

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2014

CORAM:

THE HONOURABLE MR. JUSTICE **K.K. SASIDHARAN**

C.S.No.224 of 2008

K. Hawa Bee

..Plaintiff

-Vs.-

1. C.T. Boopalan
2. Kaaliammal (deceased)
3. Vasanthi
4. Radha
5. Kumar
6. Munusamy
(D3 to D6 impleaded as LRs of deceased
2nd defendant as per order in A.No.877 to
879 of 2010 vide order dated 16.6.2011)

..Defendants

Prayer:- Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of Civil Procedure Code praying for a judgment and decree (a) declaring that the plaintiff is the sole and absolute owner of the suit property viz., Door No.21, East Mada Street, Thiruvanmiyur, Chennai-600 041, morefully described in the schedule hereunder and direct the defendants to hand over possession of the same to the plaintiff (b) directing the first defendant to render a true and proper account of the rental collections, including advances received from the various tenants, from the suit property, from August 2006 till date of decree and also thereafter till date of handing over possession of the suit property to the

plaintiff (c) directing the defendant to pay cost of the suit.

For Plaintiff : Mr. M.B. Balaji

Defendants : Set exparte (vide order dated 15.3.2013)

J U D G M E N T

This is a suit for declaration and consequential injunction.

Facts in nutshell:-

2. The plaintiff purchased the suit property on the basis of a sale deed dated 13 May 1974. The sale deed was registered before the Sub Registrar, Saidapet, vide document No.1529 of 1974. After the purchase of property, patta was transferred to her name. The plaintiff was living elsewhere. Her husband died in September, 2005. The plaintiff being a Muslim woman, was not in a position to come to the suit property frequently. When she came to the suit property, it was found that the defendants have trespassed into the property. Her enquiry revealed that the second defendant, who claimed himself to be the owner of the property executed a settlement deed in favour of the first defendant, who is none other than her son. The defendants 1 and 2 have constructed a building in the property and got it assessed by the Corporation. The plaintiff preferred a police complaint against the defendants 1 and 2.

Though the defendants 1 and 2 agreed to vacate the property and handover physical possession, they have not fulfilled their promise, resulting in filing the suit for declaration and consequential injunction.

3. The defendants were duly served. However they fail to appear before this Court resulting in declaring them ex parte by order dated 15 March 2013.

The issues:

4. This Court framed the following issues for consideration:-

(i) Whether the plaintiff is entitled to a decree of declaration that she is the absolute owner of the suit property bearing Door No.21, East Mada Street, Thiruvanmiyur, Chennai-600 041?

(ii) Whether the plaintiff is entitled to a decree directing the defendants to handover possession of the property to her?

(iii) Whether the plaintiff is entitled to a decree directing the first defendant to render true and proper accounts of the rental collections, including the advances received from various tenants from the suit

property?

(iv) Relief and costs?

Evidence:

5. The plaintiff was examined as P.W.1. The plaintiff marked Exs.P.1 to P.6 to prove the suit claim.

6. I have heard the learned counsel for the plaintiff.

Analysis:

Issue Nos. 1 and 2:

7. The plaintiff has come up with a claim that she purchased the suit property by way of a registered document dated 13 May 1974. Ex.P.1 is the parental document. Ex.P.2 shows the purchase of suit property by the plaintiff. Ex.P.3 is the patta in respect of the suit property. Ex.P.4 is the notice sent by the defendants through their lawyer, to the Inspector of Police with a copy marked to the plaintiff. Ex.P.5 is the reply notice sent by the counsel for the plaintiff.

8. The claim made by the plaintiff that she is the absolute owner of

the suit property is clearly proved by Exs.P.1 and P.2. Similarly, her claim that she is in possession of the property is proved by Ex.P.3. The first defendant has sent a lawyer's notice to the plaintiff, which is marked as Ex.P.4. The said notice does not contain any statement as to how the second defendant got this property. In case the second defendant was the owner of the property before executing the settlement deed in favour of the first defendant, she would have stated about her title. The first defendant is placing reliance on the settlement deed executed by the second defendant. Therefore, it is for the defendants to prove that the second defendant purchased the property on the basis of a valid document from the rightful owner and subsequently, it was settled in favour of the first defendant. Since there are no averments in Ex.P.4 with regard to the right claimed by the defendants, it is very clear that the defendants have no right to the property. The documents marked on the side of the plaintiff very clearly proved that she is the rightful owner of the suit property. Her possession is also proved. Therefore, I am of the view that the plaintiff is entitled to a decree of declaration as prayed for. The plaintiff is also entitled to a decree directing the defendants to hand over possession of the suit property to her. Issue Nos.1 and 2 are therefore answered in favour of the plaintiff.

Issue No.3:

9. The plaintiff wanted the first defendant to render true and proper accounts of the rental collections, including the advances received from various tenants. The plaint does not contain the details of tenancy agreements entered into between the first defendant with the tenants and the rents received by him. In the absence of such details, the plaintiff is not entitled to a decree directing the first defendant to render true and proper accounts of the rental collections. The third issue is therefore answered against the plaintiff.

Result:

10. The suit is decreed with costs as indicated above.

Index:Yes/
Internet: Yes/

01.07.2014

Tr/

K.K.SASIDHARAN, J

Tr

Pre-delivery Judgment
in
C.S.No.224 of 2008

01.07.2014