



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.684 of 2014

WEB COPY

1.M.Suresh Sekar

2.M.Kamatchi Ramesh ... Appellants /Appellants / Plaintiffs

Vs.

1.M.Rajammal

2.M.Balamurali

3.P.Chennimalai Gounder @ Chenniappa

4.N.Manivel ... Respondents /Respondents / Defendants

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 17.02.2014, made in A.S.No.126 of 2010 by the learned Additional Subordinate Judge, Dindigul, confirming the judgment and decree, dated 20.09.2010, made in O.S.No.440 of 2006 by the learned Additional District Munsif, Dindigul.

For appellants ... Mr.H.Lakshmi Shankar

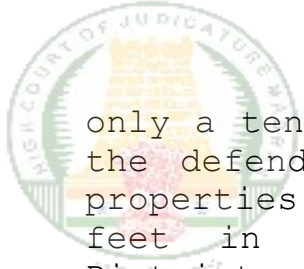
For respondents 1, 2 & 4 ... No appearance

For 3rd respondent Mr.D.Venkatesh

JUDGMENT

The plaintiffs, who were non suited by both the Courts below, are the appellants. The suit was filed for partition to divide the suit properties and to allot half share in the same to the plaintiffs.

2.The first defendant is the mother of the plaintiffs 1 and 2 and the second defendant. The third and fourth defendants are the purchasers from one Rukkai Ammal, W/o.Noor Mohammed Rowther. Admittedly, there was a suit in O.S.No.1921 of 1981 filed by the third and fourth defendants for specific performance against Rukkai Ammal, based on an agreement of sale. The said suit was decreed and E.P.No.375 of 1985 was filed and the sale deed was executed in their favour through Court. Subsequently, E.P.No.448 of 1989 was filed and delivery was effected. It is stated that the defendants 1 and 2 herein were in occupation of the suit property and they were forcibly evicted and their superstructure were demolished. Therefore, the defendants 1 and 2 herein had filed an application for re-delivery. The father of the plaintiffs was



only a tenant. In E.P.No.229 of 1993 re-delivery was ordered and the defendants 1 and 2 were put back in possession. The suit properties are two shops measuring about 30 x 20 feet and 18 x 25 feet in Palakkanuthu Village, Puduchathiram Taluk, Dindigul District, which are sought to be partitioned by the plaintiffs.

3. Both the Courts below have concurrently held that the plaintiffs are not entitled for the relief. Aggrieved by the same, the plaintiffs have filed the above appeal.

4. At the time of admission, only notice was ordered.

5. Heard the learned counsel for the appellants and the learned counsel appearing for the third respondent.

6. It is contended by the learned counsel for the appellants that Ex.B1 is a proceeding for delivery in a suit for specific performance and the same is not binding on the plaintiffs, as they were not parties to the proceedings. It is further contended that since Ex.B1 is a proceeding in a suit for specific performance, based on the same, the title of the third and fourth defendants cannot be decided.

7. The plaintiffs, who had come to the Court seeking partition, have to establish their right in the suit properties. Admittedly, it is found that the father of the plaintiffs was originally a tenant in the suit property. Based on the same, in E.P.No.229 of 1993 re-delivery was ordered and the defendants 1 and 2 were put back in possession. The plaintiffs 1 and 2 are the sons of the first defendant and it is binding on them, as the first plaintiff, in his cross examination, had admitted that the first defendant / mother is residing in the suit property. The plaintiffs have filed the suit emboldened by the act of the third and fourth defendants, who had pulled down the structure in the earlier proceedings. Therefore, the question has to be decided is as to whether the tenancy in respect of the premises is extinguished by the removal of the superstructure.

8. The very same question has already been decided by a Full Bench of the Hon'ble Supreme Court in **2015(3) CTC 339 (Shaha Ratansi Khimji & sons Vs. Proposed Kumbhar Sons Hotel P. Ltd. and others)**, wherein the Hon'ble Supreme Court has held in paragraph No.22 as follows:

"22. Immovable property means landed property and may include structures embedded in the earth such as walls or buildings for the permanent beneficial enjoyment. A lease of immovable property is a transfer of right to enjoy such property in consideration of price paid as per Section 105 of the T.P. Act. By way of lease, a right and



interest is created which stands transferred in favour of the lessee. The immovable property, thereafter, only can be reverted back on determination of such right and interest in accordance with the provisions of the T.P. Act. Therefore, once the right of lease is transferred in favour of the lessee, the destruction of a house / building constructed on the lease property, does not determine the tenancy rights of occupant which is incidental to the contract of the lease which continues to exist between the parties."

9. The judgment in **1950 1 A.F.P. 331 (Morles Ltd. Vs. Slater)** was rendered under the following circumstances:

"In this case, the premises were damaged by enemy action and became uninhabitable but the tenant was able, and continued to use them for the purpose of his business. The landlords gave the tenant a notice in writing to quit the premises and claimed possession. It was held by the Court of appeal that the premises were originally let as a dwelling house within the Rent Acts; they remained the same identifiable premises; the fact that owing to the damage the tenant was prevented from living in the premises did not change the character of the letting. What they pointed out is that the premises are still identifiable and still habitable and the tenant has got the right to live in the premises."

10. It is admitted by the plaintiffs that their mother is in occupation of the suit property pursuant to the order of restitution. The original house ceased to exist, when the defendants 3 & 4 demolished the same. Even if the superstructure was put up by the defendants 1 and 2, the status of the tenancy continues. In such circumstances, how a suit for partition is maintainable without having an iota of right except the tenancy right. In view of the above facts, the question of law arising for consideration in this appeal is answered in the negative. Therefore, the judgment of the Courts below non-suiting the plaintiffs cannot be interfered with and the same is liable to be confirmed.

11. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs.

Sd/-

Assistant Registrar (CS-I)



To

1.The Additional Subordinate Judge, Dindigul.

2.The Additional District Munsif, Dindigul.

3.The Record Keeper,

VR Section,

Madurai Bench of Madras High Court,

Madurai.

+1cc to Mr.H.LAKSHMI SHANKAR,Advocate,SR. 76758

+1cc to Mr.D.VENKATESH,Advocate,SR.77280

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