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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 18.03.2019

PRONOUNCED ON: 30.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

SECOND APPEAL (MD) No.55 of 2019

and

C.M.P.(MD).No.1978 of 2019

K.Maragatham (died)

...Original defendant

1.Pandi Selvi

2.K.R.Pandidurai

3.Muthalagupandi

4.Thangapandi

... Appellants /

Appellants / LRs of defendants

Vs.

Thiruppathur Varthaga Sangam,
Thiruppathur Town,
Sivagangai District.
Through its President,
C.Lakshmanan,
S/o.R.Chinnasamy

... Respondent/
Respondent/ Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 19.12.2018, passed in A.S.No.62 of 2014 by the Subordinate Judge, Sivagangai, confirming the judgment and decree, dated 30.04.2014, passed in O.S.No.88 of 1999 by the District Munsif cum Judicial Magistrate, Thiruppathur.

For appellants

... Mr.R.Sundar Srinivasan

For respondent

... Mr.R.Vijayakumar

JUDGMENT

This second appeal has been filed by the appellants/LRs of the original defendant against the concurrent judgment passed by the Courts below.

2. For better appreciation and understanding, the parties are referred to as per their in rank in the suit.

<https://hcservices.ecourts.gov.in/hcservices/>

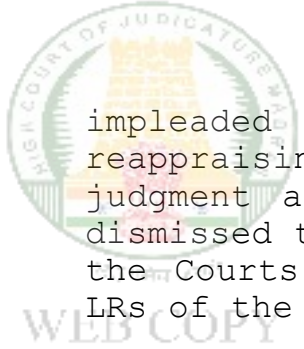
3. The plaintiff had filed the suit in O.S.No.88 of 1999 for

ejecting the defendant without any charge over the suit property.

4. The case of the plaintiff is that the suit property is belonged to the plaintiff/sangam and the same was let out to the father of the defendant in the year 1975 and the father of the defendant had been running a business in a portion of the land and he was residing in another portion of the land by putting up a construction. After the death of the father of the defendant, the defendant has been living in the building put up by her father. In the year 1997, the defendant was in huge arrears of rent and the same was collected by the plaintiff. On 17.12.1998, the plaintiff decided to construct a marriage hall in the land in dispute and in the nearby land owned by the plaintiff. Though it was intimated to the defendant, she refused to vacate the property. Thereafter, the defendant has filed a suit in O.S.No.53 of 1999 for permanent injunction restraining the plaintiff from illegally evicting her from the suit property. On 18.04.1999 the plaintiff had sent a legal notice terminating the rental agreement and directing the defendant to hand over property as vacant land. But, the defendant did not send any reply to the notice. Hence, the plaintiff has filed the suit in O.S.No.88 of 1999.

5. The case of the defendant is that ancestrally her father had been in possession and enjoyment of the western side land of the suit property. On the *bona fide* belief that the suit property was owned by the plaintiff, the father of the defendant got the suit property for rent in the year 1959 and paid Rs.7 as rent. Thereafter, the defendant has been paying the rent without any arrears. Later, the defendant came to know that the patta issued in respect of the land in dispute was cancelled by the Government and thereafter, the suit property was declared as Government promboke land. No rental agreement entered between the plaintiff and the defendant. Since the plaintiff attempted to illegally evict, the defendant filed the suit in O.S.No.53 of 1999. During the pendency of the said suit, the Government has acquired the land for the construction of bus-stand and allotted some other land to the plaintiff and therefore, the plaintiff has no prescriptive title. As the defendant has been in possession and enjoyment of the suit property for more than a statutory period by paying tax and as the plaintiff has no prescriptive title, the defendant obtained prescriptive title by adverse possession. The defendant can be evicted only through rent control proceedings and not by way of suit for ejectment.

6. Before the trial Court, on the side of the plaintiff, PW1 and PW2 were examined and Exs.A1 to A15 were marked. On the side of the defendant, PW1 to PW4 were examined and Exs.P1 to P5 were marked. On the side of the Court, Exs.X1 and X2 were marked. The trial Court, after analysing the oral and documentary evidence, has decreed the suit as prayed for. Aggrieved by the same, the defendant filed the appeal in A.S.No.62 of 2011. During the pendency of the same, the sole defendant died and the appellants 1 to 4 herein were



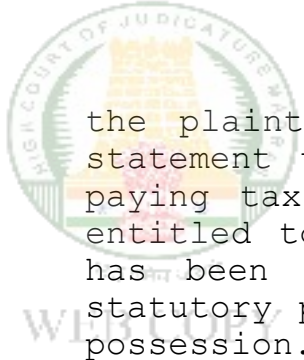
impleaded as her legal heirs. The first appellate Court, after reappraising the oral and documentary evidence, has confirmed the judgment and decree passed by the first appellate Court, thereby dismissed the appeal. Challenging the concurrent judgment passed by the Courts below, the present second appeal has been filed by the LRs of the sole defendant.

7. The learned counsel appearing for the defendants mainly contended that the plaintiff himself admitted that the vacant site of the suit property was let out to the father of the defendant and that the father of the defendant had put up super structure in the same. Therefore, the tenancy would come within the purview of the Tamil Nadu City Tenants Protection Act and the plaintiff ought to have been issued a notice under Section 11 of the Act. But, the plaintiff has issued a notice under Section 106 of the Transfer of Property Act, which is not sufficient for termination of tenancy. The Courts below, without considering the above aspects, has erroneously dismissed the suit and therefore, the concurrent judgment passed by the Courts below are liable to be set aside. Thus, he prayed to allow this appeal.

