



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 29.03.2019

PRONOUNCED ON: 18.09.2019

CORAM

THE HONOURABLE MRS. JUSTICE NISHA BANU

SECOND APPEAL (MD) No.616 of 2015

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K.Nagarajan

... Appellant /
1st respondent / Plaintiff

Vs.

1.Renganathan @ Thangam (died)

... 1st respondent/
Appellant/ 7th defendant

2.B.Saratha Amma

3.Geetha

4.Shoba

5.Subha

... Respondents 2 to 5/
Respondents 2 to 5/Defendant 1 to 4

6.Valsala Devi

7.Vasanthakumari

... Respondents 6 & 7/
Respondents 6 & 7/Defendants 5 & 6

8.Velammal

9.R.V.Raja

10.Jeyanthi

11.R.V.Sudhakar

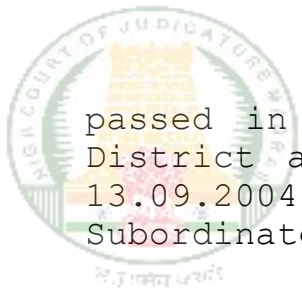
... Respondents 8 to 11 /
LRs of the 1st respondent

(Notice to the respondents 2 to 7 are dispensed with as per the order of the Court dated 28.08.2014 made in M.P.(MD).No.3 of 2012 in S.A.(MD)SR.No.31141 of 2010)

(Respondents 8 to 11 are brought on record as LRs of the deceased first respondent, as per the order of this Court, dated 05.08.2015 made in M.P.(MD).No.162 of 2015 in S.A.SR.No.31141 of 2010)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree, dated 29.09.2007,

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passed in A.S.No.40 of 2005 by the District Court, Kanyakumari District at Nagercoil, reversing the judgment and decree, dated 13.09.2004, passed in O.S.No.93 of 1996 by the I-Additional Subordinate Court, Nagercoil.

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For appellant

... Mr.A.Arumugam,
for M/s.Ajmal Associates

For respondents
8 & 11

... Mr.V.Meenakshisundaram,
for Mr.D.Nallathambi

For respondents 9 & 10 Mr.R.Murugan

JUDGMENT

This second appeal has been filed by the appellant/plaintiff against the judgment and decree passed by the first appellate Court in A.S.No.40 of 2005, whereby and whereunder the first appellate Court reversed the finding of the trial Court on the ground of jurisdiction and dismissed the suit.

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

3. The plaintiff has filed the suit for the following reliefs;

(a) To declare the plaintiff's title and allow the plaintiff to recover possession of the plaint schedule property from the seventh defendant;

(b) To pass a decree for permanent injunction restraining the 7th defendant from committing damage to the plaint schedule property and sub-leasing the same;

(c) To allow the plaintiff to recover the past mesne profits of Rs.24,000/- at the rate of Rs.1000/- from the month of August 1994 to July 1996 from the 7th defendant;

(d) To allow the plaintiff to recover the future mesne profits at the rate of Rs.1000/- per month from the 7th defendant from the date of plaint till recovery of property;

(e) For recovery of costs from the contesting defendants.

4. The brief facts of the case of the plaintiff are as follows:

The plaint schedule property which is a house (building) and house site originally belonged to the mother of the defendants 1, 5 and 6 by name Bagavathiamma. The husband of Bagavathiamma by name Dhamodharan Pillai, who was managing the suit property, leased out the same to the 7th defendant on 13.04.1959 for rent of Rs.18/- per month and obtained an advance of Rs.50/-. After the death of Dhamodharan Pillai, Bagavathiamma filed R.C.O.P.No.123 of 1982 for eviction of the 7th defendant on the ground of owner's



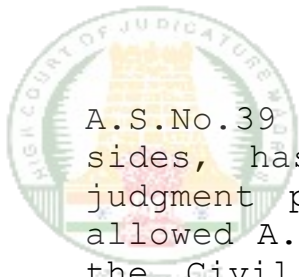
occupation. During the pendency of the said proceedings, she died and in the family partition, the suit property was allotted to the share of the 1st defendant and she got impleaded in the RCOP and that RCOP was allowed and the appeal filed by the 7th defendant against order passed in RCOP was also dismissed. In the meantime, the 1st defendant and her legal heirs/defendants 2 to 4 sold the suit property to the plaintiff on 26.08.1994. On notice of purchase, the 7th defendant agreed to pay rent to the plaintiff. Therefore, the Rent Control proceedings became infructuous. The plaintiff has sent a legal notice dated 17.04.1996 (Ex.A6) to the 7th defendant and demanded enhanced rent of Rs.1000/- per month. The 7th defendant sent a reply under Ex.A7 denying the title of the plaintiff in respect of the suit property. Hence, he filed the suit.

