

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.1207 of 2005

1.Lambert Nagar Kudiyiruppor Nala Sangam,
represented by its President,
Office at No.39, 3rd Cross Street,
Lambert Nagar, Chennai-78.

2. Udhyam Colony Kudiyiruppor Nala Sangam,
represented by its President,
Office at No.39, 3rd Cross Street,
Lambert Nagar, Chennai-78. ... Appellants/Defendants 2 & 3

versus

1.Joshuva ...1st Respondent/Plaintiff

2. Corporation of Chennai,
represented by its Commissioner,
Ripon Buildings, Chennai-3. ...2nd Respondent/1st Defendant

Prayer: Second Appeal filed under Section 100 of code of Civil Procedure against the judgment and decree dated 18.03.2005 in A.S.No.32 of 2004 passed by the Additional District and Sessions Judge, Fast Track Court IV, Chennai reversing the judgment and decree dated 07.02.2002 made in O.S.No.3948 of 1994 passed by the XIV Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.P.Baskaran
For 1st Respondent : No Appearance
For 2nd Respondent : Ms.Karthika Ashok

WEB COPY JUDGMENT

The defendants 2 and 3 are certain residential Associations and they have come forward with this appeal. The suit was laid by one Joshuva for bare injunction and the suit came to be dismissed. Challenging the same, the plaintiff preferred A.S.No.32 of 2004. The First Appellate Court decreed the suit. Parties would be referred to by their rank before the trial Court.

2. The suit property is stated to be two plots of 12 cents and 39 cents with a combined extent of 51 cents and is spread in Old S.Nos.190/1 and 190/2. It was originally part of Sy.Nos.191/1A1A. The admitted facts are that the suit properties originally belonged to one Wesleyan Methodist Mission. The said Mission leased the suit property to one Gnana Sundaram under Ext.B1 dated 14.11.1929. The lease was for five years, and was to take effect from 01.01.1930 and to expire on 31.12.1934. Subsequently, the said Mission had sold this property and others under Ext.B2 dated 27.01.1961 to the Church of South India.

3.1 The dispute commences from now: According to the plaintiff, under Ext.A1 dated 26.01.1967, Gnanasundaram had either sublet or assigned his leasehold right to the plaintiff. He would then allege that the defendant namely, Corporation of Madras, without any manner of right attempted to interfere with his possession.

3.2 According to the defendants, on purchase of the suit property and others by Church of South India, it had developed the property into a layout, and had obtained necessary permissions from the Director of Town and Country Planning. The suit property was earmarked for common public utility, and the same had been gifted by the promoters of the lay-out to the Virugambakkam Town Panchayat vide gift deed dated 22.04.1977. This document was marked as Ext.B6. Subsequently, the entire Virugambakkam Town Panchayat became part of Madras Corporation. This was in 1978, and Virugambakkam Town Panchayat had handed over the possession of the suit property to the then Madras Corporation. Thereafter, the Corporation had put up some construction in the suit property for carrying out the nutritious noon meal programme.

3.3 So far as the plaintiff's claim of assignment of lease under Gnanasundaram is concerned, Gnanasundaram had handed over the possession on the expiry of the lease terms and hence, the alleged Ext.A1 document which Gnanasundaram was purported to have executed in favour of the plaintiff was primarily incompetent. It was further alleged in the written statement that after instituting the suit and after obtaining the order of interim injunction, the plaintiff had damaged the construction put up by the Corporation for conducting the Noon Meal Scheme, and that the Assistant Engineer of Corporation had preferred a complaint to the Police.

4.1 Before the trial Court, both sides adduced oral and documentary evidence. For the plaintiff, except Ext.A1, there is nothing to substantiate that Gnanasundaram was in possession on the date when Ext.A1 was executed in 1967. Accordingly, the suit

came to be dismissed.

4.2 When the matter reached before the First Appellate Court, the First Appellate Court allowed the appeal. A close reading on the line of reasoning indicates that it cast the burden of proof on the 1st defendant-Corporation, and has held that the same has not been discharged.

4.3 Challenging the decree, the residential Associations have preferred this appeal. Technically, the Corporation whose right was exposed to peril, only stand before this Court to support the appellants, and the plaintiff who had obtained the decree before the First Appellate Court has chosen to stay away from the ongoing Second Appeal.

