

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.481 of 2013

&

M.P.No.1 of 2013

1.Maruthachala Thevar (Died)

2.Valliammal

3.Kalyani

4.M.Ramasamy

5.Krishnaveni

6.M.Senthil Kumar

... Appellants

(Appellants 2 to 6 brought on record as LRs of the deceased sole appellant viz., Maruthachalam vide order of the Court dated 08.04.2019 made in C.M.P.Nos.7493, 7495 and 7500 of 2019 in S.A.No.481 of 2013).

Vs

1.Aruchamy

2.Palanisamy

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 18.12.2012 made in A.S.No.13 of 2012 on the file of the Sub Court, Pollachi, confirming the Judgment and Decree dated 06.09.2011, made in O.S.No.991 of 2004 on the file of the District Munsif Court, Pollachi.

For Appellants : Mr.B.Ramamoorthy

For Respondents : Mr.C.Veeraraghavan

J U D G E M E N T

The unsuccessful plaintiff in the Courts below is the appellant before this Court. The suit O.S.No.991 of 2004 was filed by the plaintiff on the file of the District Munsif Court, Pollachi, in respect of an extent of 27 ½ feet X 11 ½ feet in the South-West Corner of the property totally measuring an extent of 1881 sq.ft. in S.F.No.224/2, Kinathukadavu Village, Pollachi. The relief claimed in the suit was for a recovery of possession and for a direction to the defendants to pay a sum of Rs.3,060/- towards arrears of rent and a sum of Rs.1,000/-per mensem towards damages for use and occupation from 16.08.2004. The parties are referred to in the same array as in the suit.

Plaintiff's Case:

2.The plaintiff would submit that his father one Rangasamy Thevar had purchased 5 cents of land along with an east facing tiled house in S.F.No.224/2 of Kinathu Kadavu Village, under a sale deed dated 31.05.1952, and his vendor one Rangasamy had purchased the property under a registered sale deed dated 06.02.1946. The plaintiff would submit that after his father's lifetime the property devolved on the plaintiff and his sisters and they had been enjoying the same since then.

3.The plaintiff would further contend that for putting up construction in the vacant place, the plaintiff and his sisters approached the Co-operative Housing Society, Pollachi, for a loan and in the year 1995 the plaintiff had constructed a small south facing house in the South-west portion of his property which is the subject matter of the suit.

4.The plaintiff would further submit that the defendants who are brothers also belonged to the same village. In the year 1998 the 1st defendant had requested the plaintiff to lease out the suit schedule property to him and on the basis of an oral lease the plaintiff had put the 1st defendant in possession and enjoyment of the suit property as a tenant in the month of March 1998. The plaintiff would submit that till November 2000, rents had been paid on time and thereafter the 1st defendant refused to pay the rents and further the defendants were attempting to get the patta regarding the suit property and electricity connection in their name by producing false documents.

5.It appears that apart from the EB connection, the defendants had also managed to get house tax receipts in their name behind the back of the plaintiff. These activities prompted the plaintiff to issue a legal notice on 05.04.2001, the defendants had approached the plaintiff on receipt of the

notice and promised to settle the issues and sought time to vacate the suit property. The plaintiff trusted their words and permitted them to continue in occupation of the building. However, the defendants had no intentions of vacating the premises and on the contrary they had issued a legal notice dated 13.07.2004 to the plaintiff raising false allegations. Left with no other alternative the plaintiff had come forward with the above suit.

Defendants' Case:

6.The defendants would resist the above suit inter alia contending that the suit property, namely, the tiled house belonged to the defendants exclusively and the same was allotted to them under a partition deed dated 19.09.1990. The defendants would submit that at no point of time they have been tenants under the plaintiff. The defendants would further contend that they had constructed the south facing tiled house leaving a 2 feet space on the northern side in order to maintain building. The plaintiff tried to demolish the wall by digging a pit with an intention of grabbing the property. Thereafter the defendants was constrained to issue a notice dated 13.07.2004 and the plaintiff had given a false reply on 16.07.2004. The defendants would therefore contend that the suit has to be dismissed.

Trial Court:

7.The learned District Munsif, Pollachi had framed five issues and the first of which was, Whether the plaintiff is entitled to the recover possession from the defendant? The plaintiff had examined two witnesses on his side and marked Ex.A.1 to Ex.A.14, similarly, the defendants have also examined two witnesses and marked Ex.B.1 to B.13. Ex.C.1 to Ex.C.3 were marked as Court exhibits.

8.After a detailed enquiry the learned District Munsif, Pollachi had returned finding against the plaintiff stating that the defendants were never a tenants under the plaintiff since the plaintiff has failed to prove the contention and on the contrary defendants have filed documents to show their possession and enjoyment of the same. The learned Judge had also observed that the witness who was brought on the side of the plaintiff to prove that the defendants were tenants, as P.W.2 had also adduced evidence against the plaintiff ultimately the suit was dismissed.

Appellate Court:

9.Challenging the said Judgement and Decree the plaintiff had moved an appeal in A.S.No.13 of 2012 on the file of the Sub Court, Pollachi. The learned Judge had also confirmed the findings of the Court below and held that the suit filed seeking recovery of possession without seeking relief of declaration is not maintainable particularly when the title of the plaintiff had been refuted by the defendant who had set up his title upon the property.

Submissions:

10.Challenging the said Judgement and Decree the plaintiff is before this Court. Heard Mr.B.Ramamoorthy, learned counsel for the appellant/plaintiff. The learned counsel would argue that the Courts below have failed to appreciate the documents put forward on the side of the plaintiff to show his right, title and interest to the property and that the defendants have taken the property on lease from the plaintiff. The learned counsel for the respondents would submit that the suit for recovery of possession without seeking the relief of declaration was not maintainable particularly when the title of the plaintiff to the suit property has been refuted by the defendants.

Discussion:

11.Heard both parties and perused the records. The plaintiff who has come forward with the specific case that he had given the suit property on lease to the defendants has failed to prove the same. That apart, when the title of the plaintiff had been challenged by the defendants by setting up a separate and independent title, the plaintiff had not amended his relief to include the relief of declaration, that having not been done the plaintiff cannot seek to have a decree for recovery of possession passed against the defendants particularly when the defendants have been able to show their independent possession and enjoyment of the suit schedule property. The witness who has been examined on the side of the plaintiff has also adduced evidence against him. In these circumstances, I do not find any infirmity in the Judgement and Decree of the Courts below. This Court cannot re appreciate the evidence at this stage while sitting in an appellate jurisdiction under Section 100 of the Code of Civil Procedure. I do not find any question of law much less a substantial question of law.

In the result the Second Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Pollachi.

2.The District Munsif Judge, Pollachi.

3.The Section officer,
VR Section,
High Court, Madras-104.

+1cc to Mr.B.Ramamoorthy, Advocate SR.63875

+1cc to Mr.C.Veeraraghavan, Advocate SR.63434

S.A.No.481 of 2013 &
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VBA(CO)
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