

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.305 of 2014

1.H.Isaimani

2.Baskaran

..Appellants 1&2/Appellants 1&2/Defendants 1& 2

Vs.

K.Rajakumari

..Respondent /Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the sub-Court, Cheiyar made in A.S.No.31 of 2011 dated 2nd July 2013, confirming the judgment and decree of the Additional District Munsif Court, Vandavasi Town made in O.S.No.237 of 1997 dated 19.08.2011.

For Appellants : Mr.G.Thangavel

For Respondent : Served on 29.04.2014.

J U D G M E N T

The defendants in O.S.No.237 of 1997 have come up with this appeal upon suffering a decree for declaration of title at the hands of the courts below.

2. The respondent sued for declaration and recovery of possession contending that the suit property was purchased by her from one Nataraja Naicker under the sale deed dated 27.12.1976 and the 1st defendant became tenant under her in respect of the suit property.

3. Since the 1st defendant committed default in payment of rent and the plaintiff required the property for her own occupation, she had terminated the tenancy by notice dated

29.01.1997. Inasmuch as the defendants did not comply with the demands made in the said notice and chose to deny the title of the plaintiff, the plaintiff was forced to file the above suit seeking and declaration of her title and recovery of possession.

4. The 1st defendant resisted the suit contending that the suit property belonged to Nataraja Naicker and he has been in possession of the property under the permission from the heirs of Nataraja Naicker. The plaintiff, according to the 1st defendant, is not the owner of the property and she does not have title over the same. It is also claimed that it is only the heirs of Nataraja Naicker who could evict the 1st defendant. It was also claimed that the 2nd defendant was never in possession of the property and he is unnecessary party to the suit.

5. The 2nd defendant filed separate written statement stating that he has nothing to do with the suit property and he is unnecessary party to the suit.

6. The trial court upon consideration of the evidence on record concluded that the plaintiff is the owner of the property having purchased the same under the sale deed dated 27.12.1976 from Nataraja Naicker. The trial court however rejected the prayer for recovery of possession on the ground that the plaintiff has to take proceedings under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, since the area in which property is located is a notified area.

7. Upon the said findings, the trial court decreed the suit for declaration of title and rejected the prayer for possession. Aggrieved by the decree for declaration of title granted by the trial court, the defendants preferred an appeal in A.S.No.31 of 2011. The lower appellate court agreed with the findings of the trial court and dismissed the appeal. It is against the said concurrent findings, the defendants have come up with this Second Appeal. Notice of motion was ordered on 09.04.2014.

8. I have heard Mr.G.Thangavel, learned counsel appearing for the appellants.

9. Mr.G.Thangavel, learned counsel appearing for the appellants would vehemently contend that the sale deed dated 27.12.1976 will not confer any title on the plaintiff. According to him, the suit property belonged to his mother-in-law who is the sister of Nataraja Naicker. Therefore, being close relative, he was allowed to be in possession of the property. The learned counsel would also submit that the courts below erred in granting a decree for declaration of title based on

Ex.A6 when the appellants have been in continuous possession and enjoyment of the property.

10. I do not think that the above said pleas could be countenanced at this point of time. As already adverted to, there is no plea on the part of the defendants to the effect that the property belonged to the mother-in-law who is the sister of Nataraja Naicker, therefore, the sale deed executed by Nataraja Naicker is null and void and that Nataraja Naicker had no title to convey the property. All that was pleaded in the written statement filed by the 1st defendant is that the plaintiff has no title. He is in possession under the permission of the heirs of Nataraja Naicker, if at all anybody could evict him, it is the heirs of Nataraja Naicker. The learned counsel would also submit that evidence has been let in to show that the property belonged to his mother-in-law, sister of Nataraja Naicker.

11. I do not think that any amount of evidence in the absence of plea could be looked into particularly in a Second Appeal. I do not find any issue or any discussion on the title of Nataraja Naicker. The defendant in fact conceded title of Nataraja Naicker before the trial court. Therefore, he cannot now turn around and contend that Nataraja Naicker is not the owner of the property. Mr.G.Thangavel would contend that the sale deed dated 27.12.1976 has not been proved in accordance with law. Firstly the execution of the said sale deed is not specifically denied and secondly son of the executant has been examined as PW2. I therefore find no substance in the claim that the sale deed dated 27.12.1976 has not been proved.

12. I do not find any question of law much less a substantial question of law in order to enable me to entertain this appeal. Hence, this Second Appeal is dismissed as devoid of any question of law without being admitted. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

dsa
To

1. The sub-Judge,
Cheiyar.

2. The Additional District Munsif Court,
Vandavasi.

S.A.No.305 of 2014

VBA (CO)
CB(11/09/2020)



WEB COPY