

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.06.2018

Coram

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH

Original Side Appeal No.156 of 2018
& C.M.P.No.8651 of 2018

T.Arumuga Achari,
S/o Duraisamy Achari,
No.39/94, Pillaiyar Koil Street,
Arumbakkam, Chennai-600 106.

... Appellant/Appellicants/Plaintiff

Vs.

1.N.Vani
2.N.Prabhu
3.T.Nallamuthu
4.N.Idayavani
5.I.Hemanth Kumar
6.I.Jayakumar
7.I.Selvakumar
8.S.Manohari
9.R.Shanthakumari
10.I.Udayakumar

... Respondents/Respondents/Defendants

Original Side Appeal is filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the judgment and decree dated 13.03.2018 in O.A.No.348 of 2017 in C.S.No.244 of 2017.

Prayer in O.A.No.348 of 2017:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the first respondent herein from in any manner interfering with the possession of the suit property, either personally or by proceedings with E.P.No.6 of 2016 in Ejectment Suit 61 of 2007 on the file of the Hon'ble Registrar Court of Small Causes Chennai Pending the suit.

Prayer in C.S.No.244 of 2017:-

The Plaintiffs therefore pray that this Hon'ble Court may be pleased to pass a decree and judgment in their favour.

(a) declaring that the plaintiffs are the absolute owners of the suit property morefully and particularly described in the schedule hereunder;

(b) declaring that the decree dt.02/09/2010 in Ejectment suit 61 of 2007 of the file of III court small causes, chennai obtained by the first defendant against now late poongavanam ammal, plaintiffs vendor as null and void not binding on the plaintiffs;

(c) granting permanent injunction restraining the first defendant herein from in any manner either by executing impugned decree dated 02.09.2010 in Ejectment Suit 61 of 2007 on the file of III Court Small Causes, Chennai in E.P.No.6 of 2016 or otherwise interfering with the plaintiffs possession of the property;

(d) directing the first defendant herein to pay the costs of the suit; and

(e) for such further or other reliefs as may be deemed fit and necessary.

For Appellant : Mr.R,Sathyamurthy

For Respondents : Mr.T.Viswanatha Rao for R1 to R4
Mr.A.K.Raghavalan for R5 & R6

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH,J.)

The appellant herein is the first defendant in the suit. The suit has been filed for declaration of title and to declare the decree obtained in ejectment suit No.61 of 2007 as null and void with a consequential prayer for permanent injunction. This permanent injunction is for the purpose of not executing the decree obtained in the ejectment suit No.61 of 2007. Pending the suit, the first respondent filed an application for interim protection, which on contest, was allowed. Challenging the same, the present appeal has been filed.

2. The learned counsel appearing for the appellant would submit that in view of the ejectment suit No.61 of 2007 filed against the predecessor in title of the respondents, the appeal will have to be allowed. The decree has become final in view of the dismissal of the Special Leave Petition by the Apex Court. The findings rendered by this Court would disentitle the respondents from getting the interim relief. Thus, the appeal

will have to be allowed.

3. The learned counsel appearing for the respondents would submit that the suit property originally owned by one Duraisamy Aachari. There was a registered partnership among the legal heirs in document No.948 of 1949 dated 12.11.1949. There was a suit filed between the legal heirs in O.S.No.806 of 1971, in which, a preliminary decree was passed. An Advocate Commissioner was appointed in I.A.No.22709 of 1976. Having found that the suit property was incapable of being divided, a direction was issued to sell the property in public auction. Accordingly, the property was sold in public auction on 13.11.1982, in which, the vendor of the respondents viz., Poongavanam Ammal became the auction purchaser for a sum of Rs.1,30,000/-. The jurisdictional Court has also confirmed the sale through a sale certificate dated 04.08.1983. Thereafter, all the revenue records including patta was transferred in the name of the respondents. The electricity bills and the water connection receipts would also vouch for the same. Thus, the respondents are in possession and enjoyment of the suit property. In the ejectment suit, the appellant did not implead the respondents despite having known the factum of sale effected in their favour in the year 2006 by way of a registered sale deed. Therefore, the judgment and decree rendered in ejectment suit No.61 of 2007 as confirmed by the Apex Court, will not act as res judicata, having no binding effect. Thus, the appeal will have to be dismissed.

4. We find considerable force in the argument made by the learned counsel for the respondents. Admittedly, in the ejectment suit No.61 of 2007 the respondents were not parties. The factum of sale in favour of the respondents by the vendor viz., Poongavanam Ammal was also brought to the notice of the appellant in the earlier proceedings. Thus, the said Poongavanam Ammal having lost the title conveyed at the time of filing ejectment suit, the decree rendered therein will not bind the respondents. The documents filed would show that the respondents are in possession and enjoyment of the suit property. Prima facie we are of the view that some credence will have to be given to the sale certificate issued on 04.08.1983. Admittedly, the ejectment suit decree has not been executed and possession has not been given. Knowing fully well the about said position, the present suit has been filed. The learned single Judge, on a prima facie consideration after considering parameter required under Order XXXIX Rule 1 of Code of Civil Procedure, has granted interim injunction in favour of the respondents. Therefore we do not find any error in the order passed by the learned single Judge. Accordingly, the original side appeal stands dismissed confirming the order passed by the learned single Judge in O.A.No.348 of 2017 in C.S.No.244 of 2017 on 13.03.2018. We make it clear that the observation made by the learned single Judge

as well as by us in this appeal are only on prima facie consideration and thus will not have any bearing in the suit. Considering the facts, we are of the view that the trial in C.S.No.244 of 2017 has to be expedited. The learned counsel appearing for the appellant has undertaken to file written statement within a period of four weeks. The issues will have to be framed within a further period of four weeks thereafter. After completion of the aforesaid process, the matter shall stand posted before the Additional Master No.II for recording evidence. The evidence will have to be completed within a period of eight weeks thereafter. There shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

Copy To

The Additional Master - II,
High Court, Madras.

+2ccs to Mr.R.Sathyamurthy, Advocate, S.R.No.37435

+1cc to Mr.T.Viswanatha Rao, Advocate, S.R.No.36844

O.S.A.No.156 of 2018

RSY(Co)
CS/22/06/18

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