

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24.07.2019

JUDGMENT DELIVERED ON : 30.09.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1616 of 2000

Devaki Ammal

... Appellant/Plaintiff

...Versus...

1.Chakrapani Pillai

2.Rukmani Ammal

3.Ramadoss Pillai

4.Devaki Ammal

... Respondents /Defendants

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.45 of 1999 dated 12.02.2000 on the file of the Principal District Court, Cuddalore, confirming the judgment and decree made in O.S.No.84 of 1992 dated 04.08.1997 on the file of the Subordinate Court, Chidambaram.

For Appellant :: Mr.Srinath Sridevan

For R1 :: Died

For R2&R3 :: Exparte vide Court order dated
21.03.2017

For R4 :: M/s.R.Meenal

J U D G M E N T

The unsuccessful plaintiff is the appellant herein.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

3. The suit in O.S.No.84 of 1992 on the file of the Sub-Court, Chidambaram was filed by the plaintiff for declaration of her title and for recovery of possession.

4. The plaint proceeds on the basis that:-

(i) The suit properties originally belonged to the third

defendant, who sold the same to the plaintiff under a registered sale deed dated 30.09.1976, for Rs.4000/- and since they were under the possession of first defendant and one Perumal Pillai whose wife is the second defendant, as tenants, no actual possession was given to the plaintiff.

(ii) The first defendant is in possession of Southern half of A schedule suit properties, which is described as B schedule and the second defendant is in possession of Northern half of A schedule suit properties, described as C schedule.

(iii) As the defendants 1 and 2 did not pay rent to the plaintiff after sale by third defendant, the plaintiff issued a notice dated 8.10.1990 to the defendants 1 and 2 terminating the tenancy by 31.10.1990 for which the first defendant has sent a reply on 18.2.1991 with false allegations.

(iv) Since he claimed City Tenants Protection Act and set up tenancy in favour of his wife also, she is added as party to the suit. Then the plaintiff had issued a notice on 4.3.1991 under City Tenants Protection Act to quit defendants 1 and 2 for which they denied the title of plaintiff orally.

(v) The plaintiff has no objection to give protection under City Tenants Protection Act if they accept the title of plaintiff. The third defendant is the vendor of the plaintiff under the sale deed dated 30.09.1976 and as she is not co-operating with the plaintiff. She is added as third defendant.

(vi) The plaintiff is entitled to get the decree as against her in case she is unable to get a decree for possession as against the defendants 1 and 2. Hence, the plaintiff is praying for the alternative relief of decree for Rs.40,000/- as against the third defendant representing the present market value of the suit property.

5. The defendants 1 and 4 who are husband and wife, resisted the declaration suit and for recovery of possession and inter-alia contended that:-

(i) The suit properties do not belong to the third defendant and therefore, he has no right to sell the same through a sale deed dated 30.09.1976. There is no relationship of landlord and tenant between the plaintiff and defendants 1 and 4.

(ii) The fourth defendant was paying the rent to Rajanga Nadar regularly and she has also paid taxes to the Municipality and therefore, the defendants 1 and 4 cannot be evicted, except under due process of law. There were proceedings between one Krishnasamy Nadar and his legal representatives on the one hand and one Rajanga Nadar, third defendant and others on the other hand in O.S.No.552/72 A.S.No.770/75 and S.A.No.1375/77 subsequent to the disposal of A.S.No.770/75 which ended in favour of Krishnasamy Nadar who informed the defendants 3 and 4 that the Court has decreed in his favour and that he will vacate

the defendants 3 and 4 from the suit properties.

(iii) Under such threat of eviction defendants 1 and 4 as well as one Pakkirisamy father residing in Door No.13-B and Krishnasamy Nadar entered into a written agreement. Thereunder the said Krishnasamy Nadar has admitted that the first defendant is the tenant of the site alone and superstructure belongs to first defendant.

(iv) Even in the previous proceedings by the legal representatives of Krishnasamy Nadar to take delivery of the property through Court, the defendants 1 and 4 resisted the application for removal of obstruction, which was also subsequently dismissed. Thus, the defendants 1 and 4 are in lawful possession of the properties as tenants to the suit and as owners of superstructure.

6. The third defendant who is said to the vendor of the plaintiff, filed a written statement that the suit properties originally belonged to one Rajanga Nadar. A sham and nominal sale deed was executed by Rajanga Nadar in the name of third defendant and therefore, he has executed a sale deed in favour of plaintiff. At that time, the defendants 1 and 2 were in the suit properties as tenants. The plaintiff agreed to take the responsibility of vacating the tenants from the suit properties and take possession.

