

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.438 of 2010

C.Tripurasundari

..Plaintiff

..Vs..

1.C.Anandasundararaman

2.A.Manimaran

3.E.E.N.Real Estates/E.E.N.Xerox

4.Aavin Old Washermenpet Milk
Consumer Co-operative Society,
represented by its Manager

5.Magic Vision

6.National Tiffin Centre

... Defendants

Plaint filed under Order IV Rule 1 of Original Side Rules r/w Order VII, Rule 1 of Civil Procedure Code praying to pass a judgment and decree:

a)Declaring that the plaintiff is the absolute owner of the suit property No.901, Old No.293, Tiruvottiyur High Road, Old Washermenpet, Chennai-21.

b)Consequentially directing the defendants to vacate and deliver vacant physical possession of the suit property to the plaintiff.

c)Directing the defendants to pay a sum of Rs.2,04,000/- being past mesne profits and damages for the period immediately proceeding the filing of the suit.

d)Directing the defendants to pay future profits and damages to the plaintiff from the date of the plaint till date of recovery of actual physical possession of the suit property from the defendants.

e)directing the defendants to pay the costs of the suit.

For Plaintiff : Mr.T.Viswanatha Rao

For Defendants: Mr.A.K.Sriram for D-1

No Appearance for D-2

J U D G M E N T

The suit is one for declaration of title and for recovery of possession.

The brief facts as set out in the plaint are as follows:

2.The suit property originally belonged to one Vavilla Subbamma, who had executed a registered Settlement Deed dated 30.06.1956, in favour of one Vedagiri Rama Sastry. The said Vedagiri Rama Sastry had sold a portion of the said property and settled the remaining

portion in favour of his wife Vasantha Devi, under a registered Settlement Deed dated 07.12.1969. The plaintiff is the daughter of Vedagiri Rama Sastry and Vasantha Devi, the 1st defendant is their son. The defendants 2 to 6 are the tenants under the 1st defendant.

3.It is claimed that the said Vasantha Devi even during her life time, has executed a registered Will on 06.10.1988, bequeathing the property to the plaintiff absolutely. The plaintiff had filed O.P.No.742 of 1993 seeking for grant of Letters of Administration. The said original petition was converted as Testamentary Original Suit in T.O.S.No.6 of 1994, on a caveat being lodged by the 1st defendant. After contest the testamentary suit was decreed granting Letters of Administration with the Will annexed in favour of the plaintiff. The 1st defendant had challenged the said judgment in T.O.S.No.6 of 1994 in O.S.A.No.400 of 2001. The said appeal was also dismissed on 02.07.2008. After the dismissal of the said appeal, the plaintiff had issued a notice dated 15.07.2009, requiring the defendants to vacate and deliver vacant possession of the property to the plaintiff. The said notice was also addressed to the tenants. The 2nd defendant alone sent a reply claiming that he is a tenant under the 1st defendant and he is entitled to

protection under the ***Tamil Nadu Buildings (Lease and Rent Control) Act, 1960***. The plaintiff claiming that the possession of the 1st defendant after the grant of Letters of Administration in her favour would amount to illegal possession, sought for declaration of her title and recovery of possession.

4.The suit was resisted by the 1st defendant contending that the suit property is a joint family property. It is not the absolute property of Vedagiri Rama Sastry and he has no right to settle the same in favour of his wife. It is also contended that the plaintiff does not derive any title under the Will. It is also contended that the suit is barred by limitation. Inasmuch as the 1st defendant has asserted his title in his written statement filed in T.O.S.No.6 of 1994 in March 1995. It is further claimed that the plaintiff do not exercise any right over the suit property and cannot make any demand regarding the property. It is also contended by the 1st defendant that the plaintiff is a resident of United Kingdom, and she has neither made any attempt to ascertain the state of the property nor has she made any attempt to keep herself abreast of the development relating to the maintenance of the property. It is claimed by the 1st defendant that he has been maintaining the

property at his cost. Therefore, the 1st defendant would claim that the plaintiff is not entitled to possession as well as mesne profits.

5.On the above pleadings, the following issues were framed by this Court:

- 1.Whether the plaintiff is the absolute owner of the suit property?
- 2.Whether the Settlement Deed dated 07.12.1969 is true and valid?
- 3.Whether the defendants are liable to vacate and delivery the possession of the suit property to the plaintiff?
- 4.Whether the tenancy rights claimed by the second defendant is genuine?
- 5.Whether the plaintiff is entitled to past and future mesne profits?
- 6.Whether the suit filed as such is barred by limitation?
- 7.To what other reliefs, the plaintiff is entitled to?

