

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice C.SARAVANAN

O.S.A.No.399 of 2018
and
C.M.P.No.18018 of 2018

C.E.Sathyanarayan ... Appellant

Vs

C.E.Sulochana (deceased)
1.Samyuktha Paramahamsan
2.Lakshmi Banu ... Respondents
(1&2 Respondents are brought on record as sucessor in interest of deceased respondent 1sole palintiff as per the order of the court dated passed in A.No.5832/2016 in CS No.719/2005)

Appeal preferred under Order XXXVI Rule 11 of O.S. Rules r/w Clause 15 of Letters Patent against the judgment and decree dated 06.02.2018 made in in C.S.No.719 of 2005. Plaint filed under order IV Rule 1 of the OSA Rules read with order VII Rule,1 of civil Procedure copy praying to

(a) Direction the defendant to quit and deliver vacant possession of the Western portion of the House ground and premises bearing Door No.7, (Old No.3), First Main Road, Lake Area, Nungambakkam, Chennai - 600 034, and morefully described in the schedule hereunder.

(b) Direct the defendant to pay a sum of Rs.10,000/- towards past mesne profit for the period 16.07.2005 to 31.07.2005.

(c) Direct the defendant to pay future mesne profits and damages for use and occupation of the plaint schedule property at Rs.20,000/- per month from the date of plain till date of delivery of possession.

For Appellant .. Mr.M.Aravind Subramanian

For Respondents .. Mr.T.Viswanatha Rao

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is directed against the judgment and decree dated 06.02.2018 made in in C.S.No.719 of 2005.

2.The appellant is the defendant in the suit. The suit has been laid for the following reliefs:

(a)directing the defendant to quit and deliver vacant possession of the western portion of the house ground and premises bearing Door No.7 (Old No.3), First Main Road, Lake Area, Nungambakkam, Chennai - 34 and morefully described in the schedule hereunder.

(b)direct the defendant to pay a sum of Rs.10,000/- towards past mesne profits for the period 16.07.2005 to 31.07.2005.

(c)direct the defendant to pay future mesne profits and damages for use and occupation of the plaint schedule property at Rs.20,000/- per month from the date of plaint till the date of delivery of possession.

(d)direct the defendant to pay the costs of this suit.

3.On the earlier occasion, the mother of the appellant, who is the original plaintiff has filed a suit for permanent injunction in O.S.No.8620 of 1996. The suit was decreed on 16.02.1999. The appellant filed A.S.No.324 of 2000, which was dismissed on 11.12.2001.

4.Thereafter, the appellant filed a suit for partition in C.S.No.129 of 2007. Under Ex.P3, the suit was also dismissed by taking note of the earlier suit inter se parties. As the appellant did not hand over possession even thereafter, the plaintiff filed another suit in C.S.No.719 of 2005 seeking the reliefs mentioned above.

5.The learned single Judge accordingly framed the following issues and additional issues:

(i)Whether the plaintiff is the absolute owner of the property?

(ii)Whether the defendant is in permissive possession of the suit property as claimed in the plaint?

(iii)Whether the oral partition claimed by the

defendant is true or not?

(iv) Whether the (suit) plea of the defendant is barred by principles of res judicata in view of decision in O.S.No.8620 of 1996?

(recast as per the order of this Court dated 03.07.2009)

(v) Whether the defendant is estopped from setting up title to the suit property?

(vi) Whether the plaintiff is entitled to mesne profits? If so to what amount?

(vii) Whether the plaintiff is entitled to the decree as prayed for?

Additional Issues:

(i) Whether the defendant is estopped from questioning the settlement deed dated 02.05.2014, having admitted to the execution of the same by the first plaintiff?

(ii) Whether the suit is bad for non-joinder of necessary parties?

(iii) Whether the settlement deed has been acted upon?

(iv) To what relief the plaintiffs are entitled to?