7. Before the Trial Court, the plaintiff examined herself as P.W.1 and marked Exs.A1 to A41 and the first defendant was examined as D.W.1 and the third defendant was examined as D.W.2 and marked as Exs.B1 to B13.

8. On a consideration of both oral and documentary evidence, the Trial Court dismissed the suit in entirety.

9. Aggrieved by the said judgment and decree of the Trial Court, the plaintiff has preferred appeal in A.S.No.45/99 before the Principal District Court, Cuddalore and by judgment dated 12.02.2000, the Lower Appellate Court, on its own reasonings has held that the plaintiff is entitled for declaration of title. However, on the point of recovery of possession, the Lower Appellate Court has held that the defendants 1,2 and 4 have perfected the title by adverse possession and hence, the claim made by the plaintiff is out of period of limitation and accordingly, dismissed the suit.

10. Aggrieved by the dismissal of the suit, the Second Appeal has been preferred by the appellant/plaintiff.

11. The above Second Appeal has been admitted on 19.10.2000 on the following Substantial Questions of Law:-

1. Whether possession by a party, under colour of an assumed right, could be termed as adverse to a third party, more so when that third party is not put on notice as to the rights claimed by the parties in possession?

2. Whether adverse possession can be claimed and not against a specific person, whose rights are sought to be defeated thereby?

3. Whether the valid conveyance in the appellant's favour can be defeated on the ground of adverse possession, when such point has neither been specifically pleaded nor proved?

4. Whether while denying the primary relief, the Court does not have the mandatory obligation to consider the alternate relief, especially when the same has been a specific issue between the parties?

5. Whether the mere attornment of Krishnaswamy by defendants 1 and 2 will terminate lease of the plaintiff with the defendants 1 and 2 especially when there is no issue of notice of forfeiture under Section 111 (g) of Transfer of Property Act by the plaintiff?

6. Whether mere paper attornment without recovery of rent from the tenants for 12 years will enable a third party non-owner to claim title to adverse possession on basis of constructive possession?

7. Whether the attornment by tenants is necessary to make the successor-in-interest of the admittedly original landlord as the landlord of the tenants under Section 8, 55(6a) and 109 of Transfer of Property Act?

12. Heard both sides and perused the records, more particularly Ex.B12 and Ex.A39.

13. The suit is filed by the plaintiff for declaration of her title and for the recovery of possession.

14. The main contention of the learned counsel for the appellant is that :-

(i) The learned District Judge, having held that the appellant had title, ought to have proceeded further to decree

the suit for possession. Krishnasamy-defendants 1 and 2 had prescribed title to the properties by way of adverse possession.

(ii) The learned District Judge ought to have seen that the law is well settled that the possession of a party can be truly said to be adverse only when it is open, continuous, and hostile for the entire duration of the statutory period. In the instant case the fugitive and surreptitious possession of Krishnaswamy and the defendants 1 and 2, for whatever duration, will not enable them to prescribe title.

(iii) The possession of the defendants 1 and 2 became adverse, if at all, only upon the issuance of pre-suit notice by the appellant herein on 8.10.90 (Ex.A2) and defendants' reply thereto on 31.10.90.

15. After hearing the rival submissions made by the respective counsel and also documents, it is seen that the plaintiff traces title by virtue of Ex.A1 registered sale deed, dated 30.04.1976 in respect of the suit properties. That was a document executed by third defendant in whose name there is a registered sale deed dated 14.08.1972 through Ex.A36 and the vendor therein was Rajanga Nadar, the original owner. It is seen that Rajanga Nadar had sold the suit properties to third defendant on 14.08.1972 and it is on 30.04.1976 that the plaintiff had purchased it from the third defendant under Ex.A1.

16. It is seen from the records that the fourth defendant is the wife of first defendant. They are the tenants in the suit B schedule property. It is in suit C schedule property. Originally, one Perumal was tenant and after whose death, his wife Rukmani, the second defendant is continuing in possession. The total of suit B and C schedule properties was described as suit A schedule property regarding which originally title vested with one Rajanga Nadar. He was the original owner of the suit properties. He has executed an agreement of sale to Krishnasamy on 21.07.1957 and without performing the said agreement, had sold the properties to third defendant through Ex.A36 dated 14.08.72. Within the three days therefrom, Krishnasamy had filed a suit in O.S.552/77 on 14.08.1972 itself. Although the suit was dismissed in April 1975, the appeal of Krishnasamy was allowed on February 1977. It is during the pendency of such appeal, the plaintiff had purchased it from third defendant through Ex.A1 sale deed dated 30.04.1976.

