

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1023 of 2005

1. J.Christy Raj (deceased)
2. J. Daniel Raj
3. J. Jacob Raj
4. Miss. Daisy Lilly Rani ....Appellants/Respondents 3 to 6

Vs.

R.Rajan  
rep. by General Power of Attorney  
P.C.Ramesh ...Respondent/Appellant

Cause title accepted vide order of this  
court dated 05.08.2005 made in C.M.P. No.11655/2005

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 19.08.2004 and made in A.S.No.161 of 2002 on the file of the learned Additional District and Sessions Judge of Fast Track Court-I, Chennai 1, reversing the well considered judgment and decree dated 09.10.2001 made in O.S.No.1936 of 1995 on the file of the learned I Assistant Judge, City Civil Court at Chennai.

For Appellants : Mr. N.Sankaravadivel

For Respondent : No representation / No appearance  
Set exparte, vide order dated 16.04.2019

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JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 19.08.2004 passed in A.S.No.161 of 2002 on the file of the Additional District and Sessions Court / Fast Track Court-I, Chennai 1, reversing the judgment and decree dated 09.10.2001 passed in O.S.No.1936 of 1995 on the file of the I Assistant Judge, City Civil Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for possession and permanent injunction.

4. The case of the plaintiff, in brief, is that he has acquired the suit property comprising of the house, ground and the premises in R.S.No.36/3 bearing Door No.2 to 10 by way of the sale deed dated 14.03.1983 from Nawabdar Sheriff Mohammed Khan and 4 others and the defendant is one of the tenants in the abovesaid premises bearing new No.4, old No.7 described in the plaint schedule on a monthly rent of Rs.500/- for residential purpose and after the purchase, the plaintiff advised all the tenants calling upon them to attorn the tenancy in favour of him by way of the letter dated 14.03.1983 and the defendant did not send any reply to the same and as the plaintiff decided to demolish the suit property as well as the other properties purchased by him and put up a new construction as the property is very old accordingly, issued notice calling upon the tenants, including the defendant, to vacate and deliver the vacant possession of the property under his occupation. Though the defendant initially agreed to vacate the property, however, later claimed right over the superstructure, which the plaintiff does not admit and hence according to the plaintiff, he has been necessitated to lay the suit against the defendant for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that the he is residing in the suit property in his own legal right vested in him for more than 100 years and put up the superstructure on the land belonging to the Prince of Arcot and he and his predecessors in interest had paid the land rent to the Prince of Arcot and on account of the long and continuous possession and enjoyment for more than 100 years, the defendant has perfected his legal right and title over the property and paying the property tax and the other taxes and charges in respect of the suit property and the case of the plaintiff that he had purchased the suit property by way of the sale deed dated 14.03.1983 is not true and unacceptable and the defendant has not been served with the notice as regards the abovesaid claim of purchase of the suit property by the plaintiff and the plaintiff had suppressed the institution of the earlier suit in O.S.No.102 of 1986 in which also the issues involved in the present suit were involved and therefore, the present suit is barred by resjudicata and the claim of the plaintiff that the rent for the suit property is Rs.500/- is unacceptable and the defendant was not served with any notice as regards the attornment of tenancy in favour of the plaintiff and the suit framed by the plaintiff, without the relief of declaration, is not maintainable and accordingly prayed for the dismissal of the

plaintiff's suit.

6. In the additional written statement the defendants have reiterated the plea taken on the part of the first defendant and further contended that they are the owners of the superstructure and by way of their long and continuous enjoyment, they have perfected title to the land by way of the adverse possession by paying the property tax and the other taxes to the authorities concerned and the suit filed by the plaintiff for injunction is not maintainable and the suit is bad for non joinder of necessary parties i.e. the previous owners of the suit land and the plaintiff has already filed eviction petition against the first defendant and got the eviction order and therefore, the suit levied by the plaintiff is liable to be dismissed.

