

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.11.2016

PRONOUNCED ON: 22.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.64 of 2016

A.Ganesa Sivasubramaniam

Plaintiff

Vs

1. Jeevan Prakash

2. G.Vasanthi

Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules and Order VII Rules 1 and 2 of CPC, for the reliefs as stated therein.

For Plaintiff : Mr.K.V.Sundararajan

For Defendants : M.Loganathan
Set Exparte

JUDGEMENT

सत्यमेव जयते

This civil suit has been filed, seeking a judgement and decree for the following reliefs:-

- a) direction to the Defendants to hand over vacant possession of the Schedule B property to the Plaintiff.
- b) permanent injunction restraining the Defendants or their men from in any way demolishing, constructing, renovating, tampering or in any other manner altering the Schedule A property.
- c) direction to the Defendants to pay Rs.50,000/- as future damages p.m from the date of the plaint till the date of

handing over of the vacant possession of the Schedule B property.

d) mandatory injunction directing the Defendants to remove all the debris, rubbish, additions and alterations made by the Defendants in the Schedule A property.

e) for costs of the suit.

2. The case of the Plaintiff as set out in the plaint, is as follows:-

a. The Plaintiff is the owner of the A-Schedule property, having been allotted to him by the Tamil Nadu Housing Board in 1969 and subsequently, he had put up a construction, consisting of ground and first floor out of his own funds. The Tamil Nadu Housing Board had executed a sale deed in 1979, bearing Document No.36 of 1979 in the Office of the Sub Registrar, Sembium. The Plaintiff married to Saroja G.S.Maniam and they had three children, namely, (1) Dr.Arun Kumar, who is residing in USA (2) Dr.G.Vasanthi, the 2nd Defendant herein, who is the wife of the 1st Defendant herein and (3) Dr.Ganesan, who is unmarried. Out of love and affection, the Plaintiff permitted the Defendants to reside in the first floor of the Schedule A property, which is more fully described in the B-Schedule property. The Plaintiff and his wife and 3rd son are residing in the ground floor. The Plaintiff also settled various loan accounts of the 1st Defendant.

b. Taking advantage of the age and relationship, the Defendants gave trouble to the Plaintiff and his wife and the Defendants were harassing the Plaintiff and his wife, which resulted in lodging a complaint in April 2014. The Defendants agreed to vacate the premises. Again the Defendants had started harassing the Plaintiff and damaging the property by removing the tiles in the

first floor, water pipe lines, by installing motor and putting up separate water tank in the terrace. Therefore, a notice dated 30.9.2015 was sent to the Defendants, asking them to vacate the premises. A reply dated 15.10.2015 was sent with false and frivolous allegations, as if the Defendants had been taking care of the Plaintiff and his wife and also alleging that they spent Rs.4 to 5 lakhs for repairing the house and requesting to allow them to stay in the first floor. The Plaintiff had sent a rejoinder dated 30.10.2015, denying the allegations of the Defendants and requesting them to vacate the premises. The Defendants had sent a reply dated 18.12.2015 with the same allegations. In spite of granting sufficient time, instead of the vacating the premises, the Defendants wanted to grab the property. In such circumstances, this civil suit has been filed, seeking the reliefs as stated above.

3. The Defendants had entered appearance through a counsel. The written statement filed by the Defendants was returned. However, in spite of sufficient opportunity, the written statement was not re-presented. In the mean while, there were also mediations for settlement between the parties, but, no fruitful result came.

4. There was also a representation by the learned counsel for the Defendants that the Defendants had agreed to vacate the premises by 31.05.2017. OA.Nos.85 of 2016, A.Nos.761 and 762 of 2017 filed by the Plaintiff, seeking the suit reliefs were withdrawn, in view of the undertaking given by the Respondents dated 8.3.2016.

5. The matter was posted before the Master for recording evidence.

Before the Master, the Plaintiff examined himself as PW.1 and marked Ex.P1 to

Ex.P11. Neither any witness was examined nor any document was marked on the side of the Defendants.

6. Finally, this Court had passed an order on 23.11.2017, setting the Defendants exparte, as follows:-

“The plaintiff, at the time of filing of the suit was aged 85 years. The 1st defendant is his son-in-law and the 2nd defendant is his daughter.

2. In the plaint, it had been stated that, out of grace, plaintiff had permitted the defendants to reside in the upstairs portion of the suit property. Subsequently problems arose, necessitating him to institute the suit, seeking recovery of possession and damages and also an order of injunction. Suit summons were served to the defendants. They filed written statement, but it was returned.

3. On 27.06.2017, this Court had stated that the defendants can resubmit the written statement within a period of two days. It was not done. The plaintiff was invited to tender evidence before the learned Additional Master-II, High Court, Madras. He gave evidence and also marked documents. The defendants did not come forward to cross-examine him. The notings of the learned Master reveal the many occasions when there was protraction of the Court proceedings.

4. On 25.07.2017 it was mentioned that, plaintiff and his counsel were ready from the morning, but the learned counsel for the defendants was only available at 3 p.m. It was also stated that according to the learned counsel for the plaintiff the defendants had not represented the written statement as ordered by this Court on 27.06.2017. It was further mentioned that the plaintiff, who had aged 87 years, by that time was coming to the Court almost daily.

5. On 27.07.2017, again it was noted that the plaintiff and his learned counsel was ready, but there was no appearance for the defendants. The matter was again called at 12.30 p.m and again at 2.30 p.m. for cross examination. There has been further notings on 10.08.2017 again awaiting the defendants to cross examine the plaintiff. It was not done.

