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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.03.2015

CORAM

THE HONOURABLE MRS. JUSTICE S.VIMALA

C.S.No.742 of 2012

M.Vijaya Kumar

... Plaintiff

Vs.

M.Hari Babu

... Defendant

PRAYER: Plaint under Order VII Rule 1 C.P.C. read with Order IV Rule 1 of High Court O.S.Rules, praying for the following prayers:

(a) granting a declaration that the plaintiff is entitled to the schedule mentioned property;

(b) Consequently directing the defendant to delivery vacant possession of the schedule mentioned property to the plaintiff;

(c) Directing the defendant to pay damages for use and occupation of the schedule mentioned property at the rate of Rs.10,000/- (Rupees ten thousand only) per month from 01.09.2012 till the date of delivery of possession of the schedule mentioned property to the plaintiff.

(d) To award the costs of the suit.

For Plaintiff : Mr.Ralph V.Manohar

For Defendant : Ex parte on 10.07.2014



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JUDGMENT

The suit has been filed for the relief of declaration, recovery of possession and damages for use and occupation at the rate of Rs.10,000/- p.m. from 01.09.2012 till the date of delivery of possession.

2. The plaintiff claims title through the Ex.P3- Settlement Deed executed by the father of the plaintiff in favour of him. In the Settlement Deed, it is specifically stated that all the sons and daughters are not helpful to him and as the plaintiff is the only person, who had extended full support and co-operation in all the ways possible to him, he is inclined to settle the property only in favour of the plaintiff.

3. It is the case of the plaintiff that the plaintiff's father had settled the property granting the plaintiff all absolute powers with the only condition that the power of alienation was granted to his two sons and not to him. Ex.P1, is a document which stands in the name of the plaintiff's mother Chandra Bai under which she has purchased the property and under Ex.P2, she has released her right in favour of her husband D.Madanagopal.



4. It is clear that the plaintiff's father has got title over the suit property and by virtue of Settlement Deed, the plaintiff has derived title of the suit property.

4.1. Pre-suit notice has been issued to the defendant under Ex.P14. Though the defendant has received the notice, he has not chosen to send any reply, but, the acknowledgement has been filed as Ex.P15. As the defendant did not choose to contest the case, the implication is that he has no case to contest.

5. The learned counsel for the plaintiff has also submitted that the mother has executed the settlement deed in favour of the defendant which is marked as Ex.P5. It is pointed out that after the defendant selling his own property unwantedly, he grabbed the property of the plaintiff, driving the plaintiff out of the property. Since, the defendant is in unauthorised occupation of the property he is liable to be evicted and the possession has to be given to the plaintiff, when the plaintiff has proved his title. Therefore, the suit has to be decreed.

6. In the result, the suit is decreed with costs and three months time is granted to the defendant to vacate and hand over the possession to the plaintiff.



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There shall be a separate enquiry with regard to the claim for damages for use and occupation.

Sd/- S.V.J

19.03.2015

//Certified to be a true copy//

Dated this the day of 2015.
R.s/17.06.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.