

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 21.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.202 of 2020
and CMP.No.4118 of 2020

G.Rajammal

.. Appellant/Plaintiff

Versus

P.K.Shanmugam (deceased)

1. Meena

Balan (deceased)

Jagadeeswari (deceased)

2. Kumaran

3. Jayakumari

... Respondents/ Defendants

Second Appeal is filed under Section 100, of Civil Procedure Code against the judgment and decree dated 31.10.2019 made in A.S.No.203 of 2017 on th file of the VII Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 13.03.2017 made in O.S.No.1834 of 2004 on the file of the IV Assistant City Civil Court, Chennai.

For Appellant : Mr.Muthukumar
for Mr.P.Britto

सत्यमेव जयते
JUDGMENT

The plaintiff in O.S.No.1834 of 2004 on the file of the IV Assistant City Civil Court, Chennai is the appellant herein. The suit was filed for permanent injunction restraining the defendants their men and agent from dispossessing the plaintiff from Plot No.13, Dr.Ambedkar Nagar, Arumbakkam Village, Chennai.

2. The case of the plaintiff is that she has been in possession of the suit property for more than 40 years. Legal proceedings were initiated for eviction of the plaintiff and other occupants of the land. Subsequently, by an order dated 24.02.1995 in OSA.29 of 1992, various squatters on the land including the plaintiff were permitted to purchase the property occupied by them. Accordingly, the plaintiff paid a sum of Rs.15,514/- on 28.12.1994. It is alleged that the

plaintiff received a letter dated 26.03.2004 from the Official Assignee, High Court, Madras asking her to come to his office and also informed that the land in her occupation is over and above an extent of 700 sq.ft., which will be valued by the Official Assignee and allotted in her favour. But subsequently, the defendants attempted to encroach upon the land under occupation of the plaintiff. Hence, the suit.

3. The suit was resisted by the defendants by filing a written statement contending that in I.P.No.79/72, the High Court directed the Official Assignee to inspect the land under occupation of the squatters and file a report. Accordingly, a report was filed by the Official Assignee stating that the plaintiff is in possession of 700 sq.ft. and the defendant was in occupation of 1015 sq.ft. It is further stated that the High Court directed the plaintiff to pay Rs.15,514/- towards the occupation of the land of 700 sq.ft. and the second defendant was directed to pay Rs.22,496/-. However, some of the occupiers obtained an order of stay and when the matter was pending before the Apex Court, the hut put up by the second defendant was damaged during rainy season and hence, she temporarily shifted to other place. Taking advantage of the same, the plaintiff and her henchmen attempted to encroach the second defendant's vacant land on 04.04.2004 and prayed for dismissal of the suit.

4. Based on the above pleadings, the Trial Court framed necessary issues. On the side of the plaintiff PW1 was examined and Exs.A1 to A4 were marked. On the side of the defendants DW1 was examined and Exs.B1 was produced. After considering the evidence adduced by the parties, the Trial Court dismissed the suit. On appeal, the findings of the Trial Court was confirmed. Assailing the concurrent findings, this Second Appeal is filed.

5. The learned counsel appearing for the appellant Mr.Muthukumar argued that the Courts below failed to consider that the appellant had been in possession of the suit property for more than 40 years. He further added that the Official Assignee informed the appellant that the land occupied by her would be valued by the Office and sale deed will be executed in favour of the appellant. In the meanwhile, the respondents tried to interfere with the possession of the plaintiff, but, without taking note of the above facts, the suit was dismissed.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. In the case on hand, the appellant filed the suit for bare injunction. It is the case of the plaintiff that she has been in possession of the suit property measuring an extent of 1800 sq.ft. in plot No.13. On perusal of Ex.A1, it is seen that the plaintiff was allotted only 700

sq.ft. in pursuance of the order passed in OSA.No.29 of 1992. Ex.A2 and A3 are the letters addressed by the Official Assignee Office and Ex.A4 is the notice addressed to the Inspector of Police to that effect. The plaintiff seeks decree of permanent injunction for an extent of 1800 sq.ft.

8. During the course of examination, the plaintiff admitted that in the year 1994, she paid Rs.15,514/- for an extent of 700 sq.ft. and she has not paid the cost of land for 1800 sq.ft. It is the submission of the learned counsel for the appellant that even the defendant has not disputed the possession of the appellant in the suit property. The said submission has no merit acceptance for the reason that she has not proved her possession of the entire suit property except the letter from Official Assignee Office. No reliable document was made available to show that the plaintiff is entitled to occupy 1800 sq.ft. of land. Both the Courts below on proper appreciation of evidence rightly rejected the case of the appellant.

9. For the reasons stated above, I find no illegality or perversity in the findings of the Courts below. In fine, the appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

pvs

To

1.The VII Additional Judge, City Civil Court, Chennai

2. The IV Assistant City Civil Court, Chennai

3.The Official Assignee, High Court, Madras

+1cc to Mr.P.Britto , Advocate SR.No. 15413

S.A.No.202 of 2020

A.SK(30/09/2020)