

IN THE HIGH COURT OF JUDICATURE AT MADRAS
JUDGMENT RESERVED ON : 29.08.2019
JUDGMENT PRONOUNCED ON : 02.01.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1911 of 1999

1.Palaniammal (Died)
2.Indhiran
3.Sethu
4.Rukmani
5.Kamatchi
6.Amutha

[Appellants 2 to 6 are recorded as LRs of the deceased appellant-1 viz., Palaniammal vide Court order dt.28.03.2019 made in S.A.No. 1911 of 1999 as per memo dated 28.03.2019 is recorded (PRMJ)]

... Appellants

...Versus...

V.Ramu

...Defendant

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.22 of 1995 dated 25.08.1998 on the file of the learned Subordinate Judge, Cuddalore reversing the judgment and decree made in O.S.No.514 of 1998 dated 22.12.1994 on the file of the District Munsif of Cuddalore.

For Appellants :: Mr.R.Gururaj

For Defendant :: Mr.D.Ravichander

J U D G M E N T

The legal heirs of the sole plaintiff Manickam (since deceased) and his wife Palaniammal-first appellant herein (since deceased), are the appellants herein.

2. For the sake of convenience, the parties are referred to as per ranking before the Trial Court.

3. The deceased plaintiff (Manickam) filed a suit for recovery of possession of the suit property and directing the defendant to pay a sum of Rs.2,500/- per mensem towards the arrears of rent together with interest thereon.

4. The plaint proceeds on the basis that the suit property belongs to the plaintiff. He purchased it under a Registered Sale Deed dated 09.04.1969. The defendant's father became a tenant of the plaintiff. He took the site on a monthly rent of Rs.7.50. It was more than 20 years back. Ever since then the defendant's father was living there in the superstructure put up by him. After the death of the defendant's father, the defendant continued to live there and even now continues to live there as tenant. The defendant continues to commit default in payment of rent. The defendant has been postponing payment of rent. He is not vacating the property also. Hence, the plaintiff issued a notice on 06.04.1993. The defendant has not chosen to send any reply nor has to vacate. He has not paid the rent arrears. Hence, the suit is filed for recovery of possession and for arrears of rent.

5. The defendant resisted the suit inter-alia by filing written statement contended that the suit property does not belong to the plaintiff. The defendant does not know about the sale through a Registered Sale Deed dated 09.04.1969. The plaintiff was never in possession of the suit property. The father of the defendant, who was a freedom fighter and Thiyagi purchased the said property for a valuable consideration of Rs.90/- in the year 1940 from one R.A.Sivanantha Mudaliyar orally and over since that date of purchase, the defendant's father was in possession and enjoyment of the same openly without interruption by anybody by way of constructing a thatched house and living in it and he had paid Municipal Tax and Electricity Bills. The defendant's father was in possession till his death and after his death his eldest son Damodaran was in possession of the said property as per the Will executed by him. The father of the defendant and after his death, his eldest son Damodaran enjoyed and are enjoying the said property as owners and not as tenants. They have perfected their title to the said property by their adverse possession over the statutory period. The defendant received the notice given by the plaintiff and a suitable reply was given to the plaintiff.

6. The Trial Court decreed the suit. On appeal, the lower Subordinate Judge, Cuddalore has allowed the appeal and hence, the Second Appeal.

7. This Court, at the time of admitting the Second Appeal on 22.01.2001, has formulated the following Substantial Questions of Law:-

1. Whether the defendant was the plaintiff's tenant and even otherwise estopped from denying the plaintiff's title?

2. Whether the oral sale put forward by the defendant is valid?

3. Whether the finding of adverse possession in favour of the defendant can be

given without pleading?

4. What is the effect of pleading adverse possession in a third person?

5. Whether finding of the lower Court regarding tenancy against the plaintiff will preclude the plaintiff from agitating it without filing an appeal?

6. Whether the plaintiff has not proved his title and that of the vendor?

8. The learned counsel appearing for the appellants has made submissions in support of the judgment of the trial Court. While, the learned counsel appearing for the respondent has made submissions in support of the judgment of the Lower Appellate Court.

9. The plaintiff has come forward with a specific case is that the suit property was purchased as vacant site by the first plaintiff under a Sale Deed under Ex.A2 on 09.04.1969. The defendant's father one Venugopal became a tenant under the plaintiff on a monthly rent of Rs.7.50 and took possession of the vacant site. The defendant's father put up a superstructure and lived therein till his death and thereafter the defendant continues to live also as a tenant. The defendant did not pay the rent and hence the first plaintiff issued a notice under Ex.A1 prior to the suit demanding recovery of possession and arrears of rent. As the defendant did not deliver possession this suit for eviction and for arrears of rent and for mesne profits was filed.