5. The brief facts of the case of the 7th defendant are as follows:

The plaint schedule property is a small house. It is a residential building and 7th defendant is residing in the house with his family. It is comprised in an extent of 1-1/4 cents. Dhamodharan Nair leased out the building to the 7th defendant on 15.04.1959. As the old building collapsed and fallen down due to heavy rain, the 7th defendant erected the present building in the year 1965 at the cost of Rs.15,000/- with consent and knowledge of Dhamodharan Nair. The site alone belongs to Dhamodharan Nair and the superstructure (building) belongs to the 7th defendant. The 7th defendant is not aware of any partition in the family of the defendants 1 to 6. The defendants 1 to 4 have no right to sell the suit property to the plaintiff. It is unjust on the part of the plaintiff to seek for recovery of possession. The 7th defendant is entitled to the benefits of the Madras City Tenants Protection Act. Hence, the 7th defendant filed C.T.P.O.P.No.31 of 1996 against the plaintiff and the defendants 1 to 6 praying for a direction to sell the plaint schedule property in favour of the 7th defendant on a price to be fixed by the Court and the same is pending. The plaintiff already entered appearance in that case through an Advocate. The suit is not maintainable under law.

6. On the side of the plaintiff, the plaintiff and another witness was examined as PW1 and PW2 and Exs.A1 to A12 were marked. On the side of the 7th defendant, the 7th defendant himself was examined as RW1 and another witness was examined as RW2 and Exs.R1 to R6 were marked.

7. The trial Court has tried the suit as well as C.T.O.P.No.1 of 1999 and decreed the suit as prayed for and dismissed C.T.O.P.No.1 of 1999. Against the judgment and decree passed in O.S.No.93 of 1996, the 7th defendant has filed A.S.No.40 of 2005. Against the dismissal of C.T.O.P, the 7th defendant has preferred



A.S.No.39 of 2005. The first appellate Court, after hearing both sides, has dismissed A.S.No.39 of 2005, thereby confirmed the judgment passed by the trial Court in respect of C.T.O.P. and allowed A.S.No.40 of 2005, thereby dismissed the suit holding that the Civil Court has no jurisdiction to entertain the reliefs sought for by the plaintiff ie., to declare title; recovery of possession and other consequential relief. Aggrieved by the judgment passed in A.S.No.40 of 2005, the plaintiff has filed this second appeal. During the pendency of the appeal, the 7th defendant died and his legal heirs were impleaded as respondents 8 to 11 herein.

8. At the time of admission, this second appeal was admitted on the following substantial questions of law:

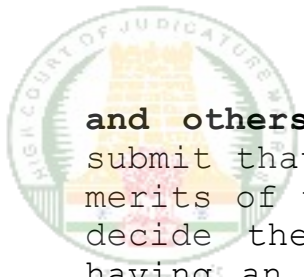
"(i) Whether the first respondent tenant having disputed the title of the appellant/plaintiff to the suit property and refused to pay rent to him, is not the suit filed by the appellant/plaintiff for the relief of declaration of title, recovery of possession and consequential relief, maintainable?

(ii) Whether the counter claim of the 1st respondent tenant over the structure in the suit property is in accordance with law without payment of any Court fee in a suit filed by the appellant/plaintiff and whether the learned District Judge is justified in considering the same, to reject the suit?

(iii) Whether the 1st respondent proved his counter claim over the superstructure in the suit property by any material or evidence in accordance with law?

(iv) Whether the continuance of the first respondent in possession of the suit property as tenant is legally valid when he has questioned the right and title of the lawful owner of the suit property?"