6.At trial, the plaintiff was examined as PW-1. Exs.P-1 to P-10

were marked. One Ramani, wife of the 1st defendant was examined as DW-1, Exs.D-1 to D-9 were marked on the side of the defendants.

7.I have heard Mr.T.Viswanatha Rao, learned counsel for the plaintiff, and Mr.A.K.Sriram, learned counsel for the 1st defendant. It appears that the 2nd defendant had not let in any evidence. The 2nd defendant's counsel is also not appearing.

Issue No.1:-

8.The plaintiff has sought for declaration of her title to the suit property. The claim of the plaintiff is primarily based on the Will executed by Vasantha Devi, W/o.Vedagiri Rama Sastry on 06.10.1988. The copy of the Settlement Deed dated 07.12.1969, executed by the said Vedagiri Rama Sastry has been filed as Ex.P-1. The said document reveals that the suit property was obtained by Vedagiri Rama Sastry under a Settlement Deed dated 30.06.1956, executed by his aunt late Vavilla Subbamma, it is also seen from the recitals in the document namely; Ex.P-1 that Vedagiri Rama Sastry had sold a portion of the property settled on him by his aunt and settled the remaining portion of the property on his wife Vasantha Devi. The said Vasantha Devi had

executed a will dated 06.10.1988, bequeathing the suit property in favour of her daughter. The copy of the registered Will has been produced as Ex.P-2. The plaintiff had filed O.P.No.742 of 1993 before this Court seeking issuance of Letters of Administration along with the Will annexed. It is seen from Ex.P-3 that the O.P.No.742 of 1993 was converted into T.O.S.No.6 of 1994, and subsequently the Testamentary Original Suit came to be decreed. Accordingly, Letters of Administration was issued infavour of the plaintiff by the judgment dated 15.12.1999.

9.The 1st defendant had filed an appeal in O.S.A.No.400 of 2001 against the said judgment in T.O.S.No.6 of 1994, which came to be dismissed on 02.07.2008. The claim of the 1st defendant is that the property is a joint family property and as such the father namely; Vedagiri Rama Sastry did not have any right to settle the property in favour of his wife, and hence the Settlement Deed dated 07.12.1969, is not valid. As already stated, it is seen from Ex.P-1 that the said Vedagiri Rama Sastry has got the property from his aunt Vavilla Subbamma by way of a registered Settlement Deed dated 30.06.1956. Therefore, it cannot be said, at any stretch of imagination, the property obtained by Vedagiri Rama Sastry from his aunt is a joint family

property or ancestral family property in his hands. In fact, DW-1 in her evidence has admitted that Vedagiri Rama Sastry had obtained the property from his aunt. Therefore, the claim of the 1st defendant that the suit property is a joint family or ancestral property in which Vedagiri Rama Sastry did not have absolute right over the property cannot be countenanced. It should be pointed out at this juncture, that the execution of the Settlement Deed by Vedagiri Rama Sastry is not denied by the 1st defendant. It is a registered document and in absence of specific denial of its execution, the requirement of proving the document by examining the attesting witnesses under Section 68 of Indian Evidence Act does not arise.

10. Once the Settlement Deed is proved to be true and valid, what remains to be seen is as to whether the plaintiff has established her valid title to the property. The plaintiff would stake her claim to the property under the Will dated 16.10.1988, executed by her mother Vasantha Devi, who was a settlee under the Settlement Deed dated 07.12.1969. The said Will has been proved in T.O.S.No.6 of 1994 and this Court had granted Letters of Administration to the said Will. The said grant has been confirmed by the Division Bench of this Court in

O.S.A.No.400 of 2001. Therefore, the 1st defendant who was a party to the T.O.S.No.6 of 1994, as well as O.S.A.No.400 of 2001, cannot now claim that the Will does not confer valid title on the plaintiff.

