

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.Nos. 332 & 358 of 2014

1.Mahaboob Be
2.S.Sultan
3.S.Dasthagir

..Appellants in both the appeals/
Appellants/Defendants

Vs.

1.Padmavathi
2.D.Vasantha

..Respondents in both the appeals/
Respondents/Plaintiffs

Prayer in both the appeals: Second Appeals filed under Section. 100 of C.P.C. against the judgment and decree passed by the learned VII - Additional Judge, City Civil Court, Chennai in A.S.No. 486/2009 & 487/2009 dated 20.11.2013 confirming the judgment and decree in O.S.Nos. 3963/2008 & 101/2007 dated 01.09.2009 on the file of VIII Assistant Judge, City Civil Court, Chennai.

For Appellants in both the appeals: Mr.R.Vijayaraghaven

For Respondents in both the appeals: Mr.V.Subramani

J U D G M E N T

These two appeals arise out of two cross suits. While O.S.No.3963 of 2008 was filed by the respondents herein seeking recovery of possession of the suit property and injunction restraining the appellants from alienating the suit property, the suit in O.S.No.101 of 2007 was filed by the appellants herein seeking a permanent injunction restraining the respondents from interfering with their possession of their suit property. According to the plaintiffs in O.S.No.3963 of 2008, the super structure in the suit land belonged to Syed Ibrahim. He has taken the suit land on lease from Jamia Waqf Board at Saidapet on 28.12.1998. After the death of Syed Ibrahim, the property had devolved on the appellants. On 28.12.1998, the appellants sold the super structure to the respondent for a consideration of Rs.50,000/-. On the same day, another agreement was entered into between the parties with reference to the relinquishment of the lease hold right in which the plaintiffs in O.S.No.3963 of 2008 / respondents herein had agreed to pay a sum of Rs.4,65,000/- to the defendants as consideration for relinquishment to lease hold right. According

to the plaintiffs, on the same day, a sum of Rs.3,50,000/- was paid and the same was evidenced by a memorandum of undertaking executed between the parties. It was also agreed that balance sum of Rs.1,15,000/- should be paid within a period of three months. On receipt of the payment, the defendants should surrender the possession of the property. It appears that the defendants did not handover possession of the property to the plaintiff in O.S.No.3963 of 2008 and chose to file a suit in O.S.No.101 of 2007 seeking a permanent injunction restraining the plaintiffs in O.S.No.3963 of 2008 from interfering with their possession of the suit property. The plaintiffs / respondents herein had instituted a suit in O.S.No.3963 of 2008 seeking possession as aforesaid. Both the suits were tried together. The suit in O.S.No.3963 of 2008 was resisted by the appellants. While accepting the fact that they had executed a sale deed in respect of the super structure on 28.12.1998, the appellants would contend that the respondents did not come forward to pay a balance amount of Rs.1,15,000/- within a stipulated time and therefore he has lost the right to seek possession. The relevant portion of the written statement is as follows:

"13. It is relevant and important to state that the said sale deed came to be executed on 28.12.1998 against payment of partial sale consideration of Rs.4,00,000/- (Rupees Four Lakhs Only). For the remaining sale consideration it was agreed by the parties that the same should be paid in 3 months time there from and until payment of balance sale consideration the possession of the suit property be with the defendants. For the said understanding the plaintiffs have also executed a deed / bond dated 28.12.1998. In that deed / bond the plaintiffs accepted / admitted to abide by any decision taken by the defendants in case if the plaintiffs failed to pay the balance sale consideration within the stipulated time mentioned in the deed / bond.

14. The defendants submit that the plaintiffs failed to pay the balance sale consideration of Rs.1,15,000/- (Rupees One Lakh and Fifteen only) as agreed. In spite of repeated demands made by the defendants. Thus, the defendants possession and enjoyment of suit property continues as in the past that is the defendants are in continuous possession and enjoyment of the suit property."

3. Since both the suits related to the same property and were between the same parties, both the suits were taken up for joint trial. Evidence was recorded in O.S.No.3963 of 2008, which is a comprehensive suit. The second plaintiff in

O.S.No.3963 of 2008 was examined as P.W.1 and second defendant was examined as D.W.1. Exs. A1 to A3 were marked on the side of the plaintiffs and Ex.B1 to B24 were marked on the side of the defendants. Eventhough the defendants has admitted the execution of the agreement regarding transfer of tenancy in the written statement in explicit terms while tendering evidence, they chose to deny it.