9. The learned senior counsel appearing for the appellant/plaintiff submitted that in this case, even before filing the petition before the Rent Controller, the tenant denied the title of the landlord by his reply notice dated 22.07.1996 and hence, the appellant/plaintiff has filed the Civil suit and therefore, the same is maintainable. He would further submit that the Civil Court can decide the title of the suit property, permanent injunction and mesne profits, for which Section 10 of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960 is not a bar. In support of the above contention, he relied upon a decision of this Court in **Subbiah Pannaiyar Vs. Shanmugavelayudham**

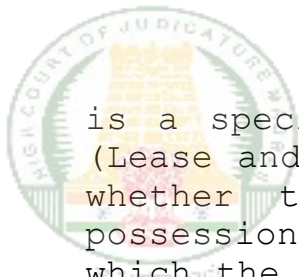


and others, reported in **1997 (1) MLJ 103**. He would further submit that though the first appellate Court has not discussed the merits of the case, this Court has power to look into the same and decide the same in this second appeal. The trial Court, after having an elaborate discussions, has held that the plaintiff has valid title and that the 7th defendant has not proved his claim of ownership of the building and hence, decreed the suit as prayed for. Thus, he prayed to set aside the judgment and decree passed by the first appellate Court and to restore the suit at least in respect of the declaration, permanent injunction and mesne profits.

10. The learned senior counsel appearing for the respondents 8 to 11, who are legal heirs of the 7th defendant, submitted that the 7th defendant had denied the title of the first defendant - Sarathammal, who is the daughter of original owner of the suit property by name Bhagavathiamma, and her daughters, excluding the other legal heirs of Bhagavathiamma in R.C.O.P.No.123 of 1982. R.C.O.P.No.123 of 1982 was filed by Bhagavathiamma, later continued by the 1st defendant - Sarathammal was dismissed for default on 22.10.2002. He would further submit that there is a specific bar on the jurisdiction of the Civil Court in the matter of eviction and therefore, the present suit for declaration and recovery of possession is not maintainable before the Civil Court. In support of his contention, he relied upon a decision of the Hon'ble Supreme Court in **M/s.East India Corporation Limited Vs. Shree Meenakshi Mills Ltd.**, reported in **AIR 1991 SC 1094** and a decision of this Court in **Rukmani Vs. R.Narayani**, reported in **1996 (1) L.W. 689**. He would further submit that the decision relied upon by the plaintiff ie., Subbaiah Pannaiyar case is not applicable to the case on hand as in that case the relief of declaration and recovery of possession was sought for in respect of a building and a vacant land annexed to it and the relief was granted only for vacant land and not to the building and further, in that decision, the legal dictum laid down in Rukmani case, cited supra, has been fortified and therefore, the said decision cannot be taken into account. Thus, he prayed to dismiss this second appeal.

11. Heard the learned counsel appearing for the plaintiff/appellant and the learned counsel appearing for the legal heirs of 7th defendant/respondents 8 to 11 and perused the records carefully.

12. In this case, the first appellate Court has dismissed the suit, thereby reversed the finding of the trial Court, mainly holding that the Civil Court has no jurisdiction to entertain the reliefs of declaration of title, recovery of possession, permanent injunction and mesne profits sought for by the plaintiff, as there



is a specific bar under Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. When the similar issue as to whether the suit for declaration of title and recovery of possession is maintainable before the Civil Court in an area in which the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 is applicable, when the title of the landlord is denied by the tenant? came up for consideration, a learned Single Judge of this Court in the decision in Subbiah Pannaiyar case, cited supra, after considering the decisions relied upon by the first appellate Court as well as the 7th defendant, has held in paragraph Nos.17 to 29 as follows:

"17. A reading of the definition of the word 'landlord' shows that it is a contract with another person which enables him to receive rent and the same has nothing to do with the title to the property or to the building. It is a contractual right that gives the person the status of a landlord. It is that status or contract, if denied by the person in occupation, gives the jurisdiction of the Rent Controller to decide the question whether that contention is bona fide or not, It is not the title over the property or the building that is the matter in issue. As held in the decision reported in Dr. Ranbir Singh v. Asharfi Lal , the absolute title over the building and the land is the germane in a suit between the landlord and the tenant. It is only the proof of the contract that gives the person the status of a landlord, which enables him to get eviction. So, naturally, the exclusion of jurisdiction contemplated in the decision reported in East India Corporation Limited v. Shree Meenakshi Mills Limited , can only be confined as to the denial of the status of landlord and not regarding the title to the building. To that extent, the civil court will have jurisdiction. That is, the civil court is competent to decide as to the ownership over the property and ownership over the building. That is not something which comes within the jurisdiction of the Rent Controller. I reiterate that the scope of enquiry under second proviso to Section 10(1) of the Rent Control Act is confined to the status of landlord and tenant, which has nothing to do with title to the property.

