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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.02.2020

Date of Verdict : 02.06.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.Nos.398 to 400 of 2005 and
CMP.Nos.6464 to 6466 of 2005

SA.No.398 of 2005

John Kennedy @ Murugan

...Appellant/Respondent/Plaintiff

Vs.

1.V.Gowri (deceased)
2.R.V.Srinivasa Naidu
3.T.Venugopal
4.V.Jaikumar
5.Vanipriya

...Respondents/Appellant/Defendants

(RR3 to 5 brought on record as LR's
of the deceased R1 - vide order of
court dated 25.02.2016 made in
CMP.Nos.3166 to 3168 of 2016
in SA.No.398 to 400 of 2005)

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 05.01.2005, in A.S.No.382 of 2004 on the file of the VI Additional City Civil Court, Chennai, reversing the decree and judgment dated 06.07.2004 in O.S.No.8965 of 1995 on the file of the II Assistant City Civil Court, Chennai.

For Appellant : Mr.M.Sriram

For Respondents

R1 : Died

R2 to R5 : Mr.N.Jayabalan

SA.No.399 of 2005

John Kennedy @ Murugan

...Appellant/Respondent/Defendant

Vs.

1.V.Gowri (deceased)

...1st Respondent/Appellant/Plaintiff

2.R.V.Srinivasa Naidu



3.T.Venugopal

4.V.Jaikumar

5.Vanipriya

...Respondents

(RR2 to 5 brought on record as LR's of the deceased R1 - vide order of court dated 25.02.2016 made in CMP.Nos.3166 to 3168 of 2016 in SA.No.398 to 400 of 2005)

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 05.01.2005, in A.S.No.383 of 2004 on the file of the VI Additional City Civil Court, Chennai, reversing the decree and judgment dated 06.07.2004 in O.S.No.12471 of 1996 on the file of the II Assistant City Civil Court, Chennai.

For Appellant : Mr.M.Sriram

For Respondents

R1 : Died

R2 to R5 : Mr.N.Jayabalan

SA.No.400 of 2005

John Kennedy @ Murugan

...Appellant/Respondent/Plaintiff

Vs.

1.V.Gowri(deceased)

2.R.V.Srinivasa Naidu

...1st & 2nd Respondent/Appellants/Defendants

3.T.Venugopal

4.V.Jaikumar

5.Vanipriya

...3 to 5 Respondents

(RR3 to 5 brought on record as LR's of the deceased R1 - vide order of court dated 25.02.2016 made in CMP.Nos.3166 to 3168 of 2016 in SA.No.398 to 400 of 2005)

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 05.01.2005, in A.S.No.384 of 2004 on the file of the VI Additional City Civil Court, Chennai, reversing the decree and judgment dated 06.07.2004 in O.S.No.3001 of 1997 on the file of the II Assistant City Civil Court, Chennai.

For Appellant : Mr.M.Sriram

For Respondents

R1 : Died

R2 to R5 : Mr.N.Jayabalan



COMMON JUDGMENT

These second appeals are directed as against the judgment and decree dated 05.01.2005, passed in A.S.Nos.382 to 384 of 2004 on the file of the VI Additional City Civil Court, Chennai, reversing the judgment and decree dated 06.07.2004 in O.S.Nos.8965 of 1995, 12471 of 1996 & 3001 of 1997 on the file of the II Assistant City Civil Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiff in O.S.No.8965 of 1995 in brief is as follows :-

3.1 The suit is filed for permanent injunction. The plaintiff is running a bakery in the suit property under the name and style of 'J.P. Bakery' for the past 12 years. He also had spent huge money in the business to develop the shop premises. He has been paying rents to the first defendant as landlady regularly without fail. While being so, the plaintiff entered into a sale agreement with the first defendant to purchase the suit property. The second defendant is the uncle of the first defendant. While being so, on 06.12.1995 the defendants attempted to evict the plaintiff from the suit property. Hence, the suit.

4. Resisting the same, the defendants filed written statement denying all the averments and allegations made in the plaint as false and frivolous. The plaintiff is a tenant of the first defendant in respect of shop admeasuring 140 square feet in the suit premises. Demised shop has been assigned door No.77/2 and the plaintiff is not a tenant for the entire suit property. The entire suit property admeasures 2160 sq.ft. There are two shops admeasuring 140 sq.ft. each in the front portion. Beyond the shops, there is a passage about 3 ½ feet wide providing access to the rear portion of the property where there are small huts. The first defendant is an absentee landlady. Originally, the shop No.77/2 was let out to one, Gurusamy, the brother of the plaintiff. In the year 1992, the said Gurusamy vacated the shop and the plaintiff was inducted as tenant for a monthly rent of Rs.350/-. The other shop situated in Door No.77/1 was let out to one, Gandhi, who in turn sublet the shop to the plaintiff after some years. Therefore, the first defendant initiated eviction proceedings against the said Gandhi and the plaintiff and it is pending. Taking advantage of the same, now the present suit has been filed. In fact, the first defendant already filed a suit for permanent injunction against the plaintiff in O.S.No.12471 of 1996 and it is pending and as such prayed for dismissal of the suit.



