

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 02.06.2017

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.S.No.345 of 2015

S.Banumathi Plaintiff

versus

1. S.Gunasekar
2. Lenin Defendants

Prayer: This Suit is filed under Order VII Rule 1 of CPC r/w Order IV Rule 1 of the Original Side Rules, for declaration, to declare that the suit schedule property belongs to the plaintiff and for permanent injunction to restrain the defendants and their men, agents or any persons claiming under them, from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property and for costs.

For Plaintiff : Ms.Asha for
M/s.Sarvabhauman Associates
For Defendants : No appearance

JUDGMENT

The present suit has been filed by the plaintiff, praying for declaration, to declare that the suit schedule property belongs to the plaintiff and for permanent injunction to restrain the defendants and their men, agents or any persons claiming under them, from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property and for costs.

2. The case of the plaintiff as set out in the plaint, is that her vendor, one Tmt.Padmini Chandrasekaran purchased the larger extent of suit schedule property through a sale deed dated 26.09.1963 from the Court Receiver. Later, said Padmini Chandrasekaran formed a layout and sold the plots and the plaintiff herein, under a sale deed dated 19.5.1980 purchased the plots, which is the suit schedule property. While so, the 1st defendant is also claiming the right over the suit schedule property by virtue of the ex parte decree obtained in O.S.No.4768 of 2004. According to the plaintiff, she was not served any notice in the above said suit since the defendants

deliberately shown erstwhile address, but not the present address wherein the plaintiff is residing, which resulted in setting her ex parte. Thereafter, the plaintiff moved an interlocutory application for restoration the suit by setting aside the ex parte decree. It is stated that the 2nd defendant also filed a suit in O.S.No.2241 of 2015 and obtained ad interim injunction against the plaintiff. By virtue of the ex parte orders, since the defendants are interfering with the peaceful possession and enjoyment of the plaintiff over the suit property, the plaintiff has come forward with the present suit.

3. As per the proceedings of the learned Master dated 07.02.2017, it reveals that the defendants were served on 4.7.2015 and 16.6.2015 respectively. Thereafter, the matter was listed under the caption 'undefended causes', the defendants did not choose to file their written statements. Hence, the learned Master referred the matter before this Court. On 24.3.2017 this matter was listed under the caption 'undefended board' and there was no representation on behalf of the defendants and hence, they were set ex parte by this Court and

directed the matter to be listed before the Master for recording the evidence.

4. In order to prove her case, the plaintiff examined herself as PW.1 and filed proof affidavit and sought to treat the same as part of her evidence and also got marked as many as 30 documents as Exs.P1 to P30. Ex.P1 is certified copy of the decree in C.S.No.431 of 1933 dated 13.06.1937 on the file of this Court. Ex.P2 is certified copy of the decree in C.S.No.431 of 1933 dated 12.09.1938 on the file of this Court. Ex.P3 is the certified copy of the mortgage deed dated 24.08.1960 registered as document No.3720 of 1960 in favour of this Court. Ex.P4 is the true copy of the order dated 04.05.1962 in C.M.P.No.4210 of 1962 in O.S.A.No.60 of 1959. Ex.P5 is certified copy of the sale deed dated 26.09.1963 in doc.No.3079 of 1963 in favour of Padmini Chandrasekaran. Ex.P6 is the true copy of the layout sketch dated 20.01.1974 approval made in the name of Padmini Chandrasekaran. Ex.P7 is certified copy of the sale deed dated 19.05.1980 executed in favour of the plaintiff. Ex.P87 is the certified copy of the sale deed dated 19.05.1980 executed by

Padmini Chandrasekaran favouring plaintiff. Ex.P9 is certified copy of the Patta, Chitta in the name of plaintiff in the year 1980. Ex.P10 is the original planning permission of plot no.2 in No.BAC15/558/80 dated 06.12.1980. Ex.P11 is the original planning permission in No.BA/U30/109/85 dated 07.03.1985. Ex.P12 is the original SBI Bank Pass Book dated 06.07.1988. Ex.P13 is the copy of the passport of plaintiff's husband dated 27.01.1993. Ex.P14 is the copy of the passport of plaintiff. Ex.P15 (series) are the original property tax demand card of plaintiff's husband. Ex.P16 is the copy of the ration card. Ex.P17 is the certified copy of the plaint dated 14.09.2004 in O.S.No.4768 of 2004. Ex.P18 is the photo copy of the judgment dated 03.01.2005 in O.S.No.4768 of 2004 on the file of XVI Asst. City Civil Court, Chennai. Ex.P19 is the certified copy of the release deed dated 12.05.2011 in document No.3827 of 2011. Ex.P20 series are the original planning application dated 08.03.2013 and permit dated 25.03.2013. Ex.P21 series are the copies of the complaint given by the plaintiff and C.S.R.No.390/CSR/J6PS/13 dated 25.09.2013. Ex.P22 is the certified copy of the affidavit and petition dated 28.09.2013 in

I.A.No.15189 of 2013 in O.S.No.4768 of 2004, on the file of XVI Asst. City Civil Court, Chennai. Ex.P23 is the certified copy of the settlement deed dated 01.10.2013 registered as document no.10033 of 2013. Ex.P24 is the certified copy of the counter affidavit in I.A.No.15189 of 2013 in O.S.No.4768 of 2004, on the file of XVI Asst. City Civil Court, Chennai. Ex.P25 is the certified copy of the affidavit and petition in I.A.No.6010 of 2014 in O.S.No.4768 of 2004, on the file of XVI Asst. City Civil Court, Chennai. Dated 22.12.2004. Ex.P26 is the certified copy of the sale deed dated 11.02.2015 executed by the 1st defendant in favour of the 2nd defendant. Ex.P27 is the true copy of the plaint dated 13.04.2015 in O.S.No.2241 of 2015 on the file of XI Asst. City Civil Court, Chennai. Ex.P28 is the true copy of the petition and affidavit dated 13.04.2015 in I.A.No.6026 of 2015 in O.S.No.2241 of 2015, on the file of XI Asst. City Civil Court, Chennai. Ex.P29 is the original notice dated 17.04.2015 issued to the plaintiff by the 2nd defendant counsel and Ex.P30 series are the original photos.

5. The defendants were set ex parte by order dated

24.03.2017. The said position continues as of now.

6. On a perusal of the above oral and documentary evidence and the pleadings, it is clear that the plaintiff has proved her claim for the reliefs as prayed for in the suit. Accordingly, the suit is decreed as prayed for, with costs.

suk

02.06.2017

V.PARTHIBAN, J.

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