18. In the Supreme Court decision cited supra, namely, Dr. Ranbir Singh v. Asharfi Lal , their Lordships also said that even if title is proved, and the contract is not proved, the owner may not be entitled to recover the property. That also



strengthens my finding that so far as the ownership of the building and the title to the property is concerned, the Second Proviso to Section 10(1) of the Rent Control Act will not be a bar.

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19. But I agree with the learned Counsel for the appellant that the right of the plaintiffs to recover the building on the basis of the rental arrangement will be barred in view of the decision cited above. But that will not affect the maintainability of the suit. *Ishar Singh v. National Fertilizers*, their Lordships were considering the scope of bar of jurisdiction of civil court in a suit where the relief is sought for were, (1) correction of date of birth, and (2) recovery of backwages or reinstatement of a dismissed workman. Part of the reliefs prayed for was barred under the Industrial Disputes Act. The question was, whether the entire suit could be dismissed. Their Lordships held thus:

Law is settled that matters which come within the purview of Section 9 of the C.P.C. are maintainable in the civil court. A suit for correcting the date of birth in the record would be maintainable in civil court. In fact, asking for a correction of that type may be for various purposes and need not necessarily be confined to the question of claiming the relief (Superannuation as per corrected date of birth in instant case) available under the Industrial Disputes Act. Where the suit for correction of date of birth is filed before an employee is superannuated on basis of the date of birth on record none of the situations contemplated under Section 2-A of the Industrial Disputes Act had happened so as to give the employee a cause of action to approach the Industrial Court. The maintainability of the suit has to be decided with reference of the suit has to be decided with reference to the date of institution of the proceeding and since on the date when the civil suit was filed none of the eventualities covered by Section 2-A had happened, he could not have approached the forum under the 1947 Industrial Disputes Act for relief. Thus the civil suit would not be barred by Section 2-A of the Industrial Disputes Act.



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If for part of the reliefs the suit is maintainable in the forum where it has been laid, it is not open to the forum to shut out its doors to the suitor. In that view of the matter, so far as the relief of rectification of the record relating to the date of birth is concerned, the civil court had jurisdiction to grant that relief. However, where the employee stood superannuated even on basis of the corrected date of birth by the time the civil suit came to be decided in his favour, the relief of backwages could not be granted by the civil Court. The employee can avail of the remedy under Section 33-C(2) of the Industrial Disputes Act.

20. If it is found that the suit is maintainable in so far as title to the property and title to the building are concerned, it cannot be said that it is bar under Section 9 of the Code of Civil Procedure or on the second proviso to Section 10(1) of the Rent Control Act. At the most, it can be held that the plaintiff will not be entitled to get recovery of the building, and to that extent, the relief cannot be granted. I am supported to hold the said view in the light of the decisions reported in *Life Insurance Corporation of India v. India Automobiles and Company and Ors.* and *Mariyappanassari v. Amaravathy Animal* (1995) 1 Ker. L.J. 33.

21. In *Life Insurance Corporation of India v. India Automobiles and Co. and Ors.* (1990) 4 S.C.C. 286 at 300, in paragraph 21 of the judgment, their Lordships held thus:

We think that this contention is well founded. There are clear indications in the Act and rules that the Rent Controller does not have the jurisdiction to decide questions of title. In a proceeding under the Act, where it be for fixation of fair rent or eviction, the tenant may raise several objections. He may, inter alia, take up the point that the opposite party is not the "landlord". The definition of "landlord" under the Act is very wide and encompasses not only an owner but also persons "receiving or entitled to receive the rent of the building which has been let out or would be entitled to receive the rent of the building if it were let out to a tenant" in one of several capacities. Denial of title of the landlord is itself one of the grounds on which