10. As stated supra, the defendant while denying the title of the plaintiff also denied the alleged legal status his possession inter-alia contended that there is no landlord and tenant relationship between the parties and also claimed title over the property by specifically pleaded that the defendant's father Venugopal who purchased the suit property for a valid consideration of Rs.90/- in the year 1940 from the original owner one R.A.Sivanandha Mudaliar orally and since then he was in possession and enjoyment of the same by putting up a thatched house and residing therein and by paying house tax and obtaining electric service connection etc. After his death, on 10.05.1989 his eldest son one Dhamodaran has been in possession of the suit property in his own right as its owner. There was no relationship of landlord and tenant at all between the first plaintiff and the defendant or between the first plaintiff and defendant's brother Dhamodaran or defendant's father Venugopal. Hence, the defendant and his brother Dhamodaran had prescribed title by adverse possession and hence, the suit deserves to be dismissed.

11. In this connection, it is to be stated that the Trial Court has held that the plaintiff has failed to prove the landlord and tenant relationship between him and the defendant.

But, held that the plaintiff has proved the title to the suit property and consequently, allowed the prayer for recovery of possession. In short, the Trial Court has held that there was no landlord and tenant relationship between the parties and the defendant is not liable to pay any arrears of rent nor mesne profits.

12. The appellant/plaintiff has not filed any independent appeal or cross objection before the Lower Appellate Court as to the finding rendered by the trial Court touching upon the alleged landlord and tenant relationship and entitlement of arrears of rent or future profits assumes significance on the background of the case.

13. The admitted factual matrix of the case is that there is no dispute between the parties as far as the identification and description of the suit are concerned. The suit property is comprised in T.S.No.4 in Block No.17 Ward No.3 within the Cuddalore Municipal limits measuring 2560 sq.ft out of 20256 sq.ft (East-West 32 feet and North-South 90 feet). It is also not in dispute that the suit property along with the remaining extent in T.S.No.4 originally belonged to one R.A.Sivanandha Mudaliar and in fact both the parties traced their title to the common ancestor one R.A.Sivanandha Mudaliar only.

14. The plaintiff claimed title by virtue of a sale deed under Ex.A2 from the persons to whom the original owner R.A.Sivanandha Mudaliar bequeathed the suit property along with other properties under a Will. But, the defendant claims that his father one Venugopal orally purchased the same suit property for a sum of Rs.90/- in the year 1940 from the same R.A.Sivanandha Mudaliar and since then the said Venugopal was in possession and enjoyment of the same till his death around 1989 and thereafter his eldest son and defendant's brother Dhamodaran were in possession and enjoyment of the same in the capacity as its owner.

15. Though the suit was filed for relief of recovery of possession and arrears of rent for the period of three years prior to the filing of the suit as alone has been prayed for.

16. Substantial Question of Law:3:-

In the written statement, the defendant has specifically pleaded that in any event the defendant's father and after his death his eldest son Damodharan have perfected their title to the said property by their adverse possession over the statutory period as stated above. In view of the specific pleading followed by evidence as D.W.1, the third Substantial Question of Law does not arise for consideration.

17. Substantial Questions of Law 1&5:-

Though the plaintiff has issued pre-suit notice under

Ex.A1. However, the averment contained in Ex.A1-Pre-suit notice found to be at contrary with the plaint and the evidence of P.W.1.

18. Both the Courts below have concurrently held that the relationship of landlord and tenant between the plaintiff and the defendant is not proved and besides it remains to be stated that the defendant contended that his father Venugopal had title to the suit property. By virtue of oral sale from the original owner R.A.Sivanandha Mudaliar and his father was in possession and enjoyment of the suit property by putting up a thatched house and living therein since 1940.

