



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 06.09.2018
DELIVERED ON : 24.10.2018

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

S.A.(MD)No.775 of 2013

1.Subramanian

2.Alagesan

.. Appellants/Appellants/Defendants
Vs.

Vairavan

.. Respondent/Respondent/Plaintiff

Prayer :Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 30.08.2013 passed in A.S.No.15 of 2011 on the file of the Sub Court, Sivagangai confirming the Judgment and Decree dated 26.11.2010 passed in O.S.No.170 of 2005 on the file of the District Munsif Cum Judicial Magistrate Court, Thiruppathur.

For Appellants : Mr.R.Vijayakumar

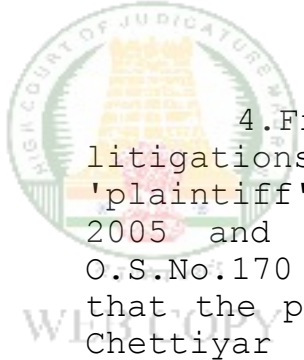
For Respondent : Mr.K.Balasundharam

JUDGMENT

Heard Mr.R.Vijayakumar, learned counsel appearing for the appellants and Mr.K.Balasundharam, learned counsel appearing for the respondent.

2.This appeal is filed to set aside the Judgment and Decree dated 30.08.2013 passed in A.S.No.15 of 2011 on the file of the Sub Court, Sivagangai confirming the Judgment and Decree dated 26.11.2010 passed in O.S.No.170 of 2005 on the file of the District Munsif Cum Judicial Magistrate Court, Thiruppathur.

3.The appellants herein are the defendants and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.170 of 2005 against the appellants herein to evict the first appellant from the suit first schedule property and to evict the second appellant from the suit second schedule property and claiming Rs.7,200/- (Rupees Seven Thousand and Two Hundred only) as compensation from each of the appellants. After the trial, the learned District Munsif, Thiruppathur decreed the suit. The appellants filed an appeal before the Sub Court, Sivagangai in A.S.No.15 of 2011 and the appeal was also dismissed by the Sub Court, Sivagangai confirming the order passed by the trial Court. The appellants filed this second appeal against the order passed by the first appellate Court.



4. From the records, it is seen that there are so many litigations between the appellants and the respondent. The word 'plaintiff' hereafter will denote the plaintiff in O.S.No.170 of 2005 and the word 'defendants' will denote the defendants in O.S.No.170 of 2005. The case of the plaintiff/respondent herein is that the plaintiff purchased the suit property from one Ramanathan Chettiyar on 11.06.1997. At the time of purchase, the first defendant was in possession of the first item of the suit property and he was running a cycle shop and second item was in possession of the second defendant who was running a tea shop. When the plaintiff asked the defendants to vacate the premises, they prayed time for shifting to some other premises. Then the plaintiff filed a suit against the defendants in O.S.No.66 of 1999 and the suit was dismissed as the plaintiff failed to give notice to the defendant to vacate the premises. Later the plaintiff sent a notice dated 03.12.2004 under Section 106 of Transfer of Property Act. Then, the defendant filed the suit against the plaintiff in O.S.Nos.42 of 1997 and 43 of 1997 seeking a prayer of injunction. Both the suits were dismissed on 31.03.1999. Afterwards, the plaintiff filed R.C.O.P.Nos.1 of 1998 and 2 of 1998 against the defendants. The suit property is not within territorial jurisdiction of the Rent Controller. This R.C.O.P.s are dismissed. In the R.C.O.Ps., the defendants have accepted that they are tenants but in the suit they are demanding the property by way of adverse possession. As the defendants are not evicting premises and they are not even paying the rent, the plaintiff filed a suit in O.S.No.170 of 2005 for recovery of possession and for arrears of rent.

5. The case of the defendants/appellants herein is that the property originally belonged to one Ramanathan Chettiyar, Periyana Chettiyar and Sathapa Chettiyar who are the sons of Vadukanatha Chettiyar. The defendants entered into tenancy agreement with Vadukanatha Chettiyar for a rent of Rs.30/- (Rupees Thirty only) per month. They have been paying Rs.45/- (Rupees Forty Five only) per month to the legal heirs of Vadukanatha Chettiyar. With the permission of legal heirs of Vadukanatha Chettiyar, each of the defendants spent Rs.50,000/- (Rupees Fifty Thousand only) for renovating the premises and they are in possession. The legal heirs of Vadukanatha Chettiyar agreed to sell the property to the defendants and Rs.50,000/- (Rupees Fifty Thousand only) spent by defendants was treated as an advance. There was an oral agreement. Afterwards, the plaintiff created forged documents and the plaintiff is trying to vacate the defendants. The defendants filed O.S.Nos.42 and 43 of 1997 for injunction against this plaintiff and appeal in A.S.Nos.88 and 89 of 1999 were filed and the defendants obtained favourable orders. But the plaintiff filed a petition in R.C.O.P.Nos.1 and 2 of 1998 for vacating the defendants and in that petitions, the learned Rent Controller has ordered that there is no tenancy agreement between the plaintiff and the defendants. The defendants perfected their title by way of adverse possession. The trial court has wrongly decreed the suit and the first Appellate Court also dismissed the appeal filed by the defendants.



6.The following substantial question of law are framed by this Court in this second appeal, which reads as follows:

“(a) whether the lower Court is right in ignoring the findings in R.C.O.P.Nos.1 and 2 of 1998 on the file of the Rent Controller, Thirupathur ?

(b) whether the suit is bared by Section 11 of C.P.C.?

(c) whether the notice issued by the plaintiff under Section Ex.A2 is in accordance with Section 106 of the Transfer of Property Act?”