7. In support of the plaintiff's case P.W.1 was examined and Exs.A1 to A7 were marked. On the side of the defendants D.W.1 was examined and Exs.B1 to B11 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit. On appeal, the first appellate was pleased to set aside the judgment and decree of the trial court and thereby granted the reliefs in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been preferred.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- "1. Whether the decision of the lower Appellate Court is legal and proper when Ex.B2 to Ex.B4 coupled with Ex.B7 to Ex.B11 clearly establish that Appellants are owners of the superstructure?
2. Whether the suit as framed is maintainable when Ex.B2 to Ex.B11 establish the Appellants' ownership of suit superstructure?
3. Whether the suit is maintainable when there is no notice of attornment of tenancy even assuming without conceding that there is a tenancy with regard to superstructure?
4. Whether respondent is entitled to any relief when he falsely and fraudulently claim ownership of superstructure?
5. Whether the decision of the lower Appellate Court is proper and sustainable on the facts and circumstances of the case?

10. The suit has been laid by the plaintiff mainly seeking for the recovery of possession of the suit property from the defendant. Pending suit, the defendant having died, the defendants 2 to 6 were brought on record. Now, according to the plaintiff, he has acquired the title to the suit property by way of the purchase of the same under the registered sale deed dated 14.03.1983, the copy of which has been marked as Ex.A3. Following the purchase of the suit property and the other properties by way of Ex.A3 sale deed, it is found that the plaintiff has also caused the publication of the public notice dated 09.10.1994 marked as Ex.A4. Claiming that the defendant is one of the tenants in respect of the suit property, accordingly, putting forth the case that the plaintiff requires the suit property for putting up the new construction and accordingly sought for the recovery of the possession of the suit property from the defendant.

11. The defendants resisted the plaintiff's suit mainly on the plea of adverse possession. Now, according to the defendant, he had taken the suit land on lease from the Prince of Arcot and paying the rent and thereafter at one stage of the matter, it is put forth that he had stopped paying the rent and thereafter, exercising absolute ownership over the suit property by paying the tax and charges to the authorities concerned and further according to the defendant, the superstructure had been put up in the suit land by his predecessors in interest and on account of their long and continuous possession and enjoyment of the suit property with the superstructure thereon, it is contended that the defendant has prescribed title to the suit property by way of the adverse possession.

12. It is thus found that admittedly the suit property belonged to the Prince of Arcot. As put forth by the plaintiff, it is found that the plaintiff had acquired the suit property from the legal heirs of the Prince of Arcot by way of the sale deed dated 14.03.1983. Thus, as determined by the first appellate court, by way of Ex.A3 sale deed, the plaintiff has acquired the title to the suit property as well as the other adjacent properties in survey No.36/3. According to the plaintiff, the defendant is a tenant in respect of the suit property. The abovesaid case of tenancy is not disputed by the defendant. All that he would plead is that, from one point of time, the rent had not been collected by the owner of the suit property and accordingly, since then, he and his predecessors in interest had been occupying the suit property by asserting the title to the same as the absolute owner thereof by paying the tax and the other charges in respect of the said property and accordingly, has prescribed title to the suit property by way of the adverse possession.