4. The Trial Court, upon consideration of the evidence on record concluded that having executed a sale deed and having received a major portion of the of the consideration for relinquishment of the lease hold right, the defendants / appellants herein are not justified in retaining possession of the property. The Trial Court also found that the respondents / plaintiffs in O.S.No.3963 of 2008 had offered to pay a sum of Rs.1,15,000/- and the same was not accepted by the appellants. On the finding that the title to the property in question stood transferred on the execution of the sale deed on 28.12.1998. The Trial Court held that the plaintiff is entitled to a decree for possession on such finding, the Trial Court decreed the suit in O.S.No. 3963 of 2008 and dismissed the suit in O.S.No.101 of 2007. Aggrieved, the defendants in O.S.No.3963 of 2008 / plaintiffs in O.S.No.101 of 2007 filed two appeals in A.S.No.486 of 2009 and A.S.No.487 of 2009. Along with an appeal an application was filed seeking to produce plaint in another suit said to have been filed by the sisters claiming the share in the suit property. The lower Appellate Court allowed the said application and plaint in the said suit was received in evidence and marked as Ex.B25. The lower Appellate Court concurred with the findings of the Trial Court on the question of validity of the sale dated 28.12.1998 as evidenced by Ex.B1. The lower Appellate Court also took note of the fact that the defendants had not chosen to deny Ex.B2. The lower Appellate Court also held that the remedy for the defendants in O.S.No.3963 of 2008 is only to sue for recovery of the balance of the sale consideration if at all there is any amount payable by the plaintiff therein to the defendants. Having upheld the validity of the sale deed, the lower Appellate Court concluded that the defendants are bound to surrender possession. On the said conclusion, the lower appellate Court dismissed the appeals confirming the judgment and decree in both the suits. Aggrieved, the defendants in O.S.No.3963 of 2008 have come up with this second appeal.

5. Heard Mr.R.Vijayaraghaven, learned counsel appearing for the appellants and Mr. V.Subramanian, learned counsel appearing for the respondents.

6. Mr.R.Vijayaraghaven, learned counsel appearing for the appellants would vehemently contend that the Courts below erred

overlooking the fact that the respondent was under an obligation to pay the balance amount of Rs.1,15,000/- within a period of three months and having failed to pay the same, the respondent cannot seek recovery of possession. He would also contend that the pendency of the partition suit in O.S.No. 12411 of 2010 would prevent the plaintiff / respondent herein from seeking recovery of possession. I am unable to accept both the submissions of the learned counsel. If Ex.B2 is accepted, it should be accepted in full. The Ex.B2 shows that the balance of Rs.1,15,000/- should be paid within a period of three months and on such payment the appellants are bound to handover the possession. They even refused to accept the said sum of Rs.1,15,000/- when it was actually sent to them. Once the super structure which admittedly belongs to the appellants has been sold, the appellants cannot retain possession of the property on the ground that there is a balance payable out of the sale consideration. The remedy of an unpaid vendor is to sue for balance of sale consideration, he or she cannot retain possession of the property. Further, the defendants have to admitted Ex.B2. These factors have been taken note of the Courts below to come to conclusion that the plaintiffs in O.S.No.3963 of 2008 are entitled by decree for recovery of possession. The pendency of the suit in O.S.No.12411 of 2010 cannot be put against the respondents herein. If the sisters of Syed Ibrahim succeed in the suit, it is always open to them to launch final decree proceedings against the respondents, since they have purchased the property from the other heirs of Syed Ibrahim.

7. I therefore, see no reason to conclude that the pendency of the suit in O.S.No.12411 of 2010 would affect the right of the respondents to recover possession from the appellants herein. Despite his best efforts, the learned counsel unable to show that the findings of facts rendered by the Courts below can be termed as perverse. There is no question of law much less a substantial question of law in order to enable me to entertain the appeals. Hence, these appeals fail and are accordingly dismissed. Consequently, connected civil miscellaneous petitions are closed. No costs.

-sd/-

Asst.Registrar (CS IV)

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Sub Asst. Registrar

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