



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SESHASAYEE

S.A.NO.1329 OF 2005

1.Sornammal (died)

2.V.M.Shanmugam

... Appellants/Respondent/
Defendant

(2nd Appellant brought on record as the only
surviving class-II heir of the deceased sole appellant
Vide order of Court dt.10.08.17 made in
CMP.2581/17 in SA.1329/2005)

Vs.

1.Chandran (died)

.. 1st Respondent/Appellant/
Plaintiff

2.Mrs.Kamala

3.Palaniammal

4.Sekar

5.Lakshmi

...Respondents

(RR2 to 5 brought on record as Lrs of the deceased
R1 Vide order of Court dated 19.3.13 made in
CMP.No.745/09 in SA.No.1329/05)

Prayer:-

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 31.3.2005 and made in A.S.No.11 of 2004 on the file of Subordinate Court, Coimbatore, reversing the Judgment and Decree dated 10.02.2004 and made in O.S.No.857 of 2001 on the file of District Munsif Court, Coimbatore.

For Appellants : Mr.T.R.Rajaraman

For Respondents : Mr.G.Karthikeyan R2 & R4
No appearance for R3 & R5

R1 - Died



JUDGMENT

The defendant who was successful before the trial Court but, suffered a decree of ejectment before the first Appellate Court has preferred this appeal. Parties would be referred to by their rank before the trial Court.

2.The suit property is described as one bearing door no.1/105 of Thudiyalur Village, Coimbatore District. The suit property along with the property bearing door no.1/106 of Vinayagar Koil Street, Thudiyalur Village originally belong to certain Nanjammal. On 23.11.1994, under Ext.A.3, sale deed, Nanjammal sold these two properties to the plaintiff. According to the plaintiff, the defendant Sornammal was a tenant of the suit properties, whereas, pursuant to the sale deed, she had come into occupation of the building bearing door no.1/105. The suit property is basically a hut like structure. The plaintiff therefore issued a suit notice terminating the lease Vide Ext.A.1, notice dated 03.03.2001, to which there was no reply.

3.According to the defendant, the suit property is a natham property and the building was put up by the defendant. The defendant was issued a patta in re-survey no.606/4. This survey number correlates to old survey no.390/2.

4.Before the trial Court, both sides adduced oral and documentary evidence. The defendant, in particular has produced Ext.B.1, suit notice dated 25.08.1997, originally issued by plaintiff's vendor Nanjammal and Ext.B.16, patta. Of the many documents that the plaintiff had filed, the important document in the present context is the property tax receipts, marked as Ext.A.5 series. It may have to be stated here that while in Ext.B.1, notice, Nanjammal had alleged that the defendant was a permissive occupier of the building bearing door no.1/105, the plaintiff had alleged that she was a tenant. Taking note of this discrepancy and inconsistent stand between the plaintiff and his vendor, the trial Court concluded that there was no uncertainty as to the jural relationship between the parties and came to dismiss the suit. It also in the process relied on Ext.B.16, patta issued sometime in 1996 jointly in the name of the plaintiff and the defendant. Inasmuch as there is a joint patta in the name of both the parties, the trial Court had concluded that the plaintiff ought to have gone for a suit for declaration of his title.

5.On appeal this was reversed by the first Appellate Court, wherein, the first Appellate Court has held that the trial Court was well within its power to grant a declaration of plaintiff's title and could have directed the plaintiff to pay necessary Court fees and further, held that the documentary evidence



preponderates the title of the plaintiff and granted a decree for ejectment.

6. This appeal is admitted for considering the following substantial questions of law;

(i) In the absence of prayer for declaration, especially when the defendant has disputed the title, is the learned Subordinate Judge right in granting a decree for possession?

(ii) Is it open to the Court to substitute a relief in the absence of any pleading on the side of the plaintiff?

(iii) Is the learned Subordinate Judge right in granting a decree for possession after having found that there is no landlord-tenant relationship?

(iv) When it is settled in law, in the absence of a pleading, no evidence can be looked into, is the learned Subordinate Judge right in granting a decree for possession in the absence of pleading regarding declaration?