5. The case of the plaintiff in O.S.No.12471 of 1996 in brief is as follows:

5.1 The suit is filed for permanent injunction. The plaintiff is the absolute owner of the suit property admeasuring 4 cents and 336 sq.ft. The suit property was inherited by the plaintiff from her mother Jayalakshmi Ammal as her only legal heir. She had been paying Urban Land Tax, Corporation Tax, Electric Charges and other revenue dues in respect of the suit property to the concerned authorities. The revenue records were mutated in her name and all the receipts were issued in her name. In the year 1981, she constructed two shops admeasuring 140 sq.ft. each, in which one shop was let out to one, Gurusamy, namely the brother of the defendant and another shop was let out in favour of one, Gandhi. The said Gurusamy was vacated the shop premises and leased out to the defendant in the year 1992 for a period of one year. Even after expiry of the lease period, the defendant refused to vacate the said premises. In the year 1992, when the other shop was vacated by the said Gandhi, the said shop was also occupied unauthorisedly by the defendant. Since the husband of the plaintiff was transferred to Bangalore, she had to shift her residence to Bangalore for business. Taking advantage of the absence of the plaintiff, the defendant fabricated the sale agreement forging her signature dated 15.03.1994 as if the plaintiff agreed to sell the shops in the suit property to the defendant. Therefore a complaint was lodged on 16.03.1996 with the Inspector of Police, Rajamangalam Police Station, and it was registered in Crime No.299 of 1996 and investigation is pending. Hence, the suit.

6. Resisting the same, the defendant filed written statement stating that already the defendant filed suit for bare injunction in O.S.No.8965 of 1995 and the present suit is nothing but counter blast to the said suit. In both the suits, the suit property is one and the same. The plaintiff is not the owner of the suit property as claimed. The suit property is classified as poramboke belonging to Government and as such the plaintiff is never being the owner of the suit property and she is the owner of the superstructure alone. The entire suit property was let out in favour of the defendant for the monthly rent of Rs.350/- and the defendant has been running bakery business in the suit property from the year 1982. There is only one shop with two shutters and the defendant had been inducted as tenant for the entire portion of the shops and it was never let out to another person except the defendant. On 15.03.1994, the plaintiff executed the sale agreement to sell the entire suit property to the defendant for the total sale consideration of Rs.2,00,000/- and received Rs.10,000/- as advance. Even in the month of May 1991 itself, she received a sum of Rs.50,000/- towards sale consideration and agreed to sell the suit property,



thereby she received totally a sum of Rs.60,000/- as advance to sell the suit property in favour of the defendant. Thereafter, the plaintiff refused to execute the sale deed in favour of the first defendant on the advice of one James. In fact, the defendant also filed suit in O.S.No.3001 of 1997 for specific performance on the basis of the sale agreement executed by the plaintiff dated 15.03.1994. Therefore, the present suit is nothing but counter blast for the earlier suit filed by the defendant and prayed for dismissal of the suit.

7. At the same time, the defendant in O.S.No.12471 of 1996 filed another suit in O.S.No.3001 of 1997 for specific performance as averred in the written statement filed in O.S.No.12471 of 1996. Pursuant to which, the plaintiff in O.S.No.12471 of 1996 filed written statement as averred in the plaint in the said suit.

8. Since all the suits were filed in respect of the very same property and also between the same parties, the trial court clubbed all the suits together and conducted trial. During the trial, on the side of the plaintiff in O.S.Nos.8965 of 1995 and 3001 of 1997 and the defendant in O.S.No.12471 of 1996, P.W.1 to P.W.4 were examined and were marked twenty five documents as Ex.A.1 to Ex.A.25. On the side of the defendants in O.S.Nos.8965 of 1995 and 3001 of 1997 and the plaintiff in O.S.No.12471 of 1996, D.W.1 and D.W.2 were examined and were marked sixteen documents as Ex.B.1 to Ex.B.16. The report of the Assistant Director, Forensic Science Department along with the signature of the plaintiff in O.S.No.12471 of 1996 were marked as Ex.X1 to Ex.X3. On considering the oral and documentary evidences adduced by the respective parties and the submissions made by the learned counsel on either side, the trial Court dismissed the suits in O.S.Nos.8965 of 1995 and 3001 of 1997 and allowed the suit in O.S.No.12471 of 1996. Aggrieved over the judgment and decree of the trial Court, the plaintiff in O.S.No.12471 of 1996 and the defendant in O.S.No.8965 of 1995 and 3001 of 1997 preferred appeal in A.S.Nos.382 to 384 of 2004 before the VI Additional City Civil Court, Chennai. The first appellate Court on appreciating the materials placed on records, dismissed all the suits by common judgment and decree dated 06.04.2005. Aggrieved by the same, the plaintiff in O.S.No.8965 of 1995 and 3001 of 1997 and the defendant in O.S.No.12471 of 1996 have come forward with the present second appeals.

