

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 31.07.2019

JUDGMENT PRONOUNCED ON : 14.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.517 of 2015

1.D.Ramesh

2.B.Dhayanidhi

3.G.Saravanan

... Plaintiffs

Vs.

Ida Selvaraj

... Defendant

PRAYER : Plaint filed under Order IV Rule 1 of Original Side Rules, read with Order VII, Rule 1 of Code of Civil Procedure, praying for the following judgment and decree:-

- (a) directing the defendant to hand over vacant possession of the suit property morefully described in the schedule hereunder to the plaintiffs;
- (b) to pay a sum of Rs.10,000/- per month from 03.12.2014 till the date of handing over possession as sought for above for damages towards use and occupation to the plaintiffs and

(c) for cost of the suit.

For Plaintiffs : Mr.G.Suryanarayanan

For Defendant : Mr.R.Ramachandran

J U D G M E N T

The suit is one for recovery of possession.

The case of the plaintiffs in brief is as follows:-

2. The plaintiffs have purchased the suit property from G.Sagunthala and others under a sale deed dated 11.11.2014 registered as Doc.No.4764 of 2014 in the Office of the Sub-Registrar, Anna Nagar. The first vendor viz., G.Sagunthala had obtained the suit property by way of a deed of settlement executed by her husband P.Gajendran on 20.02.2009 registered as Doc.No.912 of 2009 in the Office of the Sub-Registrar, Anna Nagar.

3. It is the further claim of the plaintiffs that the predecessor in interest viz., P.Gajendran who was in occupation of about 3200 sq.ft of land in Old S.No.225, T.S.No.58, Block No.6, Koyambedu Village was granted an assignment by the Special Tahsildar (Assignment) in K.Dis.No.3216 of 1976 dated

04.09.1976. The extent assigned to him under the said document was about 4 ½ cents i.e., about 2000 sq.ft.

4. It is claimed that the defendant had been a tenant under the said P.Gajendran. The defendant had entered possession of the property by paying Rs.25,000/- to the said P.Gajendran and had obtained an unregistered instrument of sale from him. The defendant had also filed a suit against the said P.Gajendran for permanent injunction restraining him from disturbing her possession of the suit property. The said suit in O.S.No.7812 of 1994 was decreed by the City Civil Court.

5. The plaintiffs would further contend that the defendant cannot claim any right title or interest in the suit property on the basis of the unregistered instrument dated 17.06.1988. At best the defendant can only be in possession till she is evicted in accordance with law.

6. Claiming that the defendant's possession is illegal, the plaintiffs have issued a legal notice requiring the defendant to vacate and handover vacant possession on 03.12.2014. The defendant sent a reply notice claiming that she is in possession pursuant to the unregistered sale deed executed by

P.Gajendran on 17.06.1988 and that she is the absolute owner of the property. The reply notice also claim that the property does not belong to P.Gajendran and the same belongs to the Government. On the above contentions, the plaintiffs sought for recovery of possession of the suit property.

7. The suit is resisted by the defendant contending that the suit is bad for non-joinder of necessary party since the vendors of the plaintiffs have not been made a party to the suit. The sale in favour of the plaintiffs was dubbed as bogus deal with an intention to usurp the property. According to the defendant, the property measuring about 2000 sq.ft was sold by P.Gajendran and his wife G.Sagunthala to the defendant on 17.06.1988 by an unregistered sale deed for a total consideration of Rs.25,000/-.

8. The defendant would further claim that because of the increase in the value of the property, the said P.Gajendran and his wife had attempted to interfere with her possession which resulted in filing a suit in O.S.No.7812 of 1994 seeking permanent injunction restraining the said P.Gajendran from interfering with the possession of the defendant. The said suit was decreed by the civil court and the civil court also found that the property belong to the Government. The trial Court in O.S.No.7812 of 1994 concluded that the

predecessor of the vendors of the plaintiffs viz., P.Gajendran had no right to dispossess the defendant.