11.Mr.A.K.Sriram, learned counsel for the 1st defendant would however contend that the Settlement Deed dated 07.12.1969 confers a right on the 1st defendant, inasmuch as it requires him to make good, the monies spent by the other son namely; Sundararaman alias Bulla for maintenance of property. The recitals in Ex.P-1 insofar as the disposition are as follows:

"I am hereby granting and settling the property described in the Schedule in favour of my third wife the said C.Vasantha Devi absolutely and for ever **with full powers of alienation by sale,** mortgage, gift or will, subject however to the condition that if she dies without making any disposition of the property by sale, gift or will, the property shall revert back to me if I survive her with power to enjoy the same during my life time and after my life time my sons Sundararaman (alias)

Bulla and Anandasundararaman shall be entitled to the said property absolutely subject only to any encumbrances which she the said Vasantha Devi may have created in the meanwhile and subject to the condition that they should perform the marriage of my last daughter Tripurasundari decently and maintain her till her marriage and to the further condition that Anandasundararaman should after he begins to earn contribute his share of the expenses if any incurred by Sundararaman (alias) Bulla to improve the property”.

12. Relying upon the above recitals in the said document it is contended by the learned counsel for the 1st defendant that he has some right over the property. I am unable to agree with the said submission of the learned counsel. The recitals of the said document are very clear. The sons would get a right over the property if only the mother had died without making any disposition of the property as already adverted to, the mother namely; Vasantha Devi had executed a Will bequeathing the property to her daughter i.e. the plaintiff herein.

Once a bequest intervenes the later part of the Settlement Deed, which provides that the property would go to the sons if the mother dies intestate without alienating the property will not arise. Therefore, the claim of the learned counsel for the 1st defendant that he had some right over the property and he was directed to reimburse the expenses incurred in maintenance of the property by the settlor does not arise at all. From the oral and documentary evidence discussed supra, it is clear that the plaintiff has acquired unimpeachable title to the property under the Will dated 06.10.1988. Hence, issue no.1 is answered in favour of the plaintiff, holding that the plaintiff is the absolute owner of the property.

Issue No.2:-

13.This issue relates to the validity of the Settlement Deed dated 07.12.1969. The Settlement Deed is a registered instrument and its execution by Vedagiri Rama Sastry is not denied by the 1st defendant. The only plea of the 1st defendant is the nature of the property and the capacity of the Vedagiri Rama Sastry to execute Settlement Deed. The capacity of Vedagiri Rama Sastry to execute the settlement has been considered while discussing the title of the plaintiff under issue no.1 and

I have concluded that it is his self acquired property and he has every right to dispose of the same by way of a settlement. In the absence of specific denial of the execution of the document by the settlor the necessity to have the document proved by examining the attesting witnesses does not arise, in view of the proviso to *Section 68 of the Indian Evidence Act, 1872*. In the absence denial of execution of settlement deed, I do not think the 1st defendant could be allowed to contest the truth and validity of the said document. Issue no.2 is therefore answered in favour of the plaintiff against the 1st defendant.

Issue Nos.3 & 6:-

14. Admittedly, the 1st defendant is in possession of the portion of the suit property and let out the other portions to tenants. The tenants, unquestionably, would be entitled to protection under the ***Tamil Nadu Buildings (Lease and Rent Control) Act, 1960***. The 1st defendant had raised a plea in the written statement claiming that the suit is barred by limitation. Inasmuch as he had denied the title of the plaintiff in his written statement filed in T.O.S.No.6 of 1994 even in March 1995, and the present suit filed in 2010 would therefore be barred by limitation. It is an admitted fact that the plaintiff's mother bequeathed

the property by her Will dated 06.10.1988 and she died in the year 1992. T.O.S.No.6 of 1994 has been filed seeking for grant of Letters of Administration and the same came to be decreed by this Court on 15.12.1999. The 1st defendant had filed O.S.A.No.400 of 2001 against the judgment in T.O.S.No.6 of 1994, which was dismissed eventually on 02.07.2008. The present suit has been filed on 29.03.2010.

15. Infact, there was a statutory prohibition against the plaintiff from establishing her claim based on an un-probated Will under Section 213 of the Indian Succession Act, 1925. The cause of action for the plaintiff to sue as against the defendants arose after the grant of Letters of Administration in T.O.S.No.6 of 1994. The appeal filed against the said grant was dismissed on 02.07.2008. Therefore, there is no question of the suit being barred by limitation. It should also be pointed out that the 1st defendant had not admitted the title of the plaintiff in T.O.S.No.6 of 1994 or in this suit. He has infact disputed and questioned the plaintiff's title. Therefore, in the absence of admission of title of the plaintiff, there is no question of the 1st defendant claiming to have perfected title by adverse possession. Issue nos.3 and 6 are answered against the 1st defendant in favour of the plaintiff to the effect

that the suit is not barred by limitation and the defendants are bound to surrender possession to the plaintiff.

