

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:06.03.2019

PRONOUNCED ON:19.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1351 of 2005
and
C.M.P.No.17892 of 2005

Kanagaraaj ...Appellant / Defendant

Vs.

N.Murugesami ...Respondent / Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.26 of 2004 dated 08.10.2004 on the file of the Subordinate Court, Thirupur reversing the judgment and decree passed in O.S.No.75 of 1999 dated 30.01.2004 on the file of the District Munsif, Thirupur.

For Appellant : M/s.R.Venkatachalapathy
for Mr.S.Kadarkari

For Respondent : Mr.T.M.Hariharan

J U D G M E N T

Challenge in the second appeal is made to the judgment and decree dated 08.10.2004 passed in A.S.No.26 of 2004 on the file of the Subordinate Court, Thirupur reversing the judgment and decree dated 30.01.2004 passed in O.S.No.75 of 1999 on the file of the District Munsif Court, Thirupur.

2. The second appeal has been admitted on the following substantial questions of law.

1. When there is a denial of title creating a doubt as to the title, whether the respondent is entitled to claim the consequential relief without praying for declaration of his title?

2. When the appellant denies the title of the respondent the Lower Appellate Court has to give a finding regarding the title of the suit property and when there was not finding regarding the same in favour of the respondent the Lower Appellate Court ought to have dismissed the suit?

3. Whether the Lower Appellate Court is right in decreeing the suit, when there was no Landlord and Tenant relationship between the parties?

4. In the absence of written Agreement or documentary evidence to prove the Landlord-Tenant relationship, whether the Sale Deed in favour of respondent will take precedence over the possessor title of the appellant?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

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

5. Suffice to state that the suit has been laid by the plaintiff against the defendant for recovery of possession of the suit property as well as claiming past rental arrears and future damages.

6. It is not in dispute that Marathal is the original owner of the suit property. The plaintiff claims title to the suit property based on the purchase of the same from Marathal and the sale deed dated 23.01.1996 executed by Marathal in favour of the plaintiff has been marked as Ex.A4. Putting forth the case that the defendant is a tenant in respect of the suit property and not paid the rent and thereby terminating his tenancy, the plaintiff issued a legal notice marked as Ex.A5 and to the same, the defendant sent a reply containing false allegations putting forth the case that he has prescribed title to the suit property by way of adverse possession and hence according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

7. The defendant had resisted the plaintiff's case contending that he being the relative of Marathal, was instrumental in helping her in securing the loan for putting up the construction in the suit property and thereby, it is only the defendant, who has been in the occupation and enjoyment of

the suit property by asserting title on himself and put forth that he has prescribed title to the suit property even as against Marathal by way of adverse possession and therefore the plaintiff is not entitled to seek the reliefs prayed for in the suit and further according to the defendant, there is no landlord-tenant relationship between the plaintiff and the defendant as claimed in the plaint and therefore, there is no question of the payment of rental arrears or future damages as claimed by the plaintiff and hence sought for the dismissal of the plaintiff's suit.

8. Based on the materials placed on record, both oral and documentary, the trial court was pleased to dismiss the plaintiff's suit. On appeal, the first appellate court 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 defendant has come forward with the present second appeal.

9. As abovenoted, it is not in dispute that Marathal is the original owner of the suit property and evidencing her title, possession and enjoyment of the suit property and also evidencing the steps taken by Marathal to secure the loan from the Co-operative Bank and putting up the construction and thereafter discharging the said loan and thereby enjoying the suit property as the absolute owner of the same by paying tax, electric service charges etc., voluminous reliable and acceptable evidence has been projected by the plaintiff and in such view of the matter, it is evident that Marathal has been enjoying the suit property as the absolute owner thereof. Furthermore, in this matter, Marathal has tendered evidence as P.W2 and she has also averred clearly that she had alienated the suit property in favour of the plaintiff and furthermore, she has also stated that the defendant being a relative had been inducted into the suit property as a tenant on the basis of oral arrangement and the defendant has not paid the rent and it is thus seen that Marathal has admitted the transfer of the suit property in favour of the plaintiff and also averred in what capacity the defendant has been inducted into the possession of the suit property i.e., on rental basis.

10. Though the defendant would plead that the plaintiff had obtained the sale deed from Marathal taking advantage of her loss of memory etc., however from the evidence of the defendant examined as D.W.1, it is found that he has clearly averred that Marathal had been enjoying the suit property till her demise as the absolute owner thereof and when Marathal herself has clearly admitted she has alienated the suit property in favour of the plaintiff with full knowledge and consent, out of her own volition by receiving the due consideration by way of Ex.A4 sale

deed, the case projected by the defendant that the plaintiff had deceived Marathal and obtained the sale deed from her as such cannot be readily accepted and rightly rejected by the Courts below.

11. The only plea putforth by the defendant to resist the plaintiff's case is that he had prescribed title to the suit property by way of adverse possession. As above noted, according to Marathal, P.W.2, the defendant was inducted into the suit property only as a tenant on oral rental arrangement. The defendant during the course of his evidence has clearly admitted that it is only Marathal, who had been enjoying the suit property as the absolute owner thereof. In such view of the matter, merely because, the defendant had been allowed to occupy the suit property and staying with Marathal, on account of the above relationship between the parties, the defendant cannot be allowed to putforth the case that he has asserted title on himself in respect of the suit property and enjoying the same openly, continuously and uninterruptedly as the full owner thereof by denying the title of Marathal, as such, with animus possidendi and thereby prescribed title to the suit property by way of adverse possession. When with reference to the abovesaid case of the defendant, there is no acceptable and reliable material, on the other hand, all the documents projected by the defendant are found to be only in the name of Marathal and furthermore, when the defendant himself has admitted that it is only Marathal, who had been enjoying the suit property as the absolute owner thereof and when the defendant has failed to establish that he was instrumental in the obtainment of loan by Marathal from the Bank for the purpose of putting up the construction in the suit property and on the other hand, when the documents projected in the matter go to disclose that it is only Marathal, who had approached the Bank for securing the loan and put up the house construction and thereafter even discharged the loan, merely on the factor that the defendant was also assisting her in the abovesaid endeavors would not entitle the defendant to claim that he is the owner of the construction put up in the suit property and the same had been put up by him by securing the loan, particularly, when the documents projected in the matter go to show that the defendant had not incurred any loan for the purpose of putting any construction in the suit property and on the other hand, the same had been secured only by Marathal. Clearly, it is only Marathal, who had discharged the same. In all, it is found that the claim of adverse title put forth by the defendant has been rightly rejected by the Courts below and I do not find any reason to interfere with the same.

12. As above pointed out, when Marathal has clearly averred about the landlord-tenant relationship between her and the defendant by way of oral rental arrangement and after the purchase of the suit property by the plaintiff from Marathal, the defendant is found to be occupying the suit property on the same lines, accordingly, the defendant having failed to pay the rent, it is seen that the plaintiff had been necessitated to terminate his tenancy and seek the recovery of possession of the suit property from the defendant by instituting the present suit. Therefore, the first appellate court is found to be fully justified in holding that the landlord-tenant relationship exists between the plaintiff and the defendant, and the plaintiff is entitled to secure the rental arrears and future damages from the defendant as claimed in the plaint.

13. The only point put forth by the defendant's counsel is that the plaintiff has not sought the relief of declaration of title to the suit property and hence without establishing the title of the suit property as per law, the plaintiff is not entitled to seek the recovery of possession of the suit property. The trial court on the footing that the plaintiff has not sought the relief of the declaration of title to the suit property, despite the denial of the same on the part of the defendant, accordingly, on that reasoning, chose to dismiss the plaintiff's suit. However, as rightly determined by the first appellate court, when the title of Marathal to the suit property has not been disputed, and when Marathal had clearly averred about the conveyance of the suit property to the plaintiff by way of Ex.A4 sale transaction and when the defendant has admitted the title of Marathal to the suit property and the only defence taken by the defendant for resisting the plaintiff's case is that he had prescribed title to the suit property by way of adverse possession and thereby the defendant is found to have impliedly accepted the title of Marathal as well as the plaintiff in respect of the suit property and when the defendant has failed to establish his plea of adverse title to the suit property by placing acceptable and reliable materials and when the abovesaid case has been rightly rejected by the Courts below, accordingly the defendant setting up adverse title against the true owner namely Marathal and the plaintiff as such and in such view of the matter, as rightly held by the first appellate court, there is no need on the part of the plaintiff to seek any declaration of title to the suit property as such for seeking the relief of recovery of possession of the suit property from the defendant. It is only the defendant, who has set up the adverse title to the suit property against the plaintiff. Impliedly by way of the abovesaid defence, when he has admitted the title of the plaintiff and he having not

established his claim of adverse title and the said plea has been rightly turned out by the Courts below, in my considered opinion, there is no need on the part of the plaintiff to seek the relief of declaration of title to the suit property as correctly determined by the first appellate court. In this connection, the plaintiff's counsel placed reliance upon the decision reported in 2007 (3) SCC 114 [M.Durai Vs. Muthu and others] The principles of law outlined the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

14. In the light of the abovesaid discussions, there is no valid reason putforth on the part of the defendant to warrant any interference in the judgment and decree of the first appellate court in upholding the plaintiff's case. The first appellate court has rightly assessed the materials placed on record, both oral and documentary and applying the principles of law pertaining to the same in the proper manner found that it is only the plaintiff who has title to the suit property and thereby entitled to recover the possession of the suit property from the defendant and accordingly justified in upholding the plaintiff's suit in entirety. In the light of the above discussions, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the defendant and in favour of the plaintiff.

15. In conclusion, the second appeal fails and is accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge,
Subordinate Court,
Thirupur.

2. The District Munsif,
District Munsif Court,
Thirupur.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1 cc to M/s.S.Kadarkarai, Advocate, S.R.No.26066

+1 cc to M/s.T.M.Hariharan, Advocate, S.R.No.25469

Judgment in
S.A.No.1351 of 2005
and
C.M.P.No.17892 of 2005

CNR (CO)
SSM(30/05/2019)



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