7.On the side of the appellants, it is stated that the learned Rent Controller in R.C.O.P.Nos.1 and 2 of 1998 has observed that there is no tenancy agreement between the respondent and the appellants whereas in the suit in O.S.No.170 of 2005, the trial Court has wrongly decided that the appellants are the tenants of the respondent. It is further stated that the the vendor of the respondent permitted the appellants to construct the building at their own cost and the vendors agreed to sell the property to the appellants. There is an oral agreement and the amount spent by each of the appellants is agreed to be taken as an advance and the appellants perfected the title through adverse possession also. As there is no tenancy agreement between the appellants and the respondent, the finding of the lower Court is to be set aside and the suit is to be dismissed.

8.On the side of the respondent, it is stated that the respondent filed a petition before the Rent Controller in R.C.O.P.Nos.1 and 2 of 1998. These R.C.O.Ps are held not admissible as the property is in mofessal area. The appellants were admitted that they were the tenants of the vendor of the respondent and they were in possession only as a tenant and now they cannot claim any other right and the trial Court is correct in decreeing the suit.

9.The verification of the records reveals that in the suit filed by the appellants in O.S.No.42 and 43 of 1997, it is stated that the appellants are the tenants. They have admitted the purchase of the property by the respondent. It is seen from the records that the appellants when they were examined as P.Ws.1 and 2 have deposed that they have paid the rent until six months prior to the date of deposition. The contention of the appellants is that they were enjoying the property as a tenant and they admitted that they were paying the rent. Admitted facts need not be proved. Hence, it is decided that the lower Court has right in deciding the status of the appellants, as tenants.

10.On the side of the appellants, it is stated that the suit is bared under Section 11 of C.P.C., as the respondent issued a notice under Section 106 of Transfer of the Property Act. On the side of the appellants, it is stated that there is no relationship of landlord and tenant between the respondent and the appellants.



11. On the side of the respondent, it is stated that the appellants have not raised any such plea that the suit is barred under Section 11 of C.P.C., in the written statement and the appellants cannot claim such plea at this stage.

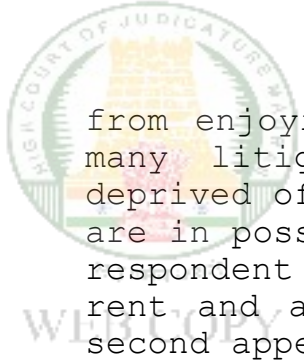
12. A perusal of the records reveals that O.S.No.66 of 1999 was dismissed by the trial Court on the ground that notice under Section 106 of Transfer of Property Act was not given to the appellants. But the trial court in O.S.No.66 of 1999 has given a finding that the property belonged to the plaintiff and the plaintiff was given direction to file suit after issuance of notice under Section 106 of Transfer of Property Act. More over the appellants have not raised any such objections in their written statement. Hence, it is decided that this questions of law raised by the appellants is not maintainable.

13. On the side of the appellant, it is stated that notice issued by the plaintiff in Ex.A2 is not in accordance with Section 106 of Transfer of Property Act. The suit filed by the respondent in O.S.No.66 of 1999 was dismissed on the ground that the notice under Section 106 of Transfer of Property Act was not given. As per the Judgment passed in O.S.No.66 of 1999, the respondent issued notice under Section 106 of Transfer of Property Act. Notice was marked as Ex.A2. The first appellant sent a reply notice to Ex.A2.

14. On the side of the appellant, it is stated that there was an oral sale agreement between the vendor of the respondent and the appellants. The date of such oral agreement was not stated in the written statement. No step was taken by the appellants to prove the oral agreement. An oral agreement regarding the immovable property is invalid. Admittedly, the appellants have not taken any steps to execute the oral agreement also. The specific stand of the appellants is that they were the tenants of the vendors of the respondent.

15. From the records, it is clear that there were so many litigations between the appellants and the respondent prior to this second appeal. When the respondent is taking steps against the appellants continuously, the possession of the appellants cannot be treated as an uninterpreted possession. The possession of the tenant is only a permissible possession. A tenant of the vendor of the property continues in possession only on the basis of attornment of tenancy. A person who is in permissible possession or a tenant cannot claim adverse possession. The trial Court in O.S.No.66 of 1999 has clearly given direction to the plaintiff that the plaintiff can take steps after issuance of notice under Section 106 of Transfer of Property Act. The third question of law raised by the appellants is not maintainable.

16. In the above circumstances, all the questions of law are not proved by the appellants. Though the property was purchased by the respondent in the year 1997, the appellants are preventing him



from enjoying the property. In view of the fact that there are so many litigations between both the parties, the respondent is deprived of his right from enjoying the property. The appellants who are in possession of the property as the tenant of the vendor of the respondent are continuously in possession even without paying the rent and abusing the legal proceedings. There is no merit in the second appeal. The Judgment and decree passed by the first Appellate Court in A.S.No.15 of 2011, learned Sub Court, Sivagangai is confirmed and the Judgment and decree passed by the learned District Munsif Cum Judicial Magistrate, Thiruppathur in O.S.No.170 of 2005 is confirmed. The appellants are hereby directed to vacate the premises and to hand over the possession of the property to the respondent within a period of two weeks from the date of receipt of copy of this order. With the above direction, the Second appeal is hereby dismissed with a cost of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

- 1.The Subordinate Judge, Sivagangai.
- 2.The District Munsif Cum Judicial Magistrate,
Thiruppathur.
- 3.The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1CC to Mr.K.Balasundharam, Advocate, SR.No.91488
+1CC to Mr.R.Vijayakumar, Advocate, SR.No.91702

S.A.(MD) No.775 of 2013
24.10.2018

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