The plaintiff used to visit the 1st defendant frequently. The plaintiff had due to his age had given up acting and was confined to his house because of his indifferent health and poor sight. He had lent some monies to his friends for interest and out of the said interest he maintained himself.

3. During 1971-72, the 1st defendant met the plaintiff at his residence and suggested that he could join her at Coimbatore instead of living alone at Madurai. She also suggested the plaintiff to sell his immovable property at Madurai and invest it in some immovable properties at Coimbatore. The 1st defendant was at that time employed as a teacher in a school run by Coimbatore Municipality. She had disclosed the fact that she had applied for allotment of a site in NGGO Colony being formed for the purposes of providing houses to non-gazetted government employees. Though she was allotted a site, she did not complete the process due to lack of funds. Since the plaintiff was willing purchase the site, the 1st defendant filed an application for the purchase of a site, in her capacity as a teacher in the Coimbatore Municipality.

4. The plaintiff thought that if he shifted his residence to Coimbatore, he would also have the company of the 1st defendant, who was living with her aged mother, who would also get benefited by the presence of the plaintiff. Therefore, he sold his property at Madurai and collected all his cash resources and shifted his residence to Coimbatore. The site was purchased in the name of the 1st defendant in the year 1974. The first defendant handed over the possession of the site to the plaintiff and he had started construction of a residential house therein. The plaintiff had sold his house property at Madurai during the year 1972 and has spent the entire sale proceeds for constructing the house at Coimbatore in a portion of the land allotted to the 1st defendant. The plaintiff has also occupied the house after completion of construction works. The 1st defendant never claimed ownership over the property.

5. A few portions of the property was let out to various tenants and the plaintiff was receiving the rental income. One Damodarasamy who was a tenant under the plaintiff had committed default in payment of rent and the plaintiff was thus forced to seek his eviction. However, Damodarasami was evicted from the building at the instance of friends and well wishers of the plaintiff. Hence the said Damodarasamy became enimical and hatched up a evil plan against the plaintiff. The said Damodarasamy along with one Balasundaram poisoned the mind of the 1st defendant. They were aided by the fact that the value of immovable property had gone up. Sensing the mood of the 1st defendant the plaintiff had demanded the 1st defendant to

transfer the land in his name. The 1st defendant by then became greedy and had evaded to do so.

6. The 1st defendant also executed a power of attorney in favour of Balasundaram at the instance of the said Damodarasamy. The 1st defendant having assured the plaintiff that she would execute the necessary documents in favour of the plaintiff has sought for inspection of the original documents which were under the custody of the plaintiff. Taking advantage of the trust the plaintiff had on the 1st defendant, she removed the sale deed and other documents from the custody of the plaintiff.

7. The plaintiff also contended that the 2nd defendant, had filed O.S.No.1546 of 1982 on the file of the District Munsif, Coimbatore seeking eviction of the plaintiff contending that he is a tenant. On the above allegations, the plaintiff had filed the present suit seeking the reliefs mentioned supra. Pending suit, the plaintiff namely, M.V.Krishnappa died. His sister Saradha V.Ram was impleaded as the legal representative of the plaintiff. The 3rd defendant Vijayanthimala @ V.Jayanthi was impleaded as the daughter of the deceased 1st plaintiff Krishnappa. The 1st defendant remained Exparte.

8. The 2nd defendant filed written statement contending that he has purchased the property from the 1st defendant on 24.08.1981. According to him, the deceased plaintiff Krishnappa was inducted as a tenant in a portion of the property by his vendor, the 1st defendant and since he failed to pay the rent, the 2nd defendant had filed O.S.No.1546 of 1982 seeking his eviction. Since Krishnappa died pending suit, his sister Saradha V.Ram was added as legal representative as she was living along with the deceased Krishnappa in the suit property. The 2nd defendant would also contend that the present suit in O.S.No.1190 of 1987 is a counter blast to the suit filed by him in O.S.No.1546 of 1982.