8. The learned counsel appearing for the plaintiff would submit that in the written statement and additional written statement filed in the suit, the defendant denied the title of the plaintiff and therefore, the notice issued under Section 106 of the Transfer of Property Act is sufficient for terminating the tenancy. The defendant has also not disputed the receipt of such notice. He would further submit that as the defendant questioned the title of the plaintiff, she is not entitled to any protection under Section 9 of the Tamil Nadu City Tenants Protection Act. The trial Court, considering the above aspects, have rightly allowed the suit and the first appellate Court also confirmed the same. Therefore, this Court need not interfere with the concurrent judgment of the Courts below. Thus, he prayed to dismiss the second appeal.

9. Heard the learned counsel appearing for both sides and perused the records carefully.

10. Admittedly, it is not in dispute that the father of the defendant had been in possession of the suit property as tenant by putting up a construction and the defendant had been in possession of the suit property under the same capacity in the suit property. In the suit in O.S.No.53 of 1999, the defendant herself admitted the landlord and tenant relationship between herself and the plaintiff, and she had further admitted that she had been paying monthly rent to the plaintiff. Though the defendant admitted the landlord-tenant relationship between herself and the plaintiff, the defendant has stated in her written statement in the present suit that after filing of the suit in O.S.No.53 of 1999, she came to know that the suit property is a promboke land and the plaintiff is not the owner of the same and that the plaintiff has suppressed the same and due to inadvertence, her father and herself had paid rent regularly to



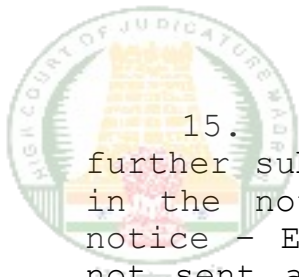
the plaintiff. The defendant has further stated in her written statement that she had been in possession of the suit property by paying tax to the Government and therefore, the plaintiff is not entitled to file the suit for ejectment and that as the defendant has been in possession of the suit property for more than a statutory period, she is entitled to prescriptive title by adverse possession.

11. From the above averments, it is clear that the defendant herself admitted the tenancy and disputed the title of the plaintiff only by saying that the rent was illegally collected by the plaintiff without any valid title and suppressing the fact that the suit property is a Government promboke land and as she has been in possession of the land for more than a statutory period, she is entitled to prescriptive title by adverse possession. On the other hand, the defendant wants protection under Section 11 of the Tamil Nadu City Tenants Protection Act.

12. The Hon'ble Supreme Court in the decision in **Palani Ammal Vs. Viswanatha Chettiar (died) and others**, reported in **1998 (2) L.W. 7**, has held that once the defendant denied the title of the plaintiff, who is the real owner of the property, she would get out of the Tamil Nadu City Tenants Protection Act and none of the provisions of the said Act can ever be pressed into service by the tenant as a shield of protection against the real owner.

13. Here, in this case, as stated earlier, the defendant denied the title of the plaintiff and therefore, the defendant is not entitled for protection contemplated under the Tamil Nadu City Tenants Protection Act. Though the learned counsel for the defendant relied on a decision of the Hon'ble Supreme Court in **S.A.Ramachandran Vs. S.Neelavathy** reported in **1997 (1) CTC 298** and an unreported decision of a learned Single Judge of this Court in **S.A.No.34 of 2007, (R.M.Subramanian V. Azhagappa University)**, dated 19.07.2007, in the above decisions, it is not a case where the tenant denied the title of the landlord and therefore, the same cannot be taken into consideration.

14. Admittedly, in this case, the plaintiff had issued a notice - Ex.A4 under Section 106 of the Transfer of Property Act, giving 15 days time. Though the defendant received the said notice on 23.04.1999, she did not send any reply to the said notice. The plaintiff, thereafter, filed the suit on 10.11.1999. Though it is stated by the learned counsel for the defendant that six months notice ought to have been given by the plaintiff under Section 106 of the Transfer of Property Act, this Court is not inclined to accept the same, in view of the fact that in O.S.No.53 of 1999, the defendant herself admitted that she has been paying monthly rent to the plaintiff. Considering the above, the finding of the Courts below that 15 days notice is sufficient, need not be interfered with.



15. The learned counsel appearing for the defendant would further submit that there is a difference in the property mentioned in the notice - Ex.A4 and the suit property and therefore, the notice - Ex.A4 is not valid. As stated earlier, the defendant has not sent any reply to the notice - Ex.A4 issued by the plaintiff. Even in the written statement, she did not aver anything against such notice and therefore, now she cannot question the same.

16. It is seen that the defendant has obtained an information under the Right to Information Act to the effect that Thiruppathur Town would come under the purview of the Tamil Nadu City Tenants Protection Act and in order to mark the documents relating to the said information, she had filed an application under Order 41 Rule 27 of C.P.C. before the first appellate Court. The first appellate Court has dismissed the said application holding that the defendant has not assigned valid reason for filing the said application at that stage and that the said documents are not essential to decide the issue involved in this case. This Court does not find any reason to interfere with the said finding of the first appellate Court.

17. Viewing from any angle, this Court does not find any reason to interfere with the concurrent judgment passed by the Courts below. There is no question of law especially substantial question of law arising for consideration. In view of the above, this Court is inclined to dismiss this appeal.

18. In the result, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Subordinate Judge,
Sivagangai District.
- 2.The District Munsif cum Judicial Magistrate,
Thiruppathur, Sivagangai District.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai (2 Copies)



+1 CC to M/s.R.VIJAYA KUMAR, Advocate (SR-78771[F] dated 31/07/2019)

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-78824[F] dated 31/07/2019)

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S.A.(MD) No.55 of 2019
30.07.2019

KK/SAR/22.08.2019/6P-7C/