6. The original plaintiff died pending suit. Therefore, the other two sisters, who have got the settlement in their favour under Ex.P17 dated 02.05.2014 got impleaded themselves as plaintiffs. Before the learned single Judge, the plaintiffs marked Exs.P1 to P18 and examined one witness as P.W.1. The appellant marked Ex.D1 which is the certified copy of the decree in O.S.No.8620 of 1996 and examined two witnesses including himself. The learned single Judge, after taking note of the earlier decisions, was pleased to hold that the judgment rendered would non-suit the contentions raised by the appellant. Insofar as mesne profits is concerned, for the past mesne profits, Rs.10,000/- per month from 16.07.2005 was ordered and for the future mesne profits, Rs.20,000/- per month was granted. This was done by taking note of the fact that the appellant did not deny the existence of his occupation. Challenging the above, the present appeal is before us.

7. Learned counsel appearing for the appellant would submit that taking into consideration the relationship between the parties, the learned single Judge ought to have held that the appellant was in permissive possession. The original plaintiff had allowed the appellant to be in possession. In any case, there is no specific finding with respect to the basis upon which the mesne profits has been arrived at. Since the relief

sought for in the earlier suits being different, the question of either estoppel or res judicata does not arise. Therefore, the appeal will have to be allowed.

8.Learned counsel appearing for the respondents submitted that the appellant is trying to re-agitate the issue, which was concluded inter se parties. The respondents are entitled for the relief under Ex.P17. The learned single Judge awarded mesne profits by taking note of the extent of possession admitted by the appellant, nature of the properties and the fact that he did not have any right over it. A finding has been given on the rent that would otherwise be payable for the occupation of the property. Therefore, no interference is required.

9.The issue for consideration in this appeal is whether the appeal will have to be allowed or not.

10.This is the third round of litigation in which the appellant is involved. The respondents/plaintiffs have stepped into the shoes of the original plaintiff. The settlement deed is not questioned by the appellant. Earlier suit filed for injunction was decreed. Therefore, the appellant lost his right in claiming title over the suit property. Claiming property is not worked out, he tried his luck for the second time, which was also declined. Thus the plea of permissive occupation has been rightly denied and rejected by the learned single Judge. In such view of the matter, we do not find any merit in this appeal.

11.Learned counsel appearing for the appellant has made one more submission with respect to mesne profits. It is submitted by him that the plaintiff was none other than the mother of the appellant. The respondents are the sisters of the appellant. The fact that the appellant was living with the original plaintiff is not in dispute. At least, till the date of filing of the present suit, the original plaintiff did not take any steps to remove the appellant. The appellant was pursuing his case hitherto. The settlement deed can only be prospective. The Court below did not take into consideration the abovesaid facts while ordering mesne profits. In any case, mesne profits should be arrived by separate proceedings by letting in evidence on the value of the property and amount that will be liable to be paid by the user.

12.We find some force in the submissions made by the learned counsel for the appellant. Mesne profits requires separate enquiry as such. The learned single Judge passed the order based upon his own assessment. Admittedly, the respondent/plaintiffs stepped into the shoes of the original plaintiff only pursuant to the settlement deed dated 02.05.2014. Such a deed can only be prospective in nature. Therefore, we are

of the view that the entitlement would come only from that point of time onwards. As the property is situated in the prime location of the city, the amount fixed by the learned single Judge is very reasonable in our considered view. The fact that the appellant is in possession of the subsequent extent of the property is not in dispute. In fact, he did not even question the amount of mesne profits in his pleadings. In such view of the matter, insofar as the quantum is concerned, we do not find any error in the judgment and decree rendered by the learned single Judge. However, we find that insofar as the past mesne profits is concerned, the respondents/plaintiffs are entitled only from the date of the settlement deed under Ex.P17 - 02.05.2014. To that extent, the judgment and decree 06.02.2018 made in C.S.No.719 of 2005 stands modified.

13. Accordingly, the appeal stands allowed as indicated above insofar as the mesne profits is concerned. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.Aravind Subrmanian, Advocate, SR. No. 33551

+2ccs to Mr.T.Viswanatha Rao, Advocate, SR. No. 33384

O.S.A.No.399 of 2018

KK (CO)

RMP(03/07/2019)

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