9. It was also contended that the suit is barred by The Benami Transaction (Prohibition) Act 1988. According to the 2nd defendant the entire property was purchased by Ramabai, the 1st defendant and she was the absolute owner of the said property. The second defendant would contend that the suit itself filed only with the object to drag on the proceedings and to avoid the claim for eviction. The 3rd defendant has filed her written statement. She would also claim that Krishnappa had executed a Will dated 1.5.1988 giving life estate to his sister Saradha V.Ram and the vested remainder to herself. She would also reiterate the claim of the deceased Krishnappa over the suit property.

10. On the above pleadings, the learned Subordinate Judge,

Coimbatore framed the following issues:

1. Whether the plaintiff is entitled to declaration that the suit property belonged to the deceased 1st plaintiff Krishnappa?
2. Whether the 1st plaintiff had perfected title by adverse possession?
3. Whether the claim that the sale deed dated 14.02.1974 executed by the 1st defendant in favour of 2nd defendant is invalid is correct?
4. Whether the suit is barred by the Benami Transactions (Prohibition) Act 1988?
5. Whether the 1st plaintiff is entitled to the declaration and consequential permanent injunction as sought for?
6. To what other relief is the plaintiff entitled to?

The above issues were recast as follows:

- 1) Whether the plaintiff is entitled to the declaration that the suit property belonged to the deceased 1st plaintiff Krishnappa?
- 2) Whether the plaintiff is entitled to the relief of permanent injunction as sought for?
- 3) Whether the plaintiff had perfected title by adverse possession?
- 4) Whether the sale deed dated 24.08.1981 executed by the 1st defendant in favour of the 2nd defendant is valid?
- 5) Whether the suit is barred under the provision of Benami Transaction (Prohibition) Act 1988?
- 6) To what other reliefs is the plaintiff entitled to?

11. The suit in O.S.No.1546 of 1982 was transferred to Sub-Court, Coimbatore and renumbered as O.S.No.1572 of 1993. The 2nd defendant in O.S.No.1190 of 1987 is the plaintiff in the said suit. The deceased Krishnappa was shown as 1st defendant and after his death, his sister Saradha V.Ram and foster daughter Vaijayanthimala @ V.Jayanthi were impleaded as defendants 2 and 3. The suit was filed by the plaintiff therein seeking eviction and damage for use and occupation. According to the plaintiff in the said suit, the 1st defendant namely, the deceased Krishnappa became a tenant in a portion of the suit property under the plaintiff's vendor Ramabai. Since he failed to pay rent from 1.10.1980, notice under Section 106 of Transfer of Property Act was issued on 15.12.1981, terminating the tenancy and calling upon him to vacate and hand over vacant possession. Instead of complying with the said request, the deceased Krishnappa sent a reply dated 06.04.1982 setting up the title in himself. Hence,

the plaintiff therein was constrained to seek a decree for eviction.

12. The deceased Krishnappa resisted the said suit contending that the vendor of the plaintiff namely Ramabai did not have any title to convey. She was only a name lender. Since she was employed as a teacher in Coimbatore Municipality, the application for allotment of land was made in her name and therefore, the sale deed was also executed by the Cooperative Society in her name. The allegations in the plaint in O.S.No.1190 of 1987 were substantially repeated in the written statement filed by Krishnappa. The 2nd defendant namely, the sister of Krishnappa filed her written statement. She claimed that Krishnappa had got a daughter and that she is a necessary party to the suit. The 3rd defendant has filed a separate written statement reiterating the Will executed by Krishnappa.

13. On the above pleadings, the learned Subordinate Judge framed 10 issues and they were recast as follows:

- 1) Whether the claim that Ramabai has no right over the suit property and she could not have sold the property to the plaintiff is correct?
- 2) Whether the claim that the 1st defendant is not enjoying the suit property as a tenant and as such he is not liable to pay any arrears of rent is correct?
- 3) Whether the claim of the defendants that the Power of Attorney said to have been executed by Ramabai in favour of Balasundaram dated 15.08.1980 is not true and valid is correct?
- 4) Whether the claim of the plaintiff that the 1st defendant is a tenant and the tenancy has been determined is legally proved?
- 5) Whether the plaintiff is entitled to possession? whether he is entitled to pass and future mesne profits?
- 6) Whether the Will executed by Krishnappa on 1.5.1988 is true and valid? and whether the 3rd defendant has inherited the property under the said Will?
- 7) To what other relief, is the plaintiff entitled to?