9. At the time of admission of the second appeals, the following substantial questions of law were framed :-

- (i) Whether the lower appellate court is justified in not appreciating the evidence properly which resulted in dismissal of the suit for specific performance?



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(ii) Whether the lower appellate court is justified in placing reliance on the report Ex.X1 by DW1 which is contrary to Section 73 of the Evidence Act?

(iii) Whether the lower appellate court is right in holding the suit for specific performance is hit by Order 2 Rule 2 in the absence of any pleadings and issue framed?

(iv) Whether the lower appellate court is right in dismissing the suit for specific performance relying on Section 17(1) of the Specific Relief Act?

(v) Whether the lower appellate court is justified in dismissing the suit on the ground of readiness and willingness in the absence of evidence and pleadings by respondent / defendant?

(vi) Whether the lower appellate court is justified in rendering the finding not supported by evidence and based on misconception of evidence contrary to pleadings?

(vii) Whether the finding of the lower appellate court is based on evidence and the evidence is based on pleadings, but on surmises?

(viii) Whether lower appellate court is right in granting decree for injunction when the possession by the respondent on the date of the suit was not proved?

(ix) Whether the lower appellate court is justified in holding the respondent's possession by letting out the remaining extent to tenants in the absence of pleadings to that effect?

(x) Are the finding on possession by respondent is not against the admission of the respondent and the pleadings?

(xi) Whether the lower appellate court is justified in dismissing the suit for injunction of the appellate when the possession was admitted by the respondent?

(xii) Whether the court below is right in not considering the Ex.A16 to Ex.A18 while reversing the validity of Ex.A.2 and the payment of advance amount?

(xiii) Whether the lower appellate court is right in not considering Ex.A12 to Ex.A15 while reversing the finding on Ex.A2?

(xiv) Whether the court below is right in not appreciating the evidence of PW2 to PW3 on the ground of interested witness?



10. The learned counsel appearing for the appellant submitted that originally the plaintiff filed suit for injunction in O.S.No.8965 of 1995 against the defendants. Pending the suit, they filed a suit for injunction for the very same property in O.S.No.12471 of 1996. Thereafter, the plaintiff filed suit in O.S.No.3001 of 1997 for specific performance for the very same property. Therefore, the trial court conducted joint trial and dismissed the suit filed by the plaintiff and allowed the suit filed by the defendants and granted interim injunction as against the plaintiff in respect of the suit property. He further submitted that the defendants never took a plea before the trial court that the property is a poramboke land and belong to Government and as such agreement for sale itself is void and it cannot be executable one. Further, he also filed objections to the memo filed by the defendants stating that out of 1631 square feet of land, only the land measuring 500 square feet seems to have been acquired by the Government of India for the formation of subway. Therefore, the suit property is very much available and appeals are survive. Further, false complaint has been filed as against the plaintiff on the allegation that the plaintiff fabricated false documents forging the signature of the first defendant and created agreement for sale in respect of suit property. The said complaint was charge sheeted and thereafter ended in acquittal. Further, he submitted that even according to the defendants, the property belongs to Government and it was acquired by the Government for formation of subway and they also received compensation. When the defendants specifically have taken stand that the property belongs to Government and classified as poramboke, they are not at all entitled for any compensation and prayed for decreeing the suits.

11. Per contra, the learned counsel for the respondents filed memo stating that while pending these appeals, the Government formed subway and also for widening the road nearby Villivakkam Railway Station have taken possession part of land and entire superstructure from the suit property and also paid compensation for superstructure alone in the later part of 2008 itself and the subject matter of the suit property, namely two shops which were rented out to the plaintiff were demolished and the possession of the land admeasuring 500 square feet or thereabouts was taken over by the Government of India. As of now, there is no superstructure as such the defendants also did not prosecute the eviction petitions filed against the plaintiff. He further submitted that the entire land is classified as poramboke and only the superstructure alone was put up by the first defendant and rented out to the plaintiff. Further, the first defendant never executed any sale agreement as alleged by the plaintiff since the poramboke land cannot be sold and since there is a specific bar under Section 17 of the



Specific Relief Act. Therefore, the agreement itself is not valid one and the suit filed by the plaintiff is liable to be dismissed and prayed for dismissal of the second appeals.