13. In the light of the abovesaid defence put forth by the defendant, as rightly determined by the first appellate court, considering the documents projected by the plaintiff marked as Exs.A1 to A7, in toto, it is found that the plaintiff has acquired the valid title to the suit property. The defendants have examined D.W.1, who during the course of evidence, has admitted that the suit land belongs to the Prince of Arcot and that he and his predecessors in interest had been occupying the suit property by paying the rent for several years. It is thus seen that the defendant and his predecessors in interest had been inducted into the suit property only as the tenant. It is claimed by the defendant that his predecessors in interest had put up the superstructure in the suit property and consequently, the claim had been put forth that the superstructure lying in the suit property absolutely belongs to the defendant. However, there is no material, as such, projected by the defendant as to when the superstructure had been put up, by whom the same had been put up and in what capacity the same had been put up and with reference to all the abovesaid factors, there is no clear plea and also evidence on the part of the defendant. However, the defendant would claim that he had been paying the tax, water charges, etc., in respect of the said superstructure put up in the suit property and the said documents had been marked. It is also the case of the defendant in the course of evidence that he had also mortgaged the superstructure lying in the suit property and the mortgage deeds are also marked as Exs.B2 to B4. However, as rightly determined by the first appellate court, once when it is noted that the defendant and his predecessors in interest had been inducted into the suit property only as a tenant, merely on the footing that at one point of time, the land owners had stopped collecting the rent, that by itself, would not confer any title to the suit property on the part of the defendant. It is put forth by the defendant that they had paid the rent lastly on 04.09.1953 and thereafter stopped paying the rent. In this connection, the rent receipt dated 04.09.1953 has been marked as Ex.B1. Ex.B1 is found to be issued by the Prince of Arcot in favour of the defendant. Therefore, the defendant's tenancy in respect of the suit property having been admitted, if at all, the defendant seeks to assert title to the same, the only way is by way of the adverse possession.

14. There is no clear plea on the part of the defendant as to when from he had been exercising the hostile ownership in respect of the suit property against the true owner. With reference to the said fact, there is neither clear plea nor reliable evidence on the part of the defendant. To seek the relief of the adverse title to the suit property, the defendant should come forward with the case as to when from his possession of the suit property had become adverse to the interest of the true owner and how he had asserted his adverse interest in

respect of the suit property to the knowledge of the true owner and with reference to the abovesaid facts, acceptable and convincing materials should be put forth by the defendant. Merely on the execution of the mortgage deeds, the payment of taxes, etc., that by itself, would not confer the adverse title. There is no material on the part of the defendant to hold that the documents put forth by him had been executed / issued to the knowledge of the true owner and despite the same, he had been the silent spectator to all the abovesaid developments. When according to the defendant, the Prince of Arcot is the owner of the suit property and when he had been inducted into the suit property as the tenant, he should have endeavoured to remit the rent to the true owner one way or the other and merely because the true owner had not demanded the rent at one point of time, that by itself, would not confer the title to the defendant in respect of the suit property. When by way of the adverse possession, the defendant is attempting to seek the claim of title to the property of the third party, the defendant cannot expect equities in his favour and he has to establish his case by acceptable and convincing evidence.

15. The suit property is shown to be comprised in R.S.No.36/3, whereas the deed of mortgages projected by the defendant as Exs. B2 to B4 are found to be pertaining to the property comprised in R.S.No.36/2. The defendant has not placed acceptable materials to correlate the abovesaid property with the suit property as such. Be that as it may, the tax and the other charges paid by the defendant and exhibited in the matter pertains only to the superstructure. As abovenoted, the defendant has failed to establish as to who had put up the superstructure and in what capacity the superstructure had been put up, etc. If really the super structure had been put up by the defendant or his predecessors in interest and when it is found that the plaintiff had come forward with the suit seeking the ejectment of the defendant from the suit property, within the time allowed by law, the defendant should have exercised his right to purchase the suit property as provided under Section 9 of the Madras City Tenants Protection Act. The defendant is also aware of the said right as could be seen from the recitals contained in the mortgage deeds projected by him. Despite the same, it is found that the defendant has failed to seek the relief within the time permitted by law and on the other hand found to have projected the claim of adverse title to the suit property against the true owner. When with reference to the said claim, as determined by the first appellate court, there is no convincing and reliable material and when the defendant has failed to establish from which point of time his possession had become adverse to the true owner and when the material projected by the defendant do not sustain his claim of hostile title to the knowledge of the true owner and in such view of the matter,

the mere possession, howsoever long, that by itself, would not confer hostile title in favour of the defendant and the mere fact that the defendant has stopped paying the rent at one point of time, also would not confer title to the suit property in favour of the defendant and when the essential ingredients for constituting the plea of adverse possession having not been pleaded and also established by the defendant and the defendant, as abovenoted, having failed to claim the benefit under the Madras City Tenants Protection Act within the admissible time, in such view of the matter, when the first appellate court is found to have discountenanced the plea of adverse possession put forth by the defendant by correctly appreciating the materials placed on record, which do not warrant any interference as such, and when it is found that the plaintiff had acquired the title to the suit property from the lawful owners, in all, it is seen that the judgment and decree of the first appellate court accepting the plaintiff's case and rejecting the defence version, do not warrant interference and in such view of the matter, in my considered opinion, no substantial question of law, as such, is involved in this second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly answered against the defendant and in favour of the plaintiff.