14. Both the suits were tried together and evidence was let in O.S.No.1190 of 1987 namely, the suit for declaration. The 2nd plaintiff Saradha V.Ram was examined as PW1 and one Viswanathan was examined as PW2. Exhibits A1 to A6 were marked. DW1 to DW10 were examined on the side of the defendants. Second defendant was examined as DW1. The 3rd defendant was examined as DW-5. DW-6 to 10 were examined on the side of the 3rd defendant. Exs.B1 to B11 were marked on the side of the second defendant. Exs.B18 to Ex.B23 were marked on the side of the 3rd defendant.

15. Upon a consideration of oral and documentary evidence, the learned Trial Judge held that the plea of Benami raised by the plaintiff in O.S.No.1190 of 1987 has not been established. The learned Judge found that though the sale deed in respect of the suit property has been executed in favour of the 1st defendant Ramabai on 14.02.1974, it is seen from Ex.B5 relating to transfer of property, the land was allotted in the year 1969 and on 14.09.1970 she started construction over the suit property. The learned trial Judge found that the entire sale consideration was paid by Ramabai even on 14.09.1970 and the learned Trial Judge disbelieved the version of the plaintiff that it was the 1st plaintiff, who purchased the suit property in the name of the 1st defendant.

16. On the above findings, the learned Trial Judge rejected the claim of benami. The learned Trial Judge also rejected the claim of the plaintiff based on the entries found in the diary said to have been maintained by Krishnappa. The learned Trial Judge also found that certain documents have been created after the institution of the present suit and the learned Trial Judge has also rejected the claim of the plaintiff based on Ex.A3 letter which is dated 03.12.1971, wherein Ramabai has claimed that she is finding it difficult to manage her affairs due to certain financial constraints.

17. On the above findings, the learned Trial Judge dismissed the suit for declaration filed by the plaintiff and decreed the suit for ejectment filed by the 2nd defendant.

18. Aggrieved by the said judgement and decree in O.S.No.1190 of 1987 dated 18.07.1994, the 2nd plaintiff Saradha V.Ram had originally filed A.S.No.194 of 2001. It appears that she had died pending appeal and the 3rd respondent in the appeal Vaijayanthimala @ V.Jayanthi has been transposed as the second appellant in the said appeal. The 3rd defendant in O.S.No.1572 of 1993 had filed an appeal in A.S.No.190 of 1994 on the file of the Additional District Court, Coimbatore. The said appeal has been transferred to this Court and renumbered as Tr.A.S.No.261 of 2001.

19. I have heard Mr.T.M.Hariharan, learned counsel appearing for the appellant in both the appeals and Mrs.Hema Sampath, learned Senior counsel appearing for Mr.S.Gunalan, the learned counsel for the 2nd respondent namely purchaser from the 1st respondent in both the appeals.

20. The following points arise for determination in these appeals:

- 1.Whether the plea of the deceased 1st plaintiff

Krishnappa that he purchased the suit property and put up construction therein benami in the name of the 1st defendant Ramabai is true?

2. Whether the decree in O.S.No.1572 of 1993 could be sustained in the absence of proof of relationship of landlord and tenant between the plaintiff therein and the deceased Krishnappa?

3. Whether the suit in O.S.No.1572 of 1993 is maintainable in view of the provisions of the Tamil Nadu Building (Lease and Rent Control) Act 1961?

21. The learned counsel appearing for the appellant would, taking me through the evidence on record, vehemently contend that the cumulative effect of the evidence available would show that the 1st defendant Ramabai was only a name lender and the deceased Krishnappa had purchased the property from and out of his savings and the construction therein was put up by Krishnappa out of the sale proceeds of the house at Madurai.