9. It is also claimed that the defendant has been in possession in her own right ever since the sale through the unregistered instrument, which took place on 17.06.1988 and the property has been assessed to Corporation tax in her name and she has been paying all the statutory dues over the said property. It is also claimed that the Village Administrative Officer, Koyambedu Village had on 29.07.1990 issued a show cause notice invoking the Tamil Nadu Land Encroachment Act, 1905 demanding the defendant to vacate and deliver vacant possession to him. The said notice was not pursued thereafter by the Authorities.

10. It is also contended that since the said P.Gajendran was aware of the fact that the property belong to the Government and that he could not make a regular sale of the said property he has executed an unregistered sale deed on 17.06.1988. The settlement deed said to have been executed by P.Gajendran in favour of the plaintiffs' vendors was not disputed by the defendant.

11. It is the further contention of the defendant that the said P.Gajendran had admitted the title to the Government over the property and the said admission was recorded by the court in O.S.No.7812 of 1994 and therefore the said P.Gajendran had no right to execute a settlement deed in favour of his wife G.Sagunthala from whom the plaintiffs claim to have purchased the property. According to the defendant, in view of the decree in OS.No.7812 of 1994 the present suit for possession is not maintainable.

12. It is the further plea of the defendant that since her initial possession was not illegal or unauthorized and she has been in continuous possession from 1988 to till date she is entitled to protection under Section 53(A) of the Transfer of Property Act. It is also claimed that the defendant does not want to cloth herself with the benefit of adverse possession as initial possession of the defendant was not illegal or unauthorized. On the above contention, the defendant sought for dismissal of the suit.

13. On the above pleadings the following issues were framed for trial in the suit:

1. *Whether the suit is bad for non-joinder of necessary party?*

2. *Whether the defendant is entitled to claim any right over the property on the basis of unregistered sale deed dated 17.06.1988?*
3. *Whether the defendant can retain possession on the basis of unregistered sale deed dated 17.06.1988 or on the strength of the decree in O.S.No.7812 of 1994?*
4. *Whether by an unregistered document, the defendant can claim protection of her possession under Section 53A Transfer of Property Act?*
5. *Whether the plaintiffs are entitled to possession of the suit property as prayed for?*
6. *Whether the defendant is liable to pay damages at Rs.10,000/- per month for use and occupation from 03.12.2014 to the plaintiffs till the date of handing over possession of the suit property?*
7. *To what other reliefs, the plaintiffs are entitled to?*

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14. At trial, the 2nd plaintiff was examined as PW1 and Ex.P1 to Ex.P12 were marked on the side of the plaintiffs. The defendant was examined as DW1 and Ex.D1 to Ex.D15 were marked on the side of the defendant.

15. Heard Mr.G.Suryanarayanan, learned counsel appearing for the plaintiffs and Mr.R.Ramachandran, learned counsel appearing for the defendant.

Issue No.1:- whether the suit is bad for non joinder of necessary party?

16. The plaintiffs would claim title to the suit property under the sale deed dated 11.11.2014 which has been marked as Ex.P4. The said sale deed has been executed by one M.Ganesh Kumar as power of attorney agent of the vendors therein viz., Mrs. G.Sagunthala W/o P.Gajendran and her children. The vendors under the sale deed had executed a power of attorney in favour of M.Ganesh Kumar on 25.09.2014. The said power of attorney has been marked as Ex.P3. The execution of the sale deed is not in dispute.

17. The original settlement deed executed by P.Gajendran in favour of his wife G.Sagunthala has been marked as Ex.P2. There is no dispute with reference to execution of Ex.P2 by P.Gajendran. The original assignment order issued by the Special Tahsildar (Assignment) dated 06.07.1976 assigning an extent of 4 ½ cents in favour of P.Gajendran son of Poongavanam has been produced as Ex.P1. The above documents would show that P.Gajendran was assigned the property in question in 1976. He had executed a settlement in

favour of his wife in 2009 and thereafter in 2014, his wife and children sold the property to the plaintiffs. The plaintiffs as the owners of the property seek recovery of possession from the defendant who is in occupation of the property.