16. Counsel for the defendant in support of his contentions relied upon the decisions reported in (2013) 8 JT 200/(2013) 3 BBCJ(SC) 409 (S.Kesari Hanuman Goud vs. Anjum Jehan & ors) and 1994 AIR (SC) 853 (S.P.Changalvaraya Naidu (dead) byLrs., vs. Jagannath (dead) by Lrs.). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

17. In conclusion, the second appeal fails and is accordingly dismissed. No costs. Connected, miscellaneous petition, if any, is dismissed.

Sd/-  
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

bga

Copy to

1. Additional District and Sessions Court / Fast Track Court-I,  
Chennai 1

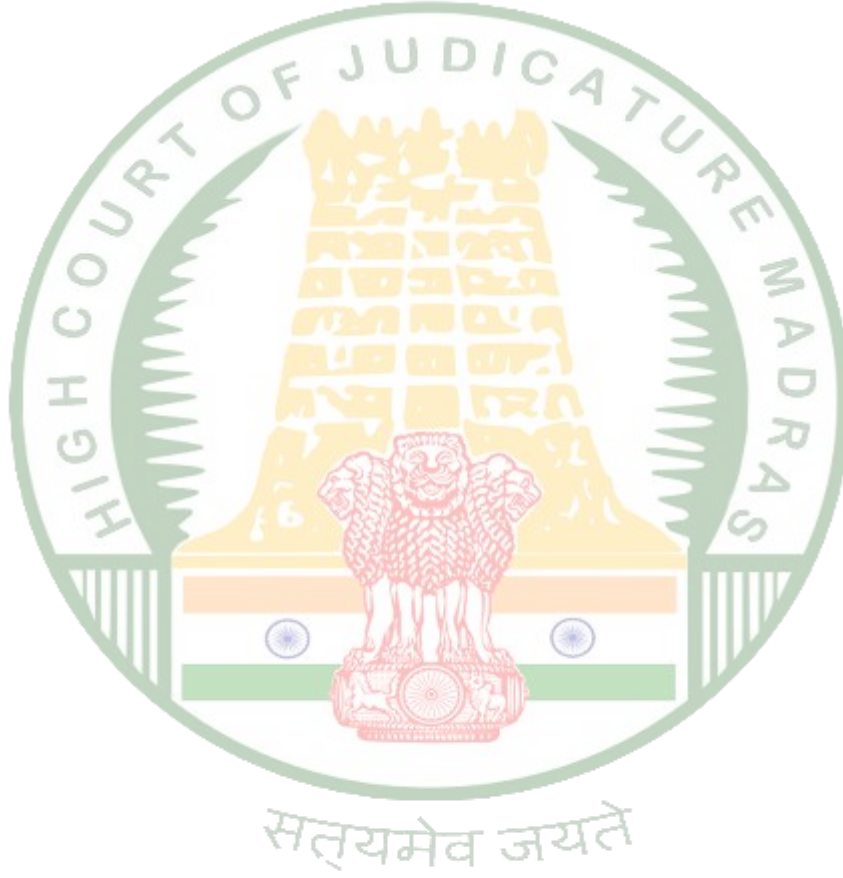
2. I Assistant Judge, City Civil Court, Chennai.

3. The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.N.Sankaravadivel, Advocate SR.No.44528

S.A.No.1023 of 2005

BS (CO)  
GMY (08/11/2019)



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