

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:06.12.2018

Delivered on:06.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.14 of 2017

1.A.Durairaj (Deceased)

2.Mrs.Poonkothai

3.Charled Egovan

4.Roslin Jeyawthi

5.Jansi Arulmozhi

6.Jeyaseelan ...Appellants/Defendants

(Appellants 3 to 6 brought on record as Legal Representatives of the deceased 1st appellant vide order of the Court dated 30.11.2018 made in C.M.P.No.4626 of 2018 in S.A.No.14 of 2017).

Vs

Mrs.Theresa (Deceased)

1.S.mary Elizabeth

2.Mrs.S.Mary Pokkisham

3.Mrs.S.Mary Violet
S.Alexander (Deceased)

4.Mr.R.Peter

5.Mr.R.Francis

6.Mrs.R.Latha

7.Mr.R.James Williams

8.Mrs.A.Rajani

9.Mr.A.Christoper

10.Mr.A.Richard

11.Mrs.R.Gnanammal ...Respondents/Plaintiffs 1 to 10, Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 20.03.2014 made in A.S.No.272 of 2013 on the file of the learned V Additional Judge, City Civil Court, Chennai, confirming the Judgement and Decree dated 25.04.2013 in O.S.No.7491 of 2005 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai.

For Appellants : Ms.Meenakshi Sundaram

For Respondents : Mr.Kannan

JUDGEMENT

The defendants 2 and 3 are the appellants before this Court. The Second Appeal is filed challenging the Judgement and Decree in A.S.No.272 of 2013 on the file of the V Additional Judge, City Civil Court, Chennai, whereby the learned Additional Judge had confirmed the Judgement and Decree of the XIII Assistant Judge, City Civil Court, in O.S.No.7049 of 2005. The suit O.S.No.7491 of 2005 was filed originally by one Mrs.Theresa, who is the mother of the respondents herein who are the plaintiffs in the suit. The parties are referred to in the same ranking as in the suit.

2.The plaintiffs had filed a suit for directing the defendants to deliver vacant possession of the schedule mentioned property and to direct the first defendant to pay a sum of Rs.24,000/- for use and occupation for the twelve months preceeding the plaint and to pay in future a sum of Rs.2,000/- as damages for use and occupation.

3.The case of the plaintiffs was that the suit property originally belonged to their maternal Grand Father Mahaimadass and on his demise the property devolved on their maternal grandmother one Papathi Ammal and on the death of Papathi Ammal the mother of the plaintiffs namely Theresa became the absolute owner since she was only child of Papathi Ammal and Mahaimadass. She was in possession of the same till her demise on 20.11.2006.

4.In the late sixties, the 1st defendant Gnanammal had taken the schedule mentioned property which was the vacant site on an

oral lease from Papathi Ammal and Therasa on a monthly rental of Rs.10/-. Thereafter, without the consent of the land lady the 1st defendant had put up temporary constructions on the schedule mentioned property and thereafter started being very irregular in the payment of the rents. The plaintiffs would submit that the 1st defendant started questioning the title of Thereasa to the suit property after they had purchased the adjoining property from one Elizabeth. The plaintiffs mother issued a legal notice dated 20.08.1995 terminating the tenancy and directing the defendants to handover vacant possession of the suit property.

5. On receipt of the said notice the 1st defendant had sent a reply dated 28.09.1995, admitting the title of the plaintiffs' mother but, however, claiming the benefits of the Tamil Nadu City Tenants Protection Act. Thereafter, once again on 16.06.2005 the plaintiffs' mother issued another notice and in her reply dated 06.07.2005 the said Gnanambal denied the title of Theresa to the suit property by alleging that Elizabeth had claimed the title to the schedule property and had sought ejectment in O.S.No.1941 of 1980 and a sale deed has been executed with respect to schedule property on 25.04.1997.

6. The plaintiffs' mother had immediately sent a rejoinder clarifying the property which was the subject matter of the suit O.S.No.1941 of 1980 did not belong to her and that the property in which she was the owner is different property and therefore the order under Section 9 petition in O.S.No.1941 of 1980 would not confer any right on the defendants.

7. Pending the suit Theresa passed away and the plaintiffs were brought on record as legal heirs by virtue of the order in I.A.No.5289 of 2006. After the plaintiffs filed a counter, the 1st defendant sought to amend her claim under Section 9 of the Tamil Nadu City Tenants Act and thereafter for reasons best known to her, the 1st defendant withdrew I.A.No.5289 of 2006 after carrying out amendment on 16.07.2007.

