

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.08.2019
DELIVERED ON: 13.08.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.No.1014 of 2011
and
M.P.No.1 of 2011

Mangaiarkarasi Appellant/Defendant -2

Vs.

1. Sumathi
2. Thulasi

... Respondents/Plaintiff, Defendant -1

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 08.02.2011 passed in A.S.No.22 of 2008 by the Principal Subordinate Judge, Puducherry, upholding the decree and judgment dated 18.03.2008 passed in O.S.No.1746 of 2006 by the II Additional District Munsif, Puducherry.

For Appellant : Mr.T.P.Manoharan, Senior Counsel
for Mr.K.P.Jotheeswaran

For Respondents : Ms. Shase
for Mr.M.Guruprasad (for R1)

No appearance for R2

JUDGMENT

The appellant is the 2nd defendant in O.S.No.1746 of 2006 on the file of the II Additional District Munsif, Puducherry and appellant in A.S.No.22 of 2008 on the file of the Principal Subordinate Judge, Puducherry.

2. The first respondent/plaintiff filed the suit in O.S.No.1746 of 2006 directing the present appellant/2nd defendant to vacate and deliver vacant possession of the suit B shcedule property to her. The suit propety is described as a house site in R.S.No.2/84 and 2/85 of Thirubuvanai Village,

Mannadipet Commune Panchayat, Pondichery District.

3. For the sake of convenience, the parties are referred to as per their ranking in the original suit and at appropriate places, their ranks in the present appeal would also be indicated, if necessary.

4. The brief case of the first respondent/plaintiff is as follows. The plaintiff is the absolute owner of the suit property and the same was allotted by the government in favour of her mother during the year 1976. The plaintiff's mother availed a loan from the Block Development Office, Villianur and constructed a thatched house and she was in possession and enjoyment of the suit property. Later on, out of love and affection, she executed a settlement deed (Ex.A2) in favour of the plaintiff on 05.02.2012 and also put her in possession of the property. As per the registered settlement deed Ex.A2, the plaintiff has been in possession and enjoyment of the suit property. The 2nd defendant was permitted to occupy the house in the suit property with her family during October 1998 by the plaintiff. The electricity service connection and water connections stand in the name of the mother of the plaintiff. The 2nd defendant is the sister-in-law of the plaintiff. Since there was some difference of opinion between the plaintiff and her husband (first defendant), the first defendant had driven her out of the matrimonial home on 30.09.2003. Thereafter, the plaintiff started living with her mother at Navarkulam. Though the plaintiff requested the 2nd defendant to vacate the suit property, she did not respond and hence, a notice dated 26.08.2004 (Ex.A4) was issued by the plaintiff to both the defendants and the same was received by them as evidenced by the postal acknowledgment cards Ex.A5 and Ex.A6. However, the defendants, did not vacate the suit premises. Therefore, the plaintiff filed the suit for recovery of possession of the suit property from the defendants.

5. The suit was resisted by the 2nd defendant on the following grounds.

(i) The assignment order issued in favour of the plaintiff was cancelled by the government of Puducherry and during the year 1990, a fresh assignment order No.2/1985 dated 15.10.2004 (Ex.B3) was issued in favour of the 2nd defendant.

(ii) In order to wreck vengeance on the defendants, the plaintiff had filed a vexatious suit.

(iii) The 2nd defendant has been residing in the suit property since 1990. Therefore, the suit filed by the plaintiff is liable to be dismissed.

6. On the basis of the above pleadings the trial court framed the following issues.

(i) Whether the plaintiff is the absolute owner of the

suit property?

(ii) Whether the 2nd defendant is the owner of the property?

(iii) Is it true that the assignment order was issued by the government in favour of the 2nd defendant?

(iv) Whether the plaintiff is entitled for the relief as prayed for by her?

(v) To what other relief the plaintiff is entitled?

7. After full contest, the learned Principal District Munsif, Puducherry decreed the suit in favour of the plaintiff and directed the 2nd defendant to vacate and hand over vacant possession of the suit B schedule property to the plaintiff vide his decree and judgment dated 18.03.2008. Aggrieved over the same, the 2nd defendant filed an appeal in A.S.No.22 of 2008 before the Principal Subordinate Judge, Puducherry. The first appellate court vide its decree and judgment dated 08.02.2011, upheld the findings recorded by the trial court. Now, the present second appeal is filed by the 2nd defendant.