22. The learned counsel would submit that the requirements of Benami Transaction has been established. According to the learned counsel, the source of funds, intention, custody of the documents, possession of the property after the purchase of the property, the relationship between the parties and the conduct of the parties in dealing with the property after the sale are the determinomg factors as laid down in various judicial pronouncements.

23. According to the learned counsel all these requirements stood satisfied in the case on hand. Krishnappa and Ramabai were first cousins and they had no other close relative. Ramabai was a spinster living with her aged mother. Krishnappa was a widower living alone at Madurai. It is therefore, probable that Krishnappa acceded to the request of the 1st defendant to shift his establishment also to Coimbatore so that they can be of support to each other. 24. The learned counsel relied upon Ex.A3 dated 03.12.1971 wherein Ramabai had expressed that she is having financial difficulties. From the contents of the said letter, the learned counsel seeks to draw an inference that the deceased Krishnappa had contributed for the purchase of the house. The learned counsel would also rely upon the entries in the diary of the Krishnappa wherein he has stated that he had spent money for construction of the house.

25. He would also take me through the oral evidence of PW2, who had deposed that Krishnappa only spent for the construction of the house and Krishnappa and Saradha V.Ram were residing in the said house. The said witness in his cross-examination would admit that he is a close friend of Saradha V.Ram and she knows her from 1974. He has also produced the records to show that he has been residing in NGGO Colony within the vicinity of the suit

property. He would depose that Krishnappa had completed the construction in the year 1972.

26. The learned counsel also invited my attention to the evidence of DW6, Nagarajagopal, who claims to be a Honorary Special First Class Magistrate. He would claim that Krishnappa has constructed the building in the suit property. He would also claim that Krishnappa had sought for execution of the sale deed in his name and he had refused. The learned counsel would also rely upon the evidence of DW7, who claims to be a tenant in the suit property under Krishnappa. The said witness in his cross-examination has deposed that the 2nd plaintiff Saradha V.Ram is very closely known to him and she is his friend. On the strength of the above said oral evidence, Mr.T.M.Hariharan, learned counsel would contend that the Trial Court erred in holding that Krishnappa has not established his claim that the property was purchased by him, benami, in the name of the 1st defendant, who was employed as a teacher, which made her eligible for allotment of the property.

27. Mrs.Hema Sampath, learned Senior Counsel appearing for the respondents would contend that none of the ingredients required for proof of benami nature of the transaction have been established. The learned Senior counsel while highlighting that the claim of the appellant in the plaint itself is that Ramabai met Krishnappa in the year 1972 and invited him to shift over to Coimbatore, and the pleading that she had in fact suggested that Krishnappa would invest in immovable properties at Coimbatore. Inviting my attention through Ex.B17, the file relating to allotment of the property to the defendant, the learned Senior counsel would contend that the payments for the plot were made much before 1972 and the entire consideration payable for the land i.e. a sum of Rs.1311.19 was paid even on 14.09.1969 and the construction was commenced even on 14.09.1970. Relying upon the said unimpeachable documentary evidence, the learned Senior counsel would submit that the claim of Krishnappa that he contributed for purchase of the property is unacceptable.

28. The learned counsel would also invite my attention to the oral evidence of PW1 wherein, she had claimed that the house at Madurai was sold in 1981. The learned Senior counsel would lay considerable emphasis on the fact that the exact date of sale of the house at Madurai by Krishnappa has been suppressed from the Court. Though it is claimed that the house was sold in 1972 in the plaint, PW1 would in her evidence stated that the house was sold in 1981 only and the 3rd defendant as DW5 would depose that Ramabai had very good income.

29. The learned Senior counsel would also invite my attention to the evidence of PW1 wherein she would admit that

Ramabai had bequeathed a property to her under a Will and the Will is with her counsel. She would also say that she does not know the date of the Will.