12. Heard Mr.M.Sriram, learned counsel appearing for the plaintiffs and Mr.N.Jayabalan, learned counsel appearing for the defendant.

13. Originally the plaintiff in O.S.No.8965 of 1995 filed suit for bare injunction in respect of the property admeasuring 1631 square feet. While pending the same, the defendants filed another suit in O.S.No.12471 of 1996 as against the plaintiff insofar as the shops situated at Door No.77/1 and 77/2 in the total extent of 1631 square feet comprised in T.S.No.142, Block No.48 of Villivakkam Village. Again, while pending both the suits, the plaintiff in O.S.No.8965 of 1995 filed another suit for specific performance for the very same property in O.S.No.3001 of 1997. Therefore, the trial court clubbed all the suits together and dismissed the suit filed by the plaintiff in O.S.No.8965 of 1995 and O.S.No.3001 of 1997, and allowed the suit filed by the defendants in O.S.No.12471 of 1996.

14. According to the plaintiff, he was inducted as a tenant for the shop bearing Door No.77/1 admeasuring 140 square feet and he is paying rent without fail. While being so, the first defendant along with the second defendant attempted to dispossess the plaintiff from the suit property. Therefore, he filed a suit.

15. It is pertinent to mention here that again, he filed another suit in O.S.No.3001 of 1997 for specific performance for the very same property as if the first defendant agreed to sell the property for the total sale consideration of Rs.2,00,000/-, in which she received Rs.60,000/- as advance and executed sale agreement on 15.03.1994. When it being so, there is absolutely no whisper about the sale agreement in the injunction suit filed by the plaintiff. There is no mentioning about the receipts of advance amount of Rs.60,000/- and execution of the sale agreement. The specific performance suit was also filed only after the suit filed by the defendants in O.S.No.12471 of 1996 for injunction. Further, the specific case of the defendants is that the first defendant has inherited the suit property from her mother, in which she constructed two shops bearing door Nos.77/1 and 77/2 admeasuring 140 square feet each. The brother of the plaintiff, one Gurusamy was originally inducted as tenant. Thereafter, it was let out to the plaintiff with effect from 01.06.1992. Insofar as the another shop is concerned, it was let out to one Gandhi and he also vacated the premises. Thereafter, the plaintiff trespassed into the shop No.77/2 and occupied without the consent of the first defendant. Therefore,



the plaintiff occupied only two shops admeasuring 280 square feet and not the entire suit property as alleged by them.

16. In fact, the first defendant also filed eviction petition before the court concerned to evict the plaintiff from the premises situated at door No.77/1 and 77/2. Therefore, the first defendant also lodged complaint, in which FIR was registered in Cr.No.299 of 1996 on the file of the Rajamangalam Police Station. Though the criminal case was ended in acquittal in favour of the plaintiff, the findings of the criminal court never bind the civil court to decide the matter, that too in the suit for specific performance. Admittedly, the suit property is classified as poramboke and belonged to Government of India. The plaintiff categorically admitted the fact that the suit property is classified as poramboke and therefore belonged to the Government of India. The superstructure alone was put up by the first defendant and rented out to the plaintiff.

17. That apart, now the learned counsel for the defendants submitted that the entire construction put up by her was already demolished and the entire land was acquired by the Government of India for formation of subway and expansion of road. Therefore, nothing survives in these second appeals and no superstructure is available in the suit property. Though the plaintiff filed objections to the memo filed by the defendants, they also categorically admitted that a portion of the land, namely 500 square feet has been acquired by the Government of India. Therefore, the remaining extent of the property admeasuring 1576 is very much available and they are entitled for relief of specific performance.

18. As discussed above, the suit property itself is classified as Government poramboke and therefore, even assuming that as per the alleged sale agreement the defendants executed sale, it is not valid one. In this regard, it is relevant to extract the provision under Section 17 of the Specific Relief Act, 1963 is as follows:

17. Contract to sell or let property by one who has no title, not specifically enforceable.

(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor

(a) who, knowing not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or



letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

Therefore, the sale agreement which was marked as Ex.A.2 is not valid in law, and the plaintiff is not entitled for any relief as prayed for, as such the first appellate rightly reversed the findings of the trial court.

19. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the first appellate court as such the first appellate court have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed all the suits. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in these second appeals. Be that as it may, all the substantial questions of law, formulated by this Court in these Second Appeals, are answered in favour of the respondents.

20. Accordingly, these Second Appeals stand dismissed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1. The VI Additional City Civil Court,
Chennai

2. The II Assistant City Civil Court,
Chennai.

Copy to:

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

S.A.Nos.398 to 400 of 2005

BP (CO)

K.RK. (13.09.2021)