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eviction can be sought (Section 10(2)(vii)). Sri Krishnamurthy Iyer is, therefore, certainly right in contending that the Act requires the Rent Controller to consider the issue, among others, while disposing the applications before him. But, we think, Sri Parasaran is right in saying that, since the Rent Controller has no jurisdiction to entertain an application except by a landlord or a tenant, the question of title to the property is one on which his very jurisdiction depends. It cannot be described as a matter that is squarely and directly in issue in these proceedings to which any finality can be attached, as the Rent Controller, by deciding the issue wrongly, cannot clothe himself with jurisdiction where none exists. All that the Rent Controller has to do is to satisfy himself that the person seeking eviction or fixation of fair rent is a "landlord" who was, prima facie, the right to receive the rents of the property in question. That the Rent Controller's jurisdiction on this issue is limited is clear from the proviso to Section 10(1) of the Act. In order to decide whether the denial of the landlord's title by the tenant is bona fide, the Rent Controller may have to go into the tenant's contention on the issue but he is not to decide the question finally. He has only to see whether the tenant's denial of the landlord's title is bona fide in the circumstances of the case. He may reach a conclusion, on the merits, that the landlord has title; yet he cannot order eviction if the tenant's action in denying the title was bona fide. Per contra, he may reach the conclusion on the materials before him that the landlord has not title; yet, it seems if he finds that the applicant is otherwise a landlord and that the grounds on which the tenant's denial was based were not bona fide, he will have to order eviction.

It was further clarified by their Lordships in paragraph 23 thus:

We are of opinion, in the light of the decided cases referred to above, that the contention on behalf of the respondents has to be accepted. We are concerned with the jurisdiction of a civil court. The extensive jurisdiction conferred on civil courts under Section 9 of the Code of Civil Procedure should not be curtailed without a



[Italics supplied]

22. In *Mariyappanassari v. Amaravathy Ammal* (1995) 1 Ker.L.J. 33, a similar question came for consideration. In that case, a learned Judge of the Kerala High Court considered the decision of the Supreme Court reported in *East India Corporation Limited v. Shree Meenakshi Mills Limited*. Section 11(1) of the Kerala Buildings (Lease and Rent Control) Act, 1965 is the same as Section 10(1) of the Tamil Nadu Rent Control Act. While discussing the scope of Section 11(1) of the Kerala Rent Control Act, it was held thus:

...the bar under Section 11(1) is attracted only in a case where the subject-matter of the suit is a building as defined in the Rent Control Act and not in a case where title to the land and a claim of fixity under the Kerala Land Reforms Act are involved. If in a given case the claim is only as regards a building on the basis that the same had been let out to a tenant and the Rent Control Act applies to the area in question, the ratio of the decision in *East Corporation Limited* case, would be attracted.

23. When a claim of exclusion of jurisdiction of a civil court is raised, it is settled law that the exclusion of jurisdiction is not to be taken for granted. Even if there is exclusion, the interpretation regarding the exclusion has to be strictly construed only to the limited scope of exclusion of jurisdiction. It is the presumption of law that any suit of a civil nature is entertainable in a civil court, unless it is expressly or impliedly barred.

24. In view of the settled position of law, the plaintiffs are entitled to maintain the civil suit insofar as the title to the land and building are concerned, and also for recovery of the land which are the subject-matter of the land. These issues cannot be covered or could be matters in issue under the Rent Control Act.

25. Regarding the title to the land and building, no serious argument was put forward by learned Counsel. It is admitted that the property belonged to the appellant's father and later there was a partition between the brothers. It is also not in dispute that the plaint item was allotted to the share of Ramiah Pannaiyar and the first



plaintiff purchased the same and subsequently gifted it to the second plaintiff. So, the title to the land covered by Ex. A-1 is proved.

26. Insofar as the building is concerned, both the Courts below have held that the defendant could not have constructed the building, and, on appreciation of evidence, it came to the conclusion that the same was constructed by the first plaintiff after the execution of Ex.A-1 sale deed. The ownership over the building also cannot be challenged.