30. In the light of the rival contentions, it is to be seen that whether the plaintiffs have established their case that it was the deceased Krishnappa who contributed money for the purchase of the property in the name of the 1st defendant. Unfortunately for the plaintiff that the source of consideration has not been established. It is the specific case of the plaintiff in the plaint that only during 1972 Ramabai met Krishnappa and requested him to come over to Coimbatore. But the official records namely, Ex.B17 would show that the entire cost of the land was paid even in the year 1969 and the construction was commenced by Ramabai even in the year 1970.

31. There is nothing on record to show that Ramabai sought help of Krishnappa and Krishnappa indeed helped her financially. Even the contents of Ex.A3, do not indicate any contribution having been made by Krishnappa. A reading of Ex.A3 itself would show that Ramabai had borrowed money from others for the purpose of construction of the house. The contents of Ex.A3 in my opinion, does not help the plaintiff. Therefore, I am constrained to conclude that the plaintiffs have failed to establish the very essential ingredient namely the source of consideration for determining the nature of the transaction.

32. The custody of the documents has been only with the Ramabai. She handed over the same to the subsequent purchaser namely, the second defendant, which was produced before the Court by him. The version of Krishnappa that Ramabai took away the sale deed under the guise of inspection of it, is wholly unbelievable. Therefore, the second ingredient namely, custody of the document is also not proved.

33. As regards the motive, the fact that the 1st defendant was employed as a teacher in Coimbatore Municipality and that the allotment was made in her favour alone, cannot be a ground to hold that Krishnappa was the actual owner and the 1st defendant was only a name lender. Though it is claimed that the property was let out by Krishnappa to various persons and he collected the rent, excepting the production of Ex.B22, no other document has been produced to show that Krishnappa had in fact exercised his right over the suit property.

34. It should be immediately pointed out that Ex.B22 is dated 16.10.1983 that is after the institution of the earlier suit in O.S.No.1546 of 1982 on 03.08.1982. Apart from the above, though the document is dated 16.10.1983, it appears that the stamp papers have been purchased on 15.11.1983. There is no

signature in the 1st page of the document. Therefore, the document itself is unbelievable. In the light of the above discussion, I find that the plaintiffs have not made out the case of benami pleaded by them and hence the suit in O.S.No.1190 of 1987 is liable to be dismissed.

35. I do not propose to go into the other issue, namely, the validity of the Will of Krishnappa, since I had concluded that Krishnappa himself did not have title over the suit property. The claim of the plaintiff that the sale in favour of the second defendant is invalid has to be rejected in view of my conclusion that the 1st defendant was the owner of the property and she had right to convey the same to the second defendant.

Point No.2.

36. The suit in O.S.No.1572 of 1993 was originally filed in O.S.No.1546 of 1982 on the file of the District Munsif Court, Coimbatore claiming that Krishnappa was a tenant under the 1st defendant Ramabai. A perusal of the plaint would show that the suit has been filed as a suit in ejectment and not as a suit for recovery of possession. The Court fee has been paid under Section 43(2) and not under Section 30 of the Tamil Nadu Court Fee and the Suit Valuation Act.

37. Mr.T.M.Hariharan, learned counsel appearing for the appellant would rely upon the judgement of the Hon'ble Supreme Court in *Guru Amarjit Singh vs. Rattan Chand and others* reported in (1993) 4 SCC 349 and contend that unless the jural relationship of land lord and tenant is established, the lease does not forfeit the tenancy or the question of determination of tenancy does not arise. The plaintiff having failed to establish the fact that there was the relationship of landlord and tenant between the deceased Krishnappa and Ramabai, he cannot seek the decree for ejectment.

38. The learned counsel would also further contend that since the suit property is situated within the Coimbatore Corporation Limit, the suit for ejectment will not lie and the same is barred under the provisions of Tamil Nadu Building (Lease and Rent Control) Act. The learned counsel would also rely upon the judgements of the Hon'ble Supreme Court in *East India Corporation Ltd. vs. Shree Meenakshi Mills Ltd.* reported in (1991) 3 SCC 230 and in *Devasahayam (Dead) by LRs. vs. P.Savithramma and others* reported in (2005) 7 SCC 653.