19. While so, the evidence of the plaintiff is that only after the purchase under Ex.A2, the defendant's father Venugopal was put in possession of the vacant site as a lessee/tenant on a monthly rent of Rs.7.50. In this regard, the documentary evidence of Ex.B8, Ex.B6 and Ex.X1 coupled with the oral evidence of D.W.1 to D.W.4 and these goes to show that the father of the defendant namely Venugopal was in possession and enjoyment of the suit property even during the year 1959 to 1960 and furthermore, even as per Ex.A12 which is of the year 1959 to 1960 also lends the case of the defendant to show his possession in the year 1959 and therefore, the contention of the learned counsel for the appellant/plaintiff is that only in the year 1969, the appellant/plaintiff have purchased the property under Ex.A2 and was let in possession by him false to ground. Ex.B18 is the Pension Pay Letter issued by the Government of Tamil Nadu to the Venugopal under the Freedom Fighter congress Thiyagi was issued on 30.08.1967 which clearly indicates the address of the Venugopal and as could be seen from Ex.B18 and thus even before the sale in favour of the plaintiff in the year 1969, Venugopal is in possession of the said property also stands demonstrated by the Government document.

20. Admittedly, Ex.B18 Pension Pay Letter issued by the Government of Tamil Nadu in awarding the pension for the freedom fighter is of the year 1967 which is two years prior to sale in favour of the plaintiff under Ex.A2 of the year 1969 and hence, this Court finds that the pleadings put forward by the plaintiff that they are existed the tenancy relationship between the landlord and tenant could not be believed and in view of the documentary evidence of Ex.B18. A similar finding has been arrived by the Trial Court though not dealt with by the appellant in the regular appeal and on the above factual background, this Court holds that the concurrent finding rendered by both the Courts below regarding the alleged relationship of landlord and tenant between the plaintiff and the original defendant has not been established is well considered and well merited does not suffer from any irregularity or illegality warranting interference at this stage and accordingly, the Substantial Questions of Law 1 and 5 are answered in negation against the plaintiff.

21. Substantial Questions of Law 2,4, and 6:-

As stated supra, the plaintiff under Ex.A1 pre-suit legal notice has taken certain plea which was found to be at material contradiction with his own evidence with regard to the alleged relationship of landlord and tenant. The defendant has taken a specific plea that he is in possession of the suit property on his own title having purchased from the original owner R.A.Sivanandha Mudaliar by way of oral sale deed. In this regard, it is to be stated that the oral sale does not convey title. There is no quarrel on this preposition of law that as per Section 9 of Transfer of Property Act. There cannot be oral sale of an immovable property, the value of which is more than Rs.100/- and as such a sale is invalid in law. Whereas in this case, the defendant claims that his father purchased the suit property in the year 1940 for a sum of Rs.90/- and as such, it cannot be stated that such a sale cannot be valid one as the sale price was less than Rs.100/-.

22. Besides the defendant never admitted the alleged tenancy agreement between the parties. In the preceding paragraphs, this Court also held that the plaintiff has not proved his pleadings of alleged tenancy relationship and it is also to be stated that as per the pleadings, the defendant's father and the defendant never paid rent to the plaintiff and in the absence of any valid reason much less any reason as to why the plaintiff has kept quiet for 20 long years from the date of his purchase under Ex.A2 before filing the suit is also appears to be cloudy with suspicion.

23. Yet another issue is that the defendant is in possession for a period more than 20 years was specifically admitted by the first plaintiff and from the documentary evidence filed by the defendant, the Lower Appellate Court has rightly come to the conclusion that the defendant family is in possession of the suit property from the year 1940 is found to be on the factual background.

24. On the point of title to the defendant, as stated supra, it is a specific case of the defendant that there was a oral sale regarding the effect of the oral sale deed on the facts and circumstances of this case in the preceding paragraphs such a plea is accepted and furthermore, in the written statement, it is specifically pleaded by the defendant while the adjacent properties were sold and boundaries were described, the name of the father of the defendant finds place in those sale deeds. Even a release deed executed by one Valliammal in favour of the plaintiff discloses the said Venugopal's title to the said property.

25. So is the evidence of D.W.1, it is to be stated that in the sale deed filed by the plaintiff, it appears that Ex.B2 and Ex.A6 which help the defendant's case rendered the plaintiff's case in the description of property. In the schedule

of said sale deeds, one of the boundary is clearly described as the property of the Venugopal namely the defendant's father and hence, even as per Ex.A6 and Ex.B2, though it was projected by the plaintiff.

