



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A(MD) .No.241 of 2016

Stella Mercy Bai

... Appellant/2nd Defendant/
2nd Respondent

Vs.

1.S.Mahadevan

2.C.John Sundar Raj

...Respondents/Plaintiff and 1st
Defendant/ Appellant and
1st Respondent

(The second respondent is given up)

PRAYER : Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 03.09.2007 of the learned Subordinate Judge, Padmanabhapuram, and made in A.S.No.55 of 2004 on his file, reversing the judgment and decree dated 27.02.2004 of the learned Principal District Munsif-cum-Judicial Magistrate, Eraniel and made in O.S.No.83 of 2001 on his file.

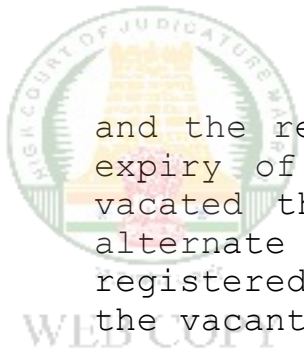
For Appellant : Mr.K.N.Thampi

ORDER

The second defendant in the suit in O.S.No.83 of 2001 on the file of the learned Principal District Munsif - cum -Judicial Magistrate, Eraniel is the appellant in this second appeal. The first respondent in this appeal filed a suit in O.S.No.83 of 2001 for recovery of possession in respect of the suit property which is described as land and building bearing door No.13-49 of Aathivillai town panchayat comprised in R.S.No. 139/14.

2. The case of the first respondent in the suit are as follows:

The suit property originally belonged to the defendants who are husband and wife. They sold the suit property in favour of the plaintiff by a registered sale deed dated 11.08.1999. Pursuant to the sale deed, patta was also changed in the name of the plaintiff and he is remitting the tax in his name. Since the defendants could not find suitable accommodation to shift their services, they entered into a tenancy agreement with the plaintiff to be in possession of the suit property as a tenant. The tenancy agreement is dated 11.08.1999 and it is for a period of 11 months



and the rent payable is Rs.1,000/-per month. However after the expiry of the period of 11 months, the defendants have not vacated the building, on the pretext that they could not find alternate accommodation. Therefore the plaintiff sent a registered notice to the defendants on 23.05.2001 to surrender the vacant possession of the suit property after tenancy.

3. The suit was resisted by the defendants and a detailed written statement was filed by the first defendant. It is the case of the defendants that the sale deed was executed in favour of the plaintiff for a sum of Rs.2,05,000/- and the understanding between the parties was that the plaintiff would settle the dispute with one P.Anandlal who had earlier paid a sum of Rs.2,00,000/- to the defendants and that the defendants would retain the possession until the amount is fully settled to the said P.Anandlal. It is further stated that though the sale deed was executed, possession was retained by the defendants only in view of the arrangement between the plaintiff and the defendants. The defendants specifically denied the tenancy between the plaintiff and the defendants and that their possession was stated only pursuant to the understanding pleaded by them. It was also stated in the written statement that the defendants did not execute any tenancy agreement and that even if any such document is produced by the plaintiff must may be a fabricated document and it was obtained by mis-representation. The trial court dismissed the suit after holding that the sale in favour of the plaintiff is not a bonafide transaction, since the sale deed was not produced before the Court. The trial Court further held that the tenancy alleged by the plaintiff is also not proved. From the reading of the entire judgment, it can be seen that the findings of the trial court are contrary to the pleadings of the respective parties and the candid admission of the defendants as to the genuineness of the transaction by which the plaintiff had purchased the suit property from the defendants.

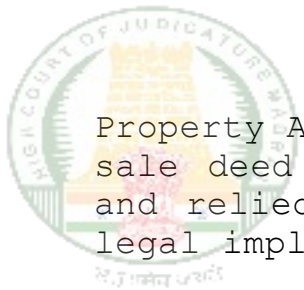
4. Aggrieved by the judgement and decree of the trial court, the plaintiff preferred an Appeal in A.S.No.55 of 2004 on the file of the Sub Court, Padmanabapuram.

5. Before the lower appellate court, the plaintiff produced two documents namely a certified copy of the sale deed dated 11.08.1999 and the judgment of the Sub-Court, Padmanabapuram in O.S.No.10 of 2001 dated 12.04.2004.

6. It is pertinent to mention that the suit in O.S.No.10 of 2001 appears to be a suit filed by a stranger for specific performance impleading the defendants as well as the plaintiff in the present suit.

<https://hcservices.ecourts.gov.in/hcservices/>

7. The Lower Appellate Court after referring to Section 92 of the Indian Evidence Act and Section 55 of the Transfer



Property Act found that the defendants who executed and registered sale deed let in evidence varying to the terms of sale deed, and relied up on S.55(6) (1) of Transfer of Property Act and its legal implication.

8. The Appellate Court came to the conclusion that the plaintiff has established his title and is entitled to seek recovery of possession. The Appellate Court further relied upon the judgment passed in O.S.No.10 of 2001 on the file of the Sub Court, Padmanabhapuram which was marked as Ex.A5 before the Appellate Court, which was received as additional evidence before the lower Appellate Court. In that suit the tenancy pleaded by the plaintiff as against defendants 1 and 2 was also found in favour of the plaintiff herein. The findings of the lower Appellate Court in the said suit to the fact that the sale agreement pleaded by the defendants 1 and 2, with the stranger is a collusive is relevant and given an indication regarding the conduct of defendants.

9. The Lower Appellate Court has categorically found that the defendants are the tenants under the plaintiff and that by virtue of the registered sale deed executed by the defendants in favour of the plaintiff, the plaintiff has become absolute owner. Under such circumstances, this Court is of the view that on the admitted facts, the judgement and decree of the lower Appellate Court cannot be assailed.

10. Though the learned counsel for the appellant referred to the substantial questions of law raised in the memorandum of grounds of appeal, he is unable to substantiate any one of the questions in view of the findings of the lower Appellate Court on facts.

11. As a result, the Second Appeal is dismissed and the judgment and decree of the learned Sub-Judge, Padmanabhapuram in A.S.No.55 of 2004 reversing the judgment and decree of the learned Principal District Munsif, Eraniel in O.S.No.83 of 2001 is confirmed. However, there shall be no order as to costs.

Sd/

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Padmanabhapuram.

2. The Principal District Munsif-cum-Judicial Magistrate,



Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.K.N.THAMPI, Advocate, SR.No. 68834

S.A(MD) .No.241 of 2016
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AAV
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