27. Even though both the courts below have held that there is rental arrangement in respect of the building, and the plaintiffs are entitled to recover, I hold that those findings have to be set aside since it has no jurisdiction to decide the same. Recovery of possession of the building granted on the basis of the rental arrangement also will have to be consequently set aside. That is a matter which a Rent Controller can decide.

28. To sum up, the substantial questions of law are answered as follows:

The findings of both the courts below that the plaintiffs are entitled to recover possession of the land is correct. But, in respect of the building, I hold that the civil court has no jurisdiction. To that extent, the first question of law is found in favour of the appellant. On the second question, namely, whether the defendant is a tenant, I hold that it is a matter to be decided by the Rent Controller and, therefore, the finding by the trial court as confirmed by the lower appellate court has to be set aside.

29. In the result, the second appeal is allowed in part, as indicated above. A decree will be granted to the plaintiffs as follows:

Plaintiffs' title to the land and building is declared. Plaintiffs are allowed to recover the property excluding the building from the defendant. The other reliefs, so far as the building is concerned, are refused. There will be no order as to costs.

(emphasis supplied)

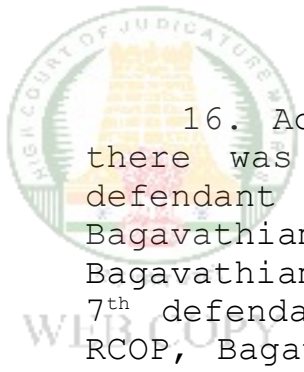
13. According to the 7th defendant, the above decision relied upon by the learned counsel for the plaintiff is not applicable to



this case, as the law laid down by the Hon'ble Supreme Court in the decision in M/s.East India Corporation Ltd., cited supra and Rukmani case, cited supra, have been concurred. It is seen that the reliefs sought for in the case in M/s.East India Corporation Ltd., cited supra and Rukmani case, cited supra, were related to recovery of possession of building and therefore, the learned Single Judge has concurred with the view of the above decisions.

14. According to the 7th defendant, in this case, the suit was filed for declaration of title, recovery of possession of building and permanent injunction, whereas in the case of Subbiah Pannaiyar, cited supra, the suit was filed for declaration and recovery of possession in respect of a building and a vacant land annexed to it and therefore, Subbiah Pannaiyar case is not applicable to this case. I am of the view that the above contention cannot be accepted, because in paragraph No.24 of Subbiah Pannaiyar case, cited supra, it has been categorically held that "in view of the settled position of law, the plaintiffs therein are entitled to maintain the civil suit insofar as the title of the land and building are concerned and also for recovery of the land which are the subject matter of the land". Further, it has been held that the plaintiff therein is not entitled to recovery of possession of the building. In this case, in addition to the relief of recovery of possession of the building, the relief of declaration of title of the suit property and permanent injunction restraining the 7th defendant from committing damage to the plaint schedule property and sub-leasing the same, and mesne profits have been sought for by the plaintiff. Therefore, this Court is of the view that Subbiah Pannaiyar case is squarely applicable to the facts and circumstances of the case. Accordingly, this Court has no hesitation to hold that the Civil Suit is maintainable in respect of the declaration of title of the suit property and permanent injunction restraining the 7th defendant from committing damage or sub-leasing the suit property. However, this Court is of the view that in general, filing a civil suit for declaration of title by the landlord is nothing but a roundabout way and therefore, it would be better for the landlord to approach the Rent Controller rather than filing Civil Suit for declaration of title.

15. In this case, the trial Court has decreed the suit as prayed for after a detailed discussions on merits of the case. The first appellate Court, without any discussion on merits of the case, has dismissed the suit on the preliminary ground of jurisdiction. Though the first appellate Court has not discussed the merits of the case, considering the year of the suit, this Court is inclined to go into the merits of the case without remanding the matter to the first appellate Court.



