

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2017

PRONOUNCED ON : 02.02.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.122 of 2013

1. P.Ravakannu
2. J.Bhuvaneswari
3. R.Palanivelu
represented by his Power Agent
R.Subramanian
4. R.Subramanian
5. K.Vijayalakshmi

.. Plaintiffs

Vs.

1. S.Govindaraj
2. Abdul Rehman @ Abdul Rahaman
3. Abdul Rahim
4. Latifa Begum

.. Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956
read with Order VII Rule 1 CPC praying for the following judgment and
decree against the defendant.

(i) directing the first defendant to deliver vacant possession in respect of the property described in the Schedule 'A' hereunder;

ii) directing the first defendant to mesne profits of Rs.1,80,000/- calculated at the rate of Rs.5000/- per month for 3 years prior to the filing of the suit and also to pay the future mesne profits on such date as this Honourable Court may fix on ascertainment under the proceedings under Order 20 Rule 12 C.P.C. At the time of passing of the decree for possession;

iii) directing the defendants 2 to 4 to deliver vacant possession in respect of the property described in the schedule 'B' hereunder;

iv) directing the defendants 2 to 4 to pay paste mesne profits of Rs.3,60,000/- calculated at the rate of Rs.10,000/- per month for three years prior to the filling of the suit and also to pay the future mesne profits on such date as this Honourable Court may fix on ascertainment under the proceedings under Order 20 Rule 12 C.P.C. At the time of passing of the decree for possession and

c) costs of the suit;

For Plaintiffs : A.K.Venkatesan

For defendants : Ex-parte

J U D G M E N T

The suit is filed for delivery of possession and also mesne profits for three years and for costs.

2. One T.M.Manickam Mudaliar was the owner of various items of the properties in Sembium Village. He has executed settlement with regard to some of the items belonging to him in favour of his sister's son T.G.Rajabadhar Mudaliar under deed of settlement dated 07.06.1972. In the above settlement deed, the said Rajabadhar was given life interest and after his death vest on his children on their attaining majority. Under the Sale deed dated 25.07.1937, one of the item of the suit property was sold by the said Manicka Mudaliar. The same has been subsequently questioned in suit in O.S.No.2733 of 1965 on the file of the City Civil Court, Chennai seeking the above sale deed as null and void and not binding on the plaintiff. During continuation of the above proceedings in A.S.No.67 of 1984 in respect of Item Nos.1, 3, 5 and 6, a compromise decree was passed among the parties therein on 12.2.2002 and the appeal in A.S.No.67 of 1984 was confined in respect of items 2 and 4 of the plaint which are described in schedule 'A' and 'B' herein. Since the said Rajabadhar was alive at the time of filing of the suit, they were not in a position to claim any right in

respect of the above properties. The first defendant is the purchaser of the suit property during the pendency of the appeal. The defendants 2 to 4 also cannot seek right over the second item of the property, since their purchaser purchased the property only from the life estate holder. In the above appeal in A.S.No.67 of 1984, the right of the defendants were already negated and finally decreed the suit in favour of the plaintiff. In view of the same, the possession of the defendants is nothing but unlawful. Hence, the suit for recovery of possession.

3. Though notice was served on the defendant long back, they have not chosen either to appear in person or through counsel. Therefore, he was set *ex parte* by this Court on 16.06.2015.

4. On the side of the plaintiffs, the fourth plaintiff was examined as P.W.1 and Ex.P.1 to Ex.P.11 were marked.

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	07.06.1927	Certified copy of settlement deed registered as Doc.No.948 of 1927
2.	P-2	25.07.1937	Certified copy of Sale deed registered as Doc.No.1560 of 1937
3.	P-3	27.08.1943	Certified copy of Sale Deed

S.No.	Exhibits	Date	Description
4.	P-4	27.03.1991	Certified copy of Sale Deed
5.	P-5	13.07.2001	Death Certificate of T.G.Rajabathar
6.	P-6	12.02.2002	Certified copy of judgment pass in A.S.No.67 of 1984 by the Honourable High Court, Madras
7.	P-7	17.09.2012	Certified copy of Judgment passed in A.S.No.67 of 1984 by Honourable High Court Madras
8.	P-8	17.09.2012	Certified copy of Decree passed in A.No.67 of 1984 by Honourable High Court, Madras.
9.	P-9	--	Encumbrance Certificate from 01.06.1927 to 31.12.1986
10.	P-10	--	Encumbrance Certificate from 01.01.1987 to 21.09.2012
11.	P-11	17.02.2015	Order in SLP No.13071 of 2013

Witnesses examined on the side of the plaintiffss:

P.W.1. - R.Subramanian

5. Heard the learned counsel for the plaintiffs and perused the records.

6. P.W.1 has spoken about the fact that the suit property belong to them.

The sale made by their father not valid and the same has been confirmed in the appeal in A.S.No.67 of 1984. Hence, prayed for a decree. P.W.1 evidence has not been challenged.

7. Ex.P.1 is the certified copy of the settlement deed dated 07.06.1927. Ex.P.2 is the sale deed dated 25.07.1937. Ex.P.3 is also a certified copy of the sale deed dated 27.08.1943. Ex.P.5 is the death certificate filed to show that Rajabhadhar died only on 26.12.1998. Ex.P.6 is the judgment of this Court in A.S.No.67 of 1984. In the above suit, the suit property alone is decreed and the defendants 2 to 4 are also defendants 2 to 4 in the above appeal. Ex.P.7 is the certified copy of the Order of this Court in A.S.No.67 of 1984. When carefully perused, the documents exhibited in respect of the suit properties in the year 1937 and 1943, are not binding on the plaintiff and that the plaintiffs are the owners of the suit properties. The above judgment clearly show that the suit properties are subject matter of the above appeal and the same has reached finality. The defendants remained exparte and they have not adduced any evidence and the first defendant appears to have purchased the suit 'A' schedule property during the pendency of the appeal. Therefore, any purchase made during the pendency of the above appeal, not binding on the plaintiff. Further, the rights of the plaintiff has been decided in the above appeal. The Special Leave Application filed by them has been dismissed by the Supreme Court as could be seen from Ex.P.11.

9. From the above documents and evidence, this Court is of the view that the plaintiffs have established their case. Accordingly, the defendants are liable

to vacate the suit property. Besides their possession is also could be termed unlawful since they have not established any right or interest over the same. Hence, they are also liable to pay damages of a sum of Rs.5000/- per month for both the suit schedule properties from the date of suit till realization.

10. With the above observation, the suit is decreed with costs.

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Index : Yes/No
Internet : Yes/No
vrc

N.SATHISH KUMAR, J

VRC

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