26. On a careful perusal of the schedule of the properties described therein and the suit property is described therein as the property of the defendant and hence, a finding rendered by the Lower Appellate Court as to the possession and the title of the defendant's father Venugopal appears to be correct and does not warrant any interference and hence, this Court finds that as pleaded by the defendant in the written statement supported by the oral evidence of D.Ws.2, 3 and 4 and also the documentary evidence of Ex.A6 and Ex.B2, this Court finds that pursuant to the oral sale effected by the vendor of the plaintiff namely R.A.Sivanandha Mudaliar in favour of the original defendant, he is in possession of the suit property and his title and possession has been duly reflected in the subsequent document under Ex.A6 and Ex.B2 and further, the possession of the Venugopal in the suit property has already been established by the defendant by letting in independent documentary evidence in the Exhibit B-series more so in Ex.B8 Pension Pay Letter and therefore, this Court is of the considered view that the defendant have clearly demonstrated by specifically pleading his title to the suit property and proving the same in the manner known to law and their possession is only in pursuance of the said oral sale in their favour.

27. In view of the other reasons discussed presiding paragraphs, the title of the defendant stands established while the plaintiff has miserably failed to prove the title in the manner known to law and further, even on the plea of adversely possession, there is a specific plea has been raised in the written statement, as extracted supra, the oral and documentary evidence in the form of D.W.2 to D.W.4 and Exs.B15 to B20 and Ex.X1 and hence, the finding rendered by the Lower Appellate Court that he has also perfected the title by adverse possession is well considered and well merited and therefore, does not warrant any interference and hence, the Substantial Questions of Law 2,4 and 6 are answered in negation against the plaintiff.

28. In view of the same, the Substantial Questions of Law are also answered in negation against the appellants/plaintiffs and this Court finds that the defendant has demonstrated his title to the property and his possession for over a period of statutory period and the appellants/plaintiffs have miserably failed to prove his pleadings and hence, neither proved the title of the suit property nor proved the relationship of landlord and tenant and the possession of the defendant since 1967 and hence, he is in possession for more than statutory period.

29. In this view of the matter, all the Substantial Questions of Law are answered in negation against the plaintiffs and this Second Appeal is dismissed. No costs. The judgment and decree of the First Appellate Court is confirmed.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Cuddalore.

2. The District Munsif of Cuddalore.

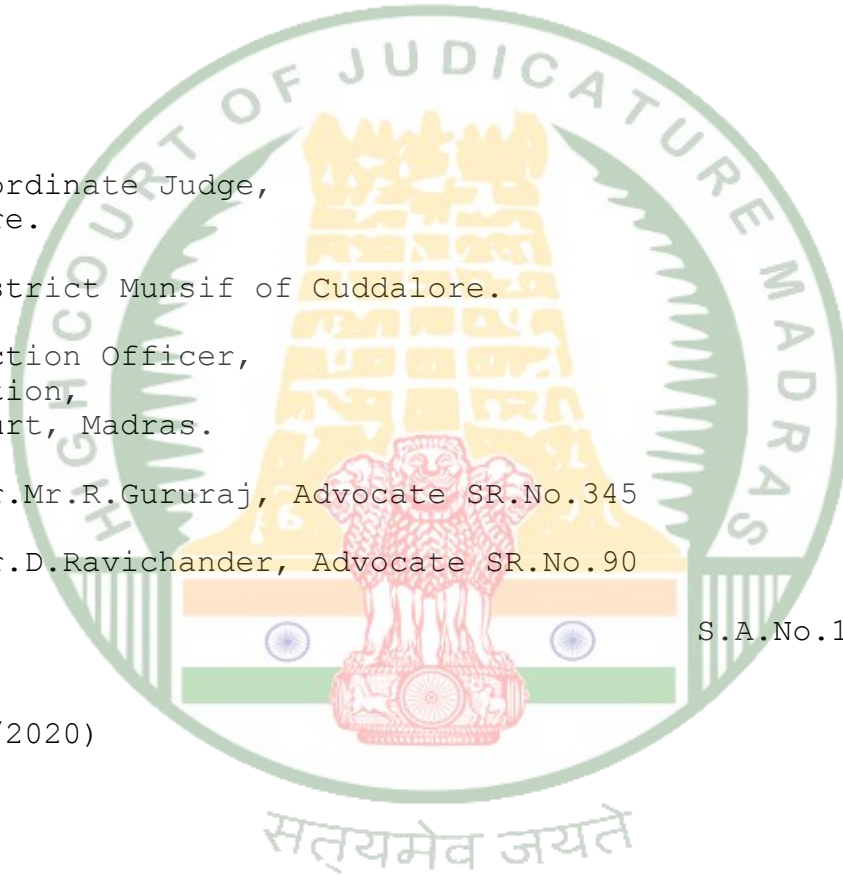
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.Mr.R.Gururaj, Advocate SR.No.345

+1cc to Mr.D.Ravichander, Advocate SR.No.90

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