8. After the trial in the suit had commenced and during the cross examination of P.W.1 the plaintiffs came to know that the 1st defendant had sold the suit property to defendants 2 and 3. Thereafter, the plaintiffs had filed I.A.No.17806 of 2007 to implead the 2nd and 3rd defendants herein.

9.The plaintiffs therefore contended that they are entitled to the vacant possession of the suit property by virtue of the withdrawal of the Section 9 application of the 1st defendant and her failure to pay the rents in respect of the suit property. The suit property was described as follows:

"All that piece and parcel of land in 109, Puliyur Choolaimedu High Road-Comprised in Paimash No.777, Patta No.1546 T.S.No.97/A-Part, block 21, and bounded on

NORTH BY House of Thavamani

SOUTH BY 12' Common Pathway

EAST BY Land belonging to Palani and Selvaraju measuring 1200

WEST BY Land belonging to Elizabeth measuring 1,200 Sq.ft."

10.The 1st defendant had filed a written statement in which she made a following submissions:

a)The suit is barred by limitation.

b)The identity of property was in doubt.

c)The defendants have been in enjoyment of the property for over twelve years and the same has not been objected to by the plaintiff.

d)The initial notice was issued in the year 1995 and no action was taken.

e)The defendant is entitled to protection under the Tamil Nadu City Tenants Protection Act.

f)An additional written statement was filed wherein the 1st defendant had added a plea of adverse possession.

11.The 2nd and 3rd defendants who have been impleaded in the above suit filed a written statement inter alia contending that they had purchased the property under a sale deed dated 09.07.2007, and that they have been in possession and enjoyment of the same since then and have put up construction after obtaining the planning permission. They had also pleaded that the identity of the suit property was in doubt. In addition to that they had pleaded that there was no document to show that the 1st defendant was the tenant under the plaintiffs and also that the plaintiffs and 1st defendant had colluded together to deprive the rights of the 2nd and 3rd defendants.

12.The parties had entered trial and the learned XIII Assistant City Civil Judge, Chennai had framed the following issues and additional issues:

1.Whether the suit is barred by limitation?

2.Whether the defendant has acquired title over the suit property by adverse possession?

3.Whether the plaintiffs are entitled to get delivering of vacant possession of the suit property?

4.Whether the plaintiffs are entitled to claim damages for the use and occupation of the suit property from the defendant as prayed for?

5.To what other relief the plaintiffs are entitled?

Additional Issues Framed:

1.Whether the suit is properly valued?

2.Whether the defendants are derived titled by adverse possession?

13.The plaintiffs had examined one witness on their side as P.W.1 and marked Ex.A.1 to Ex.A.13. The plaintiff was examined as P.W.1. The defendants on their part had examined one witness namely the 3rd defendant as D.W.1 and had marked Ex.B.1 to Ex.B.6. The learned Trial Judge after elaborately considering the evidence on record returned the finding on Issue Nos.1 to 4 and additional Issue No.1, that the first defendant has admitted the title of the plaintiff under Ex.A.2 dated 28.09.1995 and Ex.A.4 dated 16.07.2005, which were replies to the legal notice issued by the plaintiffs under Ex.A.1 dated 22.08.1995 and Ex.A.3 dated 16.06.2005 respectively.

14.The learned Judge also held that the filing of the Section 9 petition under the Tamil Nadu City Tenants Protection Act also confirmed that the defendants has recognised the title of the plaintiffs to the suit property therefore, it was held that the suit property belonged to the plaintiffs. The learned Judge taking note of the Ex.A.5, Ex.A.6, Ex.A.7, Ex.A.8, Ex.A.11 and Ex.A.12 came to the conclusion that the property which was the subject matter of the suit O.S.No.1941 of 1980 was not the suit property and that taking advantage of the order in O.S.No.1941 of 1980 the 1st defendant has clandestinely included the suit property in the sale that she had effected in favour of the defendants 2 and 3.

15.The learned Judge has also taken note of the affidavit filed in support of the petition under Section 9 in Tamil Nadu City Tenants Protection Act in I.A.No.5289 of 2006, wherein the

1st defendant had in very clear terms stated that she was a tenant under said Papathi Ammal since the year 1946 and was in occupation of the suit land as well as adjacent land. She used to live in one portion and other portion was used as cattle shed and that she had purchased the cattle shed by the order passed in O.S.No.1941 of 1980.

16. Therefore the 1st defendant had clearly mentioned that the property that was the subject matter of the suit O.S.No.1941 of 1980 was not the property which is the subject matter of the present suit. The question of prescribing title to the property could not be considered since the 1st defendant had contended that she was a tenant under the plaintiff's mother and grand mother as well as plaintiffs. Having taken such a stand the defendant is estopped from pleading adverse possession.