17. At this juncture, it is relevant to refer Ex.B2 marked through D.W.2 which is a suit extract copy A.S.No.77/75 wherein at column No.11, it is mentioned that S.A.1375/77 filed against A.S.No.77/75, had been dismissed by this Court on 23.06.1981 and thus, the Specific Performance suit filed in O.S.No.552/72 by the said Krishnasamy Nadar originally, was dismissed and on appeal in A.S.No.77/75 the specific performance was decreed as appeal was allowed and consequently the Specific

Performance suit was decreed and further S.A.No.1375/77 was dismissed by this Court on 23.06.1981.

18. On a perusal of Ex.A39, it is seen that it is the suit extract issued by the District Munsif at Chidambaram pertaining to O.S.No.552/72 wherein at Column No.11, it is stated that in E.P.254/82 proceedings based "on registered sale deed filed", E.P was closed on 17.12.1983 and thus, this Court finds that S.A.1375/77 filed against A.S. No.77/75 was dismissed and in the E.P.proceedings, the sale deed has already been registered and demonstrates that the plaintiff in O.S.No.552/72, namely Krishnasamy Nadar has obtained sale deed through Court. In respect of Court sale deed a contra finding appears to be rendered by the Lower Appellate Court and as the same is error apparent on the face on record and hence, the said contra finding that sale deed was not executed in favour of the Krishnasamy Nadar is liable to be vacated and accordingly, the same hereby stands vacated.

19. It is seen from the above exhibit that the Specific Performance suit filed by the said Krishnasamy Nadar, who obtained the decree, was confirmed in the Second Appeal by this Court and in the Execution Proceedings, a sale deed had been executed through Court and the same has been filed. Consequently, the E.P was closed and hence, the contention of the defendant that Krishnasamy Nadar is the owner of the land and the defendants 1,2 and 4 are tenants under him in respect of the land, is liable to be upheld and consequently, the finding in favour of the plaintiff that he is entitled for decree of declaration, is liable to be vacated.

20. Yet another point is that the plaintiff having claimed title by virtue of the sale deed executed by the third defendant under Ex.A1, however, the third defendant has filed written statement before the Trial Court specifically stating that a sham and nominal sale deed, was executed by Rajanga Nadar in his name. Therefore, he had executed a sale deed in favour of the plaintiff assumes significance.

21. In view of the specific admission made by the third defendant through the written statement, this Court holds that the appellant/plaintiff is not entitled for any relief, since his vendor does not own any title as he himself as stated that the sale deed is only sham and nominal.

22. On the above background, coupled with the decree and Execution Proceedings in the specific performance suit filed by the Krishnasamy Naidu in O.S.No.552/72, A.S.No.77/75 and S.A.No.1375/77 and subsequent attornment of tenancy by the defendant in favour of Krishnasamy Nadar, are found to be legally valid and hence, the plaintiff cannot maintain the suit

for recovery of possession, as she has no title. Further, the defendants being the lawful tenant under the said Krishnasamy Nadar, cannot be asked to deliver the possession to the plaintiff who has not established her title.

23. It remains to be stated that according to the plaintiff, she purchased the suit properties from the third defendant under Ex.A1 dated 30.04.1976 and when she demanded legal notice under Exs.A2 to A5, it was only in the year 1990 i.e., after passage of 12 years and hence, the Lower Appellate Court has rightly come to the conclusion that on the strength of Ex.A1, the claim is clearly barred by limitation under Article 65 of the Limitation Act.

24. It remains to be stated that for the reasons stated in the preceding paragraphs, this Court has found that Ex.A1 sale deed does not confer any title in favour of the plaintiff. In view of the specific admission by her vendor in his written statement, coupled with finding that the Krishnasamy Nadar has obtained Court sale deed executed through the Court, as could be seen from Ex.A39 and hence, the plaintiff is not entitled for any relief of declaration of title and possession.

25. On the above factual background, none of the substantial question of law framed at the time of the admission, arises for consideration and hence, they are answered in negation. Accordingly, in this view of the matter, the appellant/plaintiff is not entitled for any relief as prayed for.

26. In the result,

- (i) This Second Appeal is dismissed.
- (ii) The judgments and decrees of the First Appellate Court and the Trial Court are confirmed.
- (iii) No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District Judge,
Cuddalore.
2. The Subordinate Judge,
Chidambaram.

Copy to:
The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mrs.R.Meenal, Advocate SR.83353

S.A.No.1616 of 2000

EV(CO)
CB(14/02/2020)