8. At the time of admission, the following substantial questions of law were framed.

(i) Whether the suit for recovery of possession is maintainable in the absence of any prayer for setting aside the patta granted in favour of the appellant by the revenue authorities?

(ii) Whether the courts below are right in holding that the first respondent has got title to the suit property?

9. The specific case of the plaintiff is that she is the absolute owner of the suit property by virtue of the settlement deed (Ex.A2) dated 05.12.1996 executed by her mother in her favour. She had also filed the assignment order (Ex.A1) issued by the Puducherry Government in favour of her mother. Both the courts below had concurrently held that the Puducherry Government though had issued an assignment order in favour of the plaintiff's mother in the year 1977, without any notice to the plaintiff's mother, had arbitrarily issued another assignment order in favour of the 2nd defendant during the year 2004 and therefore, the plaintiff is entitled for recovery of possession of the suit property from the 2nd defendant.

10. It is evident from the records that the 2nd defendant also admitted that originally an assignment order was issued in favour of the plaintiff's mother by the Puducherry Government. The main contention of the defendants is that the said assignment order was cancelled by the government, since the plaintiff's mother did not comply with certain terms and

conditions laid down in the assignment order and therefore a fresh assignment order was issued infavour of the 2nd defendant, considering her continuous and long possession over the suit property. When the plaintiff contends that the 2nd defendant is only a permissive occupier in the suit property, the 2nd defendant states that she is in possession of the suit property by virtue of an assignment order dated 27.10.2004 (Ex.B3) issued by the Puducherry Government in her favour.

11. Mr.T.P.Manoharan, learned Senior Counsel appearing for the appellant contended that the house in which the 2nd defendant is residing was constructed by the 2nd defendant and that she is not a permissive occupier as alleged by the plaintiff. He would further contend that the issuance of assignment order by the Puducherry Government in favour of the 2nd defendant cannot be held to be invalid, merely because the earlier assignment order in favour of the plaintiff's mother was not cancelled. He also relied on the decision in Krishnadevi Malchand Kamatha and others Vs. Bombay Environmental Action group and others reported in 2011 - 3 Supreme Court Cases 363 and contended that even if an order is not valid, the same requires to be declared so by a competent forum and it is not permissible to ignore the said order merely because it not valid. His specific contention is that the plaintiff or her mother have not approached the appropriate forum for setting aside the assignment order issued in favour of the 2nd defendant.

12. The relationship between the parties is very important, as far as the present case is concerned. The plaintiff is the wife of the first defendant and sister-in-law of the 2nd defendant. The fact that the assignment order was issued in favour of the plaintiff's mother during the year 1977 has not been disputed by both the parties. However, the Puducherry Government without cancelling the said assignment order, seems to have issued another assignment order in favour of the 2nd defendant during the year 2004. It is also admitted that there was difference of opinion between the plaintiff and the first defendant as a result of which, the plaintiff started living with her mother. Though it is contended by the 2nd defendant that she has been residing in the suit property after constructing a house, she has not adduced any acceptable evidence to prove the same. The payment receipts for electricity consumption charges and water charges (Ex.B10 to Ex.B12) are not only subsequent to the filing of the suit but also contain two different addresses and no evidence was adduced by the 2nd defendant to show that Pillaiyar Koil Street and Thoppu Street are one and the same.

13. The first appellate court had also analysed the evidence of Deputy Tahsildar, who was examined on the side of

the defendants as DW5. Though DW5 had deposed that the assignment order was issued in favour of the 2nd defendant after cancelling the assignment order issued in favour of the mother of the plaintiff, no documentary evidence was adduced by him to prove that the cancellation of the earlier assignment was done. Once the assignment order is made in favour of a particular person, the government cannot claim right and possession over the suit property. The DW5 did not also state that subsequent to the cancellation of assignment order, the government took possession of the suit property from the plaintiff's mother. Infact, the DW5 also admitted that before issuing assignment order in favour of the 2nd defendant, they did not examine the plaintiff's mother or the persons who are residing in the neighbourhood.

14. Mr.T.P.Manoharan, learned counsel appearing for the appellant contended that since the property belonged to the government, the suit filed by the plaintiff, without impleading the Director of Survey and Land Records, has got to be dismissed.