17. The learned Judge therefore decreed the suit as prayed for. Challenging the said Judgement and Decree the defendants 2 and 3 alone filed an appeal before the V Additional Judge, City Civil Court, Chennai.

18. The learned Additional Judge on an independent consideration of the evidence on record dismissed the appeal and confirmed the Judgement and Decree passed in O.S.No.7491 of 2005 by the XIII Assistant City Civil Judge, Chennai.

19. Challenging this concurrent Judgement and Decree defendants 2 and 3 are before this Court. M/s. Meenakshi Sundaram, learned appearing for the appellant would challenge the Judgement and Decree on the following grounds:

a) There was no tenancy subsisting on the date of the suit since the same had been filed after the long time after terminating the lease.

b) The suit does not contain the details about the property regarding its measurements and boundary.

c) The defendants have been in possession and enjoyment of the property for over statutory period and therefore the Courts below ought to have held that they had prescribed title to the property.

d) The Courts below have erred in relying upon the proceedings between the 1st defendant and Elizabeth though the appellants are not parties therein and that this suit is barred under Order II Rule 2 of the Code of Civil Procedure since the earlier suit O.S.No.1941 of 1980 was with reference to one of the two sites which was leased out to the 1st defendant.

20. It is to be noted that the appeal had not been admitted and in the Second Appeal, notice was ordered to the respondents/plaintiffs who have entered appearance through counsel Mr. T.N. Rajagopal. Mr. Kannan, learned counsel appearing

on their behalf would argue that the 1st defendant having admitted the plaintiff's title to the property, the defendants 2 and 3 who are the purchasers under the 1st defendant cannot plead differently.

21.He would further argue that since the 1st defendant had withdrawn the petition filed by her under Section 9 of the Tamil Nadu City Tenants Protection Act, the defendants are not entitled to any protection therein and the defendants 2 and 3 are purchasers who have purchased the property being fully aware about Tenant legal proceedings and therefore they cannot be treated as bonafide purchaser for value and they are bound by the action of the 1st defendant.

22.Heard both parties and perused the records. From a reading of the pleading as well Judgement of the Lower Courts it is evident that the 1st defendant who was the original tenant under the plaintiff's mother and grand mother had clearly and categorically admitted that she is the tenant under the plaintiffs. This stand is further highlighted by the fact that she has deemed it fit to file an application under Section 9 of the Tamil Nadu City Tenants Protection Act whereby the title of the plaintiffs to the suit property has been further confirmed. The Lower Appellate Court has considered the evidence and observed that there was a fraud which has been enacted by the defendants herein to usurp the property of the plaintiffs.

23.The Appellate Court had observed that in the sale deed which has been filed as Ex.A.12 in favour of the 3rd defendant it is stated the vendor; that is 1st defendant, had derived title to the property subject matter of the sale vide order in I.A.2454 of 1992 on the file of the XI City Civil Court, Chennai. However, this order has not been produced by the defendants.

24.It is seen that defendants 2 and 3 have purchased the property only pending the suit and the property which is the subject matter in the suit O.S.No.1941 of 1980 is a distinct and separate property and not the suit property. The defendants 2 and 3 are aware about the various proceedings pending in respect of the suit property and therefore they cannot seek protection claiming to be bonafide purchasers for value, which they are not. The Courts below have rightly decreed the suit and directed the defendants to vacate and handover the vacant possession of the suit property to the plaintiffs.

I find no infirmity in the Judgement and Decree passed by the learned Additional Judge in A.S.No.272 of 2013. Consequently, the above Second Appeal is dismissed as there are no Substantial Questions of law involved in the above suit. The

Judgement and Decree of the V Additional Judge, City Civil Court, Chennai, in A.S.No.272 of 2013 and the Judgement and Decree of the XIII Assistant Judge, City Civil Court, Chennai in O.S.NO.7491 of 2005 is confirmed. The defendants are directed to vacate the suit premises and deliver the vacant possession on or before 30.04.2019. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

kan

To,

1.The V Additional Judge,
City Civil Court, Chennai.

2.XIII Assistant Judge,
City Civil Court, Chennai.

+1cc to Mr.T.N.Rajagopalan, Advocate SR.No.9961

+1cc to Mr.A.Meenakshisundaram, Advocate SR.No.10186

NMI (CO)
GMY (15/04/2019)

S.A.No.14 of 2017

सत्यमेव जयते
WEB COPY