16. Admittedly, it is not in dispute that in the year 1959, there was a building in the suit property, in which the 7th defendant was tenant under the original owner by name Bagavathiamma. It is also not in dispute that the said Bagavathiamma had filed R.C.O.P.No.123 of 1982 for eviction of the 7th defendant from the suit property and during the pendency of RCOP, Bagavathiamma died and the first defendant impleaded in the said RCOP as the suit property was allotted to her share in the family partition and thereafter, the RCOP was allowed and RCA filed by the 7th defendant was also dismissed. The impleadment of the 1st defendant alone in the RCOP and non filing of any proceedings by the other legal heirs of the original owner of the suit property ie., 5th and 6th defendants would show that the suit property has been allotted to her share in the partition. It is stated that the 1st defendant and her legal heirs ie., defendants 2 to 4 sold the suit property to the plaintiff by registered sale deed dated 26.08.1994 under Ex.A1. The plaintiff has produced the receipts for payment of municipal taxes and current consumption charges and the order relating to change of drinking water connection in his name. The documents produced by the plaintiff would show that the plaintiff has purchased the suit property for a valid sale consideration and the plaintiff is the owner of the suit property and the records have been mutated in his name and he has been paying taxes, etc. Though the 7th defendant denied the title of the first defendant and her legal heirs and also the plaintiff, he has not produced any valid document in order to substantiate his contention. Mere denial of title will not create any right over the 7th defendant. Therefore, this Court has no hesitation to hold that the plaintiff is the owner the suit property.

17. According to the 7th defendant, in the year 1965, due to heavy rain, the building, which was rented out by the original owner, collapsed and fell down completely and only with the consent and knowledge of the husband of the original owner of the property, he constructed a new building at the cost of Rs.15,000/- in the suit property and thus, he became owner of the building. Admittedly, the 7th defendant did not produce any oral and documentary evidence in order to substantiate the said contention. Further, it is unbelievable to hear that without any documents he himself constructed the building in the suit property by spending Rs.15,000/-, because the value of the cost of Rs.15,000/- in the year 1965 was more and no prudent man would do so. Though in the cross examination the 7th defendant has stated that he has obtained drinking water connection by spending Rs.5,000/- and current connection in his name, he has not produced any document in support of the same. Further, Ex.P5- the series of photographs of the building in question shows that it is a very old building. More over, DW2 has stated in his evidence that the 7th defendant



has been living in the suit property by doing repairing work. From the above discussions, it is clear that the 7th defendant has not constructed new building in the suit property, as stated by him. As the 7th defendant has not proved that the building in the suit property was constructed by him, as rightly held by the trial Court, the plaintiff can be declared as the owner of the building in the suit property.

18. In this case, the plaintiff has sought for the relief of permanent injunction restraining the 7th defendant from causing damages to the plaint schedule property and sub-leasing the same mainly stating that the 7th defendant had attempted to sub-lease the suit property, lease out the walls for advertisements and damage the suit property. It was denied by the 7th defendant. Though the plaintiff has not substantiated the above submission, as it is held that the plaintiff is entitled to the relief of declaration of title and the ownership of building in the suit property, this Court is of the view that the plaintiff is entitled to the relief of permanent injunction also.

19. So far as the reliefs of recovery of past and future mesne profits are concerned, the plaintiff has claimed the same by fixing Rs.1000/- as rent. This Court is of the view that it would not be proper for the Civil Court to fix so and hence, this Court is not inclined to grant the relief of mesne profits.

20. From the above discussions, this Court is of the view that the judgment and decree passed by the first appellate Court is liable to be set aside and the judgment and decree passed by the trial Court is liable to be restored only for declaration of title to the suit property and the relief of permanent injunction. The petitioner is not entitled to the relief of recovery of possession of the building and mesne profits, for which the plaintiff has to approach the Rent Controller.

21. In the result, this second appeal is partly allowed and the judgment and decree passed by the first appellate Court are set aside. The judgment and decree passed by the trial Court are restored only in respect of the relief of declaration of title and permanent injunction. The plaintiff has to approach the Rent Controller for the relief of recovery of possession and mesne profits. No order as to costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)



To

1.The District Judge,
Kanyakumari District at Nagercoil.

2.The I-Additional Subordinate Judge, Nagercoil.

3.The Record Keeper,-2 copies
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-87884[F] dated
19/09/2019)

+1 CC to M/s.R.MURUGAN, Advocate (SR-87296[F] dated 18/09/2019)

judgment made in
S.A.(MD) No.616 of 2015
18.09.2019

KM/(16.10.2019) 16P 7C