

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2020

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1258 of 2019
and C.M.P.No.27267 of 2019

A.K.Shaffi Baig ..Appellant/Appellant/Plaintiff
Vs

1.The Commissioner,
Corporation of Chennai,
Chennai - 3.

2.The District Collector,
Collectorate, Chennai District,
Chennai - 5.

3.The Conservancy Inspector (C.I.),
105 Division, Zone VII,
Boopathy Nagar,
Egmore, Chennai-600 008. ...Respondents/Respondents/Defendants

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree dated 13.11.2018 passed in A.S.No.113 of 2015 on the file of the I Additional Judge, City Civil Court, Chennai confirming the decree and judgment dated 04.04.2013 passed in O.S.No.4741 of 2008 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.C.T.Mohan

For Respondents : Mr.K.Soundararajan

Standing Counsel for R1 & R3

Mr.Y.T.Aravind Gosh

Government Advocate for R2

JUDGMENT

The unsuccessful plaintiff in O.S.No.4741 of 2008 is the appellant herein. The suit was filed to declare that the plaintiff is the owner of the suit property and for consequential permanent injunction.

2. The case of the plaintiff is that, he is in occupation of the suit property measuring an extent of 300 sq.ft., since 01.03.1980. Originally it was a vacant land, wherein he put up a superstructure to an extent of 100 sq.ft and he has been enjoying the property without any interference for more than 27

years and thereby, he had perfected the title by way of adverse possession. It is alleged that on 02.07.2008 the respondents attempted to dispossess him without following the due process of law and hence, the suit.

3. The suit was resisted by the respondents by contending that the suit property is a Corporation public toilet and pump room and a licence was granted in favour of the plaintiff's brother Rafic Baig for a period of one year from 04.07.2007 to 03.07.2008 vide work order Ref.No.2.07/C.No.E2/4413/070. After expiry of one year period, the contractor was directed to vacate the suit properties and hand over the same to the Corporation. Accordingly, he handed over the toilet except the pump room. The plaintiff is using the suit property for running a shop. Hence, the respondents prayed for dismissal of the suit.

4. Based on the above pleadings, the trial Court framed necessary issues. On the side of the plaintiff P.Ws.1 to 4 were examined and Exs.A1 to A5 were marked. On the side of the defendants D.W.1 was examined and Exs.B1 to B7 were marked. Upon consideration of both oral and documentary evidence, the trial Court dismissed the suit. On appeal preferred by the plaintiff, the findings of the trial Court was confirmed.

5. Mr.C.T.Mohan, learned counsel for the appellant would urge that the Courts below failed to see the various documents filed by the appellant to prove his possession and enjoyment of the property. It is further submitted that P.Ws.2 to 4 have also supported the case of the appellant. The Courts below without proper appreciation of the evidence came to the wrong conclusion that the pump room was leased out to the plaintiff's brother.

6. Per contra, Mr.K.Soundararajan, learned Standing Counsel appearing for the respondents 1 and 3 would argue that admittedly, the suit property belongs to the Chennai Corporation and the plea of adverse possession was not established before the Courts below. It is further contended that no question of law arises to entertain this appeal.

7. Heard the leaned counsels on either side and perused the materials available on record.

8. In the matter on hand, the case of the appellant is that from the year 2008 he has been enjoying the suit property and to prove the said contention Exs.A1 to A5 were marked. The respondents gave evidence to show that the suit property belongs to the Chennai Corporation and in the year 2007, the public toilet and pump room were leased out to the brother of the

plaintiff. Ex.A1 Bank Pass Book, Ex.A2 Voter Identity Card, Ex.A3 Ration Card for 2005-2009, Ex.A4 Voter List and Ex.A5 Ration Card of P.W.4, after verifying the documents, it was found out that the documents relied on by the appellant did not relate to the suit property. On the other hand, it was established by the defendants that the suit property was a part of property that was leased out to the brother of the plaintiff and after the licence period, he encroached upon the property.

9. In my considered opinion that both the trial Court and the Appellate Court after independently analysing the evidence available on record came to the conclusion that the plaintiff is not entitled for the prayer sought for in the suit. I find no valid ground to interfere with the findings of the Courts below. In fine the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10. At this juncture, the learned counsel for the appellant would state that the appellant is running a business in the suit property and he is the only bread winner of the family and seeks six months time to surrender the possession to the respondent Corporation and undertakes to file a memo to that effect.

11. In the light of the above submissions, the appellant is directed to hand over the vacant possession to the respondent Corporation on or before 30.06.2020. The appellant shall file an affidavit of undertaking within a period of two weeks from the date of receipt of a copy of this order, failing which the respondent Corporation is at liberty to evict the appellant forthwith.

Sd/-
Assistant Registrar (C.S.III)

/True Copy/

Sub Assistant Registrar

To

- 1.The I Additional Judge, City Civil Court, Chennai.
- 2.The XVI Assistant Judge, City Civil Court, Chennai.

+1cc to Mr.C.T.Mohan, Advocate Sr.No.2195
+1cc to Mr.K.Soundarrajan, Advocate Sr.No.2379
+1cc to The Government Pleader Sr.No.2705

AKM/19.03.2020 /2P-6C/

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