39. The second submission of the learned counsel is on the assumption that the village namely, Kurudampalayam wherein the suit property is situated is a part of Coimbatore City Municipal Corporation. It is an admitted fact that the suit village was

not a part of the Corporation when it was originally formed. A proposal to include 12 local bodies with Coimbatore Corporation was mooted in G.O.Ms.No.251 dated 20.10.2010 and finally out of 12, nine Local bodies were actually annexed to the Coimbatore Corporation. Under GO.Ms.No.72 dated 12.05.2011 two Town Panchayat namely Vellakinar and Chinnavedampati were also annexed to the Coimbatore Municipal Corporation. As a result of the two G.Os namely GO.Ms.No.49 dated 22.2.2011 and G.O.Ms.No.72 dated 12.05.2011, the following 11 local bodies alone were included in the Coimbatore Municipal Corporation limits. They are 1.Kurichi Municipality, 2.Kuniamuthur Municipality, 3.Goundampalayam Municipality, 4.Thudiyalur Town Panchayat, 5.Vellakinar Town Panchayat, 6. Chinnavedapatti Town Panchayat, 7.Saravananpatti Town Panchayat, 8.Kalapatti Town Panchayat, 9.Vadavalli Town Panchayat, 10.Veerakeralam Town Panchayat and 11. Velankurichi Village Panchayat .

40. From the above it is clear that Kurudampalayam even now remains only as village panchayat and it has not been merged with Coimbatore City Municipal Corporation. Therefore, the suit for ejectment was maintainable. Having held that the suit is maintainable, it is to be determined whether the plaintiff has established the jural relationship of landlord and tenant in order to claim a decree in ejectment. In my considered opinion from the evidence on record that the plaintiff has failed to prove the tenancy. No doubt it is alleged that Krishnappa is a tenant, but that alone is insufficient to come to the conclusion that he was the tenant in the suit property.

41. If the plaintiff had sought for recovery of possession by paying Court fee under Section 30 of the Tamil Nadu Court Fees and suits valuation Act 1955, there would have been no difficulty in his succeeding in the suit. Unfortunately the plaintiff has chosen to claim a decree for ejectment on the ground that the deceased Krishnappa was a tenant under his vendor Ramabai. In the absence of any proof of such tenancy and payment of rent, I am unable to sustain the conclusion of the Trial Court in granting a decree for ejectment in favour of the plaintiff.

42. A reading of the judgement and decree of the Trial court would show that the learned Judge had proceeded to grant decree for Ejectment in O.S.No.1572 of 1993 as consequence of dismissal of O.S.No.1190 of 1987. The said wrong assumption on the part of the learned Trial Judge led to his granting a decree for ejectment without even considering whether the plaintiff has established the tenancy as pleaded by him .

43. In the light of the above discussion, the judgement and decree of the Trial Court in O.S.No.1572 of 1993 are liable to be set aside and are accordingly set aside and the appeal in

Tr.A.S.No.261 of 2003 is allowed and the suit in O.S.No.1572 of 1993 will stand dismissed.

44. In fine the appeal in A.S.No.194 of 2001 is dismissed confirming the judgement and decree of the Trial Court in O.S.No.1190 of 1987 dated 18.07.1994. The appeal in Tr.A.S.No.261 of 2003 is allowed. The judgement and decree in O.S.No.1572 of 1993 will stand set aside and the suit will stand dismissed. Considering the facts and circumstance of the case, I leave the parties to bear their own costs. It is open to the plaintiff in O.S.No.1572 of 1993 to recover possession in the manner known to law. Consequently the connected CMP.No.1854 of 2008 in Tr.A.S.No.261 of 2003 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vk

To

- 1 The IInd Additional Subordinate Judge, Coimbatore.
- 2 The Section Officer, VR, Section, High Court, Madras

+1cc to Mr.T.M. Hariharan, Advocate, S.R.No.10786

+1cc to Mr.S. Gunalan, Advocate, S.R.No.10636

sai(CO)
md(08/03/2017)

A.S.No.194 of 2001 and
Tr.A.S.No.261 of 2001

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