5. This appeal was admitted on the following substantial questions of law:

a) Is not the lower court erred in granting relief to the plaintiff for suit property which has been dedicated to the Panchayat (State) to be used by public more so when a gift deed was executed by the owners to the Panchayat and later taken over by Corporation?

b) Is the lower appellate court correct in shifting the onus of proving possession on the defendant in a suit for injunction?

c) Is the lower appellate court correct in holding that the plaintiff is in possession of the property on the ground that no proof was given by the defendants to show that the plaintiff's predecessor surrendered possession to the original owners more so when a sale deed of the year 1961 specifically stipulate handing over possession to the purchaser and consequently gifting the land for public purpose in the year 1977?

d) Does not the lease period automatically lapses on the expiry of the lease by efflux of time in the absence of proof that it was extended or in the alternative the lessee to prove that he was in continuous possession beyond the period of lessee?

6. The learned counsel for the appellants would submit that in Ext.B1, the lease granted to Gnanasundaram was for a term lease for 5 years and it was to take effect from 01.01.1930, and was to expire on 31.12.1934. And, alleged assignment of

Gnanasundaram in favour of the plaintiff was only in 1967. Therefore, some 33 years separated the expiry of the lease term and the date of the alleged assignment of lease in favour of the plaintiff. When the defendants had disputed Ext.A1, and contended that it was an incompetent document, the burden would be squarely on the plaintiff to substantiate that Ext.A1 was a genuine document, and that Gnanasundaram had title over the alleged leasedhold right to convey it to the plaintiff. On the other hand, Ext.B2 sale deed in favour of Church of South India, and subsequent Ext.B6 gift deed in favour of the Virugambakkam Panchayat would indicate that the suit property has been continuously dealt with by the local body from 1961 upwards both by Wesleyan Methodist Mission followed by Church of South India and then by the Corporation. And in this scenario, the approach of the First Appellate Court in fixing the entire burden on the Corporation, and ignoring the fact that the initial burden of proof in any suit is always on the plaintiff.

7. Supporting the appellants, the learned counsel for the Corporation would argue that the complaint given by the Assistant Engineer of the Corporation was marked as Exts.B8 and B9, which would show that even in 1994, the Corporation had resisted an attempt to trespass into the suit property by the plaintiff based on the incompetent Ext.A1 document. To this effect, DW1, Assistant Engineer of the Corporation has deposed before the Court.

8. On a careful appreciation of the submissions made in unison against the plaintiff in absentia, and in the light of the pleading and evidences on record it is evident that the plaintiff had not discharged his initial burden. When confronted with a dispute that Ext.A1 was not competent, the burden was on the plaintiff to establish that Gnanasundaram, the original lessee under Ext.B1 was in possession of the property till he executed Ext.A1 in 1967. Under Ext.B2 sale deed, the Wesleyan Methodist Mission makes a statement that it handed over the vacant possession of the property covered therein to the Church of South India. This is also probalised by the fact that the gift deed has been later executed in favour of the Corporation in 1977 under Ext.B6, where is the evidence that the plaintiff has been in possession between Exts.A1 and Ext.B6. This would imply that the plaintiff not proved either his possession after the alleged execution of Ext.A1, nor has he proved that Gnanasundaram had been in possession as a lessee at any time between 1934 and 1967. Ext.A1 is a solitary piece of evidence but it is not adequate to tilt the balance in his favour, given the weight of evidence produced by the defendants. Necessarily, it has to be held that the First Appellate Court had got its fundamentals entirely wrong.

9. In conclusion, this appeal is allowed and the judgment and decree dated 18.03.2005 passed by the Additional District and Sessions Judge, Fast Track Court IV, Chennai in A.S.No.32 of 2004 is set aside. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssn

To

1. The Additional District and Sessions Judge,
Fast Track Court IV,
Chennai.
2. The XIV Assistant Judge,
City Civil Court,
Chennai.

Copy to

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

+2 ccs to Mr.S.P.Srinivas Advocate sr64778
+1 cc to Mrs.Karthikaa Ashok Advocate sr64276

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