Issue No.4:-

16.This issue relates to the status of the 2nd defendant. The 2nd defendant has claimed that he is a tenant under the 1st defendant. The defendants 3,4,5 and 6 are also said to be the tenants. DW-1 in her evidence had stated that during the pendency of the suit some of the tenants have vacated new tenants were inducted and the 1st defendant was receiving rents from them. In so far as the tenants are concerned, there cannot be a decree for possession in this suit. The plaintiff will only be entitled to symbolic possession of the suit property against the tenants subject to her right to evict them by the following due process of law. Therefore, the issue no.4 is answered to the effect that in so far as the tenants are concerned they are entitled to the statutory protection under the *Tamil Nadu Buildings (Lease and Rent Control) Act, 1960*. Further, it is made clear that the tenants shall attorn tenancy to the plaintiff.

Issue No.5:-

17.This issue relates to mesne profits. The plaintiff has valued the suit for future mesne profits and has paid court fee. The learned counsel for the 1st defendant would contend that there is no tangible evidence to show that there was income from the properties. It is seen that an advocate receiver was appointed in T.O.S.No.6 of 1994, and she had collected certain rents from the tenants. She also filed an interim report which is marked as Ex.P-5, wherein, it is stated that she has collected about Rs.40,410/- as rent up to May 2000. It is also seen that she had deposited the money into the Court to the credit of T.O.S.No.6 of 1994 on 7th July 2000. The plaintiff would be entitled to mesne profits for three years prior to the suit i.e. From April 2007. She would also be entitled to mesne profits during the pendency of the suit and future profits. DW-1 in her evidence admitted that she has collected a rent of Rs.7,000/- per month. Of course, it is claimed by the 1st defendant that he has been spending on upkeep of the property and paying the taxes also. Therefore, I find that the plaintiff would be entitled to a sum of Rs.4,000/- per month towards the past and future mesne profits commencing from 3 years prior to the filing of the suit till date of delivery of the possession. It is seen from Ex.P-5, that the receiver had deposited Rs.40,410/- being the rent collected by her

during the pendency of T.O.S.No.6 of 1994. The plaintiff would be entitled to withdraw the said sum. Hence, issue no.5 is answered accordingly.

18.In the result, the suit is decreed as prayed for declaring the title of the plaintiff, and directing the 1st defendant to deliver the possession of the portion of the property in his possession. The 2nd defendant and the other tenants are to attorn the tenancy to the plaintiff and start paying rents to the plaintiff forthwith. The plaintiff will also be entitled to a decree for mesne profits at the rate of Rs.4,000/- per month from three years prior to the institution of the suit till date of delivery of possession. Considering the relationship between the parties, there will be no order as to costs in this suit.

16.02.2018

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Index : No
Internet : Yes
Speaking order

List of the witnesses examined on the side of the plaintiff:

PW1 - C.Tripura Sundari

List of Exhibits marked on the side of the plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.P1	The certified copy of the settlement deed.	07.12.1969
2	Ex.P2	The notary attested copy of the registered Will.	06.10.1998
3	Ex.P3	The order copy of the Hon'ble Court in T.O.S.No.6 of 1994.	15.12.1999
4	Ex.P4	The copy of the judgment of the Hon'ble Court in O.S.A.No.400 of 2001.	02.07.2008
5	Ex.P5	The true copy of the memo filed by the Advocate Receiver in T.O.S.No.6 of 1994.	---
6	Ex.P6 (series)	The legal notice and postal acknowledgements.	15.07.2009
7	Ex.P7	The reply notice.	06.08.2009
8	Ex.P8	The rejoinder.	12.08.2009
9	Ex.P9	The further notice.	25.08.2009
10	Ex.P10	The certified copy of the probabte order in T.O.S.No.6 of 1994.	15.12.1999

List of the Witnesses examined on the side of the Defendants:

DW1 - C.A.Ramani

List of Exhibits marked on the side of the Defendants:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.D1	Authorisation letter dated 29.06.2017	--
2	Ex.D2	Photocopy of the legal heir certificate.	--
3	Ex.D3	Photocopy of the extract of the Town Survey Register.	--
4	Ex.D4	Name transfer notice.	--
5	Ex.D5	Water and Sewerage service charges card.	--
6	Ex.D6	Property Tax Demand Card.	--
7	Ex.D7	Water and Sewerage connection receipt.	--
8	Ex.D8	Property tax payment receipt.	--
9	Ex.D9	Series are the bill receipts (28 nos.)	--

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To

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

R.SUBRAMANIAN,. J.

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