7. The learned counsel for the appellant/defendant argued that when the defendant had raised a dispute of title and has also produced Ext.B.16, patta to substantiate it, the Court ought to have dismissed the suit rather than presuming a title in the plaintiff. Secondly, as rightly found by the trial Court, there is a discrepancy in fixing the jural relationship between the plaintiff and the defendant. It is not made known as to when the permissive occupier of door no.1/105 has become a tenant.

8. The learned counsel for the respondents/plaintiff argued that both the defendant and her husband have passed away and some of her collaterals occupied the property and they have evicted the property sometime in 2014 and that the respondents have taken possession of the suit property. He has also filed a memo to that effect.

9. The learned counsel for the appellant/defendant however, would contend that even though those collateral heirs of the defendant live separately in a separate place, if at all the plaintiff had taken possession of the suit property, it is illegal possession and requested the Court to take these facts into consideration that had taken place during the pendency of this case.



10. Having recorded the allegation and the counter allegation as to taking possession of the suit property as indicated in the earlier paragraph, this Court proceeded to hear the counsel for the respondents/plaintiff on merits. The learned counsel submitted that what the trial Court ignored was the time difference between Ext.B.1 and Ext.A.1, notices and Ext.A.3, sale deed. He also added that Ex.B.1 is an incompetent document since the plaintiff had already purchased the property in 1994 and Ext.B.16, patta was issued in 1996, after the suit property was purchased by the plaintiff.

11.1 This Court considered the rival submissions carefully. The significant documentary which this Court considers relevant under the present circumstances is Ext.A.5, series. It contains several demand notices or receipt for payment of property tax and it dates from 1958 to 1976 and it covers both the buildings, bearing door nos.105 and 106. It is therefore evident that they have been issued in the name of Nanjammal. This would imply, in the absence of any contra evidence, Nanjammal is the owner of the property, bearing door no.105 and 106.

11.2 Secondly, when a state of affairs is shown to exist then, it is presumed to exist till the contra is proved. Therefore, the said state of affairs, namely the title which Nanjammal claims over both the buildings till Ext.A.3, sale deed was executed is believed to exist. After all, the defendant has not introduced any evidence to pose the presumption in the interregnum period. When Nanjammal executed a sale deed on 23.11.1994, under Ext.A.3, it has the effect of confirming her title over building bearing door nos.105 and 106. Though the defendant claims that the suit property is a Natham property and that she had put up the building bearing door no.105, inasmuch as the Court has already found that the defendant could not have put up the building in door no.105 in the face of overwhelming evidence in the form of Ext.A.5, series, her challenge to title appears vacuous attempt.

11.3 When the title is vested in the plaintiff, it is not known how Nanjammal came to issue the suit notice dated 25.08.1997. Obviously, Nanjammal having parted with her title over the suit property in 1994 cannot assert any title over building bearing door no.105 when she issued Ext.B.1, notice. It might be that Nanjammal might have permitted the defendant to occupy the building but, the same character need not continue when the title to the property is vested on the plaintiff, and here the case of the defendant is not based on tenancy but, one on title. This Court finds precious little material to pose the case on title.

12. The only document that requires to be explained is



Ext.B.16, patta. It gives the re-survey no as 606/4 which is correlated to old Sy.No.390/2 and refers to a certain building as 'ottu veedu' (tiled house). It does not refer to door number of the building as 105 which is significant in the context. Secondly, nor does it describe about the total extent in old Sy.No.390/2. Unless, these aspects are clarified, which in the instant case is to be done only by the plaintiff, this Court has to go by preponderating probability which the evidence produced by the plaintiff creates. Having stated thus, this Court is not in agreement with the reasoning of the first Appellate Court as it entertains certain presumptions which cannot be accommodated in law.

13. In conclusion, this Court finds all the substantial questions of law are against the appellant. The appeal is accordingly dismissed and the Judgment and Decree passed in A.S.No.11 of 2004 on the file of Subordinate Court, Coimbatore, reversing the Judgment and Decree, dated 10.02.2004, passed in O.S.No.857 of 2001, on the file of District Munsif Court, Coimbatore is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

tsg

To:

1. The Subordinate Court,
Coimbatore.
2. The District Munsif Court,
Coimbatore.
3. The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.T.R.Rajaraman, Advocate, S.R.No.67947

+1cc to Mr.G.Karthikeyan, Advocate, S.R.No.67022

S.A.No.1329 of 2005

PM(CO)
CS/15/07/2020