6. Similarly on 18.08.2017, the defendants and their counsel did not come forward to cross examine the plaintiff.

7. On 23.08.2017, having no other option, the learned Additional Master No.II, High Court, Madras made following endorsement;

"Aged plaintiff with counsel present at 10.30 a.m Till noon, no representation for defendants. Passed Over. Item-1 in today's list. At 3 p.m. also no representation for defendants. Post the matter before the Hon'ble Court"

8. The matter has been posted before this Court. Mr.K.V.Sundararajan invited the Court to the details mentioned above and stated that the plaintiff had actually undergone very disheartening Court proceedings. It is clear that the defendants are not interested in contesting the suit. D1 & D2 are set exparte.

9. The suit is reserved for Judgement on the basis of pleadings and evidence already on record.

10. Orders Reserved."

7. Subsequently, judgement could not be passed since the bundle could not be traced. Thereafter, on 21.02.2018, the Assistant Section Officer (Original Side), had handed over the bundle in Chambers, along with a note, dated 20.02.2018, stating as under:-

"It is respectfully submitted that the above said case was listed on 23.11.2017 before your Lordship. On that day, matter has been reserved for orders. On 29.11.2017, I have received more than ten cases along with the above said matter from the Online Section and I have segregated all the cases according to the date of adjournment. I have kept the above said matter separately to return the same to the Chamber since it was reserved for orders.

It is most respectfully submitted that due to pressure of my work, I forgot to hand over the same to the Chamber. I will take more care in future while handling the cases. Kindly apology for the inconvenience caused by me."

8. It is seen that the Defendants are not interested in prosecuting the

matter, by not filing the written statement and by letting in evidence, though they had entered appearance through a counsel and that the Defendants are protracting the case in one way or the other. Hence, considering the oral and documentary evidence, this Court is of the view that the plaintiff is entitled for the reliefs, as prayed for. Accordingly, the civil suit is decreed as prayed for with costs.

.02.2018

Index:Yes/No
Web:Yes/No
Srcm

1. List of Witnesses Examined on the side of the Plaintiff:-
 1. PW.1 - A.Ganesa Sivasubramaniam
2. List of Exhibits marked on the side of the Plaintiff:-
 1. Ex.P1 is the certified copy of the sale deed d t 5.7.1979.
 2. Ex.P2 is the police complaint dated 17.4.2014.
 3. Ex.P3 is the original CSR dated 17.04.2014 issued by the ip, L&O, Chennai-40.
 4. Ex.P4 (series) are the photographs of the suit property.
 5. Ex.P5 (series) are the office copy of the legal notice dated 30.9.2015 along with acknowledgement cards.
 6. Ex.P6 is the original reply dated 15.10.2015 given by the counsel for the Defendant.
 7. Ex.P7 is the copy of rejoinder dated 18.12.2015.
 8. Ex.P8 is the original reply to the rejoinder dated 18.12.2015.
 9. Ex.P9 is the original property tax card for payments till 2012.
 - 10.Ex.P10 (series) are the water tax card for payments till 2015 and the water tax receipts for 2015 and the property receipt 2015-2016.

11.Ex.P11 (series 4 nos.) are the electricity card showing payments till August 2016 and the latest electricity receipts of February and April 2017.

3. List of Witnesses Examined on the side of the defendants:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

22.02.2018

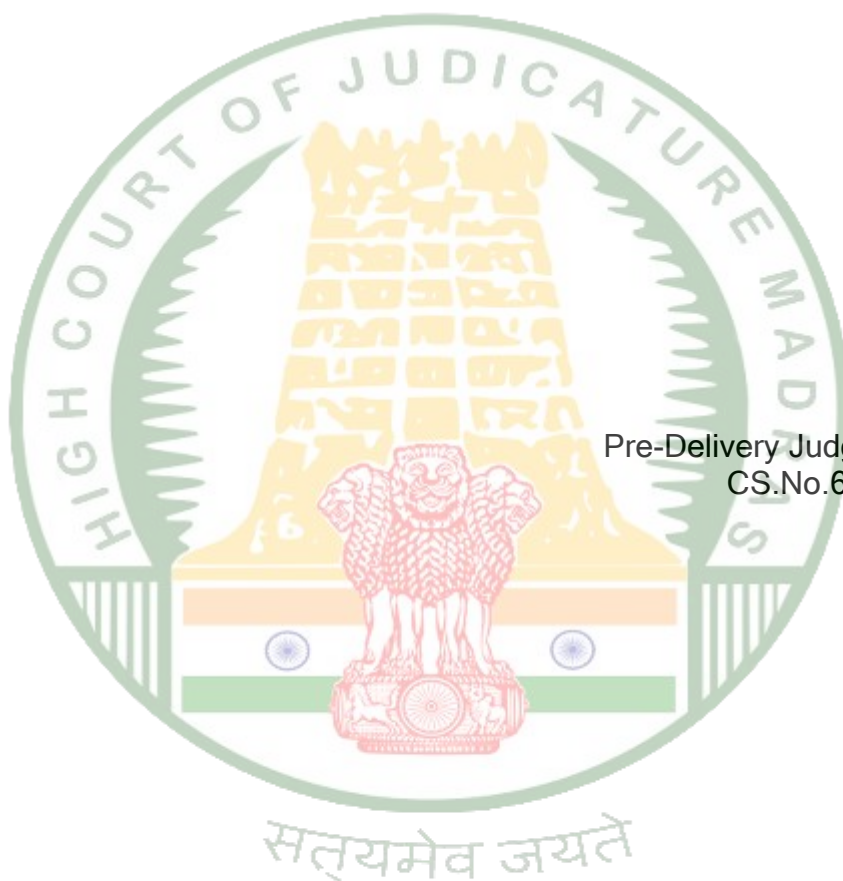
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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.64 of 2016

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