18. It is not known on what basis the defendant would contend that the suit is bad for non joinder of necessary party. Admittedly P.Gajendran is no more and his legal representatives have sold the property to the plaintiffs. The plaintiffs seek recovery of possession as owners of the property. Therefore, the vendors of the plaintiffs can, at no stretch of imagination, be held to be either necessary or proper parties to the suit.

19. The defendant has not disputed the execution of the sale deed by the vendors of the plaintiffs, all that is stated is that the said sale deed does not convey any right to the plaintiffs, inasmuch as the property covered by the sale deed belongs to the Government. Therefore, I do not find any substance in the plea of the defendant that the vendors of the plaintiffs are necessary parties to the suit. Hence, this issue is answered against the defendant and in favour of the plaintiffs holding that the suit is not bad of non-joinder of necessary party.

Issue Nos.2 and 3:-

20. These two issues relate to right of the defendant to be in possession of the property. The defendant would contend that she has purchased the property from P.Gajendran under an unregistered sale deed dated 17.06.1988 for a sum of Rs.25,000/-. It is her further claim that the said P.Gajendran had been permanently enjoined from interfering with the possession of the defendant under the decree in O.S.No.7812 of 1994.

21. Adverting to the claim of the defendant under the unregistered sale deed it should be pointed out that the said document is invalid for want of both registration as well as stamp. The defendant has not chosen to produce the said unregistered sale deed in evidence. In fact permission was sought for to mark a copy of the unregistered sale deed in A.No.8471 of 2017 and this court had specifically rejected the document dated 17.06.1988. The said order has become final. Therefore, the defendant cannot rest her claim on the unregistered sale deed dated 17.06.1988. Even otherwise it is settled law that an instrument of conveyance of immovable property valued more than Rs.100 has to be by way of a registered instrument only. Though an unregistered instrument could be looked into for colateral purposes, the same cannot be

used to claim title or to protect the possession of the party, claiming under the said document. Therefore issue No.2 is answered against the defendant and in favour of the plaintiffs holding that the defendant cannot claim any right over the suit property on the basis of the unregistered sale deed dated 17.06.1988.

22. The defendant would contend that her possession has been protected by the decree of the civil court in O.S.No.7812 of 1994. O.S.No.7812 of 1994 is a suit for bare injunction. The judgment in the said suit has been marked as Ex.P5. A perusal of the same would show that the trial court has very clearly stated that it is not going into the question of title.

23. Mr.R.Ramachandran, learned counsel appearing for the defendant would contend that the predecessor in interest of the plaintiff viz., P.Gajendran had admitted in his evidence that the suit property belong to the Government. But a close reading of the said judgment would show that the defendant in the said suit viz., P.Gajendran had claimed that he was in possession of the property from 1972 and that the Special Tahsildar (Assignment), upon inspection, had granted an order of assignment under Ex.P1 on 06.07.1976. He has also claimed that the adangal extract Ex.P2 of the year 1982 is in his name. It is also seen from the said judgment that P.Gajendran

had claimed that defendant became tenant under him and from the year 1988 she has not been paying rent to him.

24. It is the trite position of law that a finding on title in a suit for injunction where no issue regarding title was framed cannot and will not operate as *resjudicata* in subsequent proceedings. The only issue that is framed in the suit in O.S.No.7812 of 1994 was that whether the suit as framed is maintainable. Even in the judgment which has been marked as Ex.D5, the trial Court had very clearly said that it is not going into the question of title. In fact it is seen from the judgment of the trial court in O.S.No.7812 of 1994 that the trial court had granted injunction purely based on possession and has found that the defendant therein have not proved better title. The said injunction at best can prevent the defendant in the said suit P.Gajendran or any person claiming under him from interfering with the possession of the plaintiff therein except under due process of law.

25. A person having better title, upon proof of such title has always a right to recover possession of the property from a person who is in illegal possession there of. In the case on hand, the defendant had in the written statement specifically pleaded that her possession is legal and is pursuant to

the document dated 17.06.1988. She had also specifically stated in the written statement that she is not claiming adverse possession and no issue had been framed regarding adverse possession. In fact no issue has been framed in the suit regarding the title of the plaintiff. The absence of an issue regarding the title of the plaintiff in the suit for recovery of possession clearly demonstrates that the defendant had not questioned the title of P.Gajendran.