15. In the instant case, the government had already issued an assignment order in favour of the plaintiff's mother during the year 1976 as evidenced by Ex.A1 and though DW5 states that the said assignment order was cancelled subsequently, he did not adduce any evidence to show that the possession of the suit property was taken by the government before issuing an assignment order in favour of the 2nd defendant during the year 2004. In the absence of all these documents, it cannot be held that the plaintiff is not entitled to the suit property. Further more, both the courts below after appreciating the oral and documentary evidence adduced on both sides, had concurrently held that the plaintiff is entitled for recovery of possession of the suit prperty from the 2nd defendant and in fact, there is no substantial question of law involved in the instant case. Since the government without cancelling the assignment order issued in favour of the plaintiff's mother had issued another assignment order in favour of the 2nd defendant without conducting any enquiry, the plaintiff need not seek for a relief of setting aside the assignment order granted in favour of the 2nd defendant. Hence, the second appeal fails and the same is liable to be dismissed.

16. In the result,

(i) The second appeal is dismissed. No costs. The connected miscellaneous petition is closed.

(ii) The decree and judgment dated 08.02.2011 passed

in A.S.No.22 of 2008 by the Principal Subordinate Judge, Puducherry and the decree and judgment dated 18.03.2008 passed in O.S.No.1746 of 2006 by the II Additional District Munsif, Puducherry are upheld.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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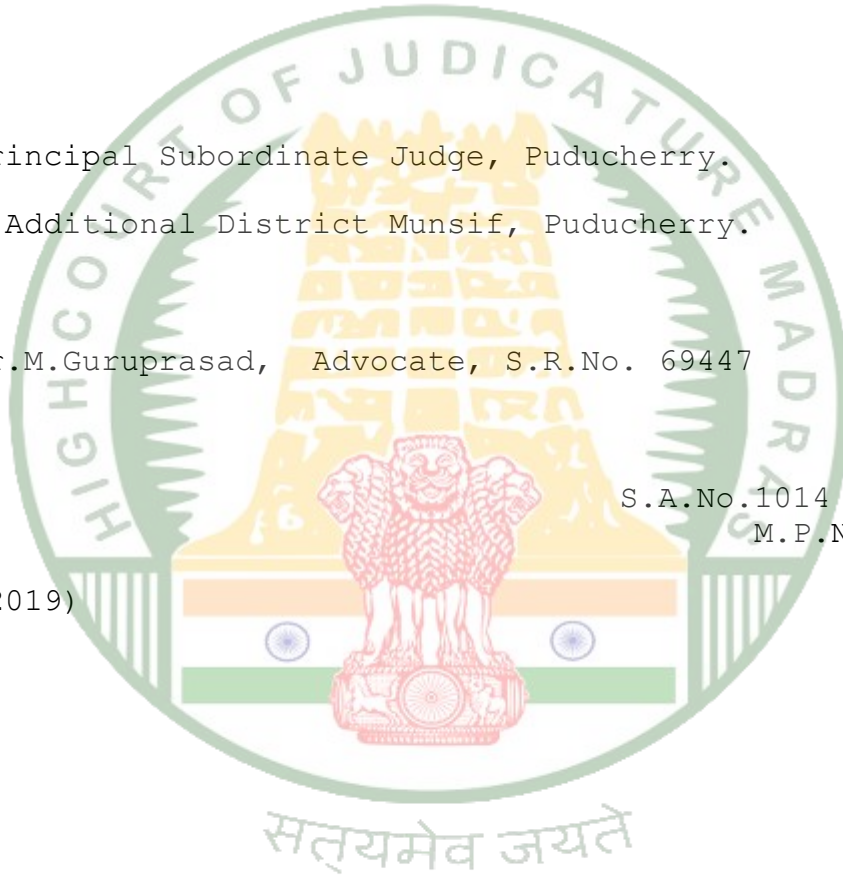
To

1. The Principal Subordinate Judge, Puducherry.
2. The II Additional District Munsif, Puducherry.

+lcc to Mr.M.Guruprasad, Advocate, S.R.No. 69447

S.A.No.1014 of 2011 and
M.P.No.1 of 2011

NMI (CO)
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