26. The defendant had rested her claim only on the unregistered document dated 17.06.1988 and the so called admission made by P.Gajendran in the suit in O.S.No.7812 of 1994 with reference to the title of the Government to the property. Therefore, the fact that the defendant had obtained a decree for permanent injunction against the predecessor in interest of the plaintiffs cannot prevent the plaintiffs from seeking to recover possession from the defendant on proof of better title.

27. The fact that the suit property was assigned to P.Gajendran has been proved beyond doubt by Ex.P1. It is not the case of the defendant that Ex.P1 has been cancelled by the Government and the land has been resumed. Once there is an assignment by the Government in favour of P.Gajendran, the said P.Gajendran had every right to deal with the property.

28. Though feeble attempt was made by R.Ramachandran, learned counsel appearing for the defendant to show that Ex.P1 was a conditional assignment and there was a breach of conditions and therefore, the land reverted back to the Government, he is unable to substantiate the same.

29. A perusal of Ex.P1 shows that there was absolute assignment without any condition attached there to and no action was taken by the Government to resume the grant on the ground of violation of the condition. I am therefore constrained to conclude that the fact that the defendant had obtained a decree for permanent injunction against the predecessor in interest of the plaintiffs would not prevent the plaintiff from suing for recovery of possession of the property. In the light of the above the issue Nos.2 and 3 are answered against the defendant and in favour of the plaintiffs.

Issue No.4:-

30. This issue relates to Section 53A of Transfer of Property Act. Section 53A confers right on a person who is to be in possession pursuant to an agreement of sale, to protect his possession on his satisfying the court that he was always ready and willing to perform his part of the contract.

31. It is not the case of the defendant that the defendant was put in possession pursuant to the agreement of sale. On the contrary, the defendant had come to the court with a clear case that she has purchased the property under unregistered instrument dated 17.06.1988 and she has been in continuous possession of the property ever since 17.06.1988. It is also the contention of the defendant that the Government is the owner of the property. Therefore, the provisions of Section 53A will not stand attracted to the case on hand.

32. In order to invoke the provisions of Section 53A the defendant must admit the title of the vendor under the agreement or the unregistered instrument if it is treated as an agreement of sale. In the case on hand, the defendant had not admitted the title of P.Gajendran, on the other hand, the defendant had pleaded that P.Gajendran was not the owner of the suit property and it is the Government which is the owner of the suit property.

33. In order to prove the said claim that the Government is the owner of the property the defendant would rely upon Ex.D15 which is said to be a letter from Tahsildar, Egmore -Nungambakkam Taluk addressed to P.Gajendran. The

said letter is dated 04.02.2010 reads as follows:-

தாங்கள் பட்டா கோரிய, கோயம்பேடு கிராமம், பிளாக்
எண்.6, டி.எஸ்.எண்.58 என்பது இவ்வலுவலக நிரந்தர நிலப்
பதிவேட்டில் தமிழ்நாடு வீட்டு வசதி வாரியம் பெயரில்
பதிவாகியுள்ளது என்பதைத் தெரிவித்துக் கொள்கிறேன்.

34. It also refers to an application said to have been made by P.Gajendran on 28.01.2010. It also shows that P.Gajendran is a resident of No.32, Thirumeni amman Koil Street, 13th Main Road, Anna Nagar, Chennai - 40 which is the address of the suit property. Neither the executant of the document nor recipient had been examined. It is not known as to how the said document was addressed to P.Gajendran at the address of the suit property, when the defendant had obtained a permanent injunction decree against P.Gajendran restraining him from interfering with the possession of the property in O.S.No.7812 of 1994 as early as on 25.04.1996. I therefore find that Ex.D15 cannot be relied upon to show that the Government is the owner of the property. The defendant cannot also seek to direct possession under Section 53A of the Transfer of Property Act. Hence, issue No.4 is answered against the defendant and in favour of the plaintiffs.

Issue No.5:-

35. This issue relates to the right of the plaintiffs to recover possession of the property. The settlement deed executed by P.Gajendran in favour of the vendors of the plaintiffs deals with an extent of about 3200 sq.ft. Whereas, the property that has been assigned to the predecessor in interest of the plaintiffs under Ex.P1 is only an extent of 2000 sq.ft.

36. The sale deed is also for an extent of 3200 sq.ft. The vendor of the plaintiffs is shown to be entitled to only an extent of 4 ½ cents i.e., about 2000 sq.ft. He claims to be in possession of 3200 sq.ft and executes a settlement deed in respect of the said extent in favour of the vendors of the plaintiffs and they in turn conveyed a larger extent to the plaintiffs. There is no evidence to show that neither the predecessor in interest of the vendors of the plaintiffs P.Gajendran nor the vendors of the plaintiffs were in possession of larger extent of the property.

37. Therefore, I do not think that the plaintiffs could be favoured with a decree for possession for entire 3200 sq.ft. The plaintiffs would be entitled to possession of the extent of property viz., 4 ½ cents which had been assigned to P.Gajendran under the assignment patta marked as Ex.P1. Therefore, issue

No.5 is answered partly in favour of the plaintiffs holding that the plaintiffs are entitled to recover possession of 4 ½ cents of land that has been assigned to P.Gajendran.

Issue No.6:-

38. This issue relates to claim for damages for use and occupation. Now that it is found that the plaintiffs are entitled to recover possession of 4 ½ cents of land which has been assigned to P.Gajendran under Ex.P1 by virtue of settlement deed which has been marked as Ex.P2 and the sale deed dated 11.11.2014 which has been marked as Ex.P4. The defendant would be liable to pay damages for use and occupation atleast from the date of the suit. The damages for use and occupation is fixed at Rs.5,000/- per month from the date of suit till date of delivery of possession. Considering the facts and circumstances of the case, I direct the parties to bear their own costs.

39. In fine, the suit is decreed as follows:-

(i) *The plaintiffs are entitled to recover possession of an extent of 4 ½ cents as found in the patta dated 06.07.1976 from the defendant.*

(ii) *The defendant is directed to pay a sum of Rs.5,000/- per month from the date of suit i.e.,*

17.04.2015 till date of handing over possession.

(iii) The suit in other respects will stand dismissed.

(iv) No costs.

14.08.2019

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Index : Yes/ No

Internet : Yes/ No

Speaking order/ Non-Speaking order

List of the Witnesses examined on the side of the Plaintiffs:

PW1 - B.Dhayanidhi

List of Exhibits marked on the side of the Plaintiffs:

Sl.No.	Exhibits	Description of documents	Date
1	Ex.P1	Original Patta	06.07.1976
2	Ex.P2	Original settlement deed registered as Doc.No.912 of 2009	23.03.2009
3	Ex.P3	Original Power of attorney deed in favour of M.Ganesh Kumar registered as Doc.No.4145 of 2014	25.09.2014
4	Ex.P4	Copy of the sale deed registered as Doc.No.4764 of 2014	11.11.2014
5	Ex.P5	Original Encumbrance certificate from 01.01.1970 to 26.01.1983	27.12.2004
6	Ex.P6	Original Encumbrance certificate from 01.06.1982 to 31.12.1986	27.10.2004

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
7	Ex.P7	Original Encumbrance certificate from 01.01.1987 to 02.01.2015	05.01.2015
8	Ex.P8	Original legal notice issued by the plaintiffs with acknowledgment card	--
9	Ex.P9	Photocopy of the reply notice issued by the defendant.	--
10	Ex.P10	Original Property tax receipts	19.07.2011
11	Ex.P11	Original Water tax receipts	03.08.2011
12	Ex.P12	Property tax receipt	31.03.2011

List of the Witnesses examined on the side of the defendant:

DW1 - Ida Selvaraj

List of Exhibits marked on the side of the defendant:

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.D1	Xerox copy of property tax collection receipt tax collected from the defendant	14.06.1989
2	Ex.D2	Xerox copy of notice under Section 5 of the Tamil Nadu Encroachment Act, 1905 to the defendant	29.07.1990
3	Ex.D3	Xerox copy of payment challan water supply and sewerage board (S.A)	19.11.1992
4	Ex.D4	Xerox copy of payment challan water supply and sewerage board (W.A)	29.12.1992
5	Ex.D5	Certified copy of judgment in O.S.No.7812 of 1994	25.04.1996
6	Ex.D6	Certified copy of decree in O.S.No.7812 of 1994	25.04.1996
7	Ex.D7	Original continuous approval to the school run by the defendant upto 30.06.2016	29.07.2015

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
8	Ex.D8	Original property tax receipt for the year 1991-1992 to 1993-1994	10.12.1993
9	Ex.D9	Copy of the property tax collection consolidated statement from 1998-1999 to 2015-2016	--
10	Ex.D10	Original water charges card 1993-94 to 1992-93	--
11	Ex.D11	Original water and sewerage tax 1987-88 to 1992-93	--
12	Ex.D12	Original Water and Wewerage tax cum charges card from 2010-11 to 2013-14	--
13	Ex.D13	Original water and Sewerage tax cum charges receipt for 2015	--
14	Ex.D14	Original Electricity consumption card from 2006-2015	--
15	Ex.D15	Original Letter No.2/2176/2010 dated 04.02.2010 received by the Tahsildar, Egmore-Nungambakkam Taluk, Chennai - 600 031	--

सत्यमेव जयते

14.08.2019

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To

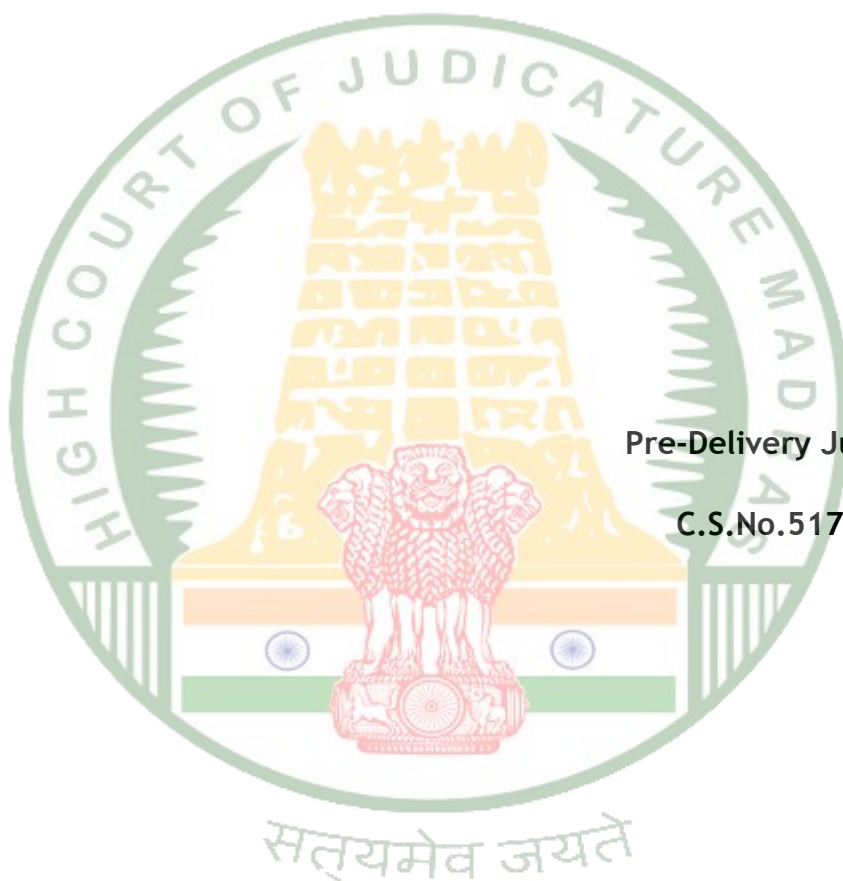
The Sub Assistant Registrar,
Original Side, High Court, Madras.

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Pre-Delivery Judgment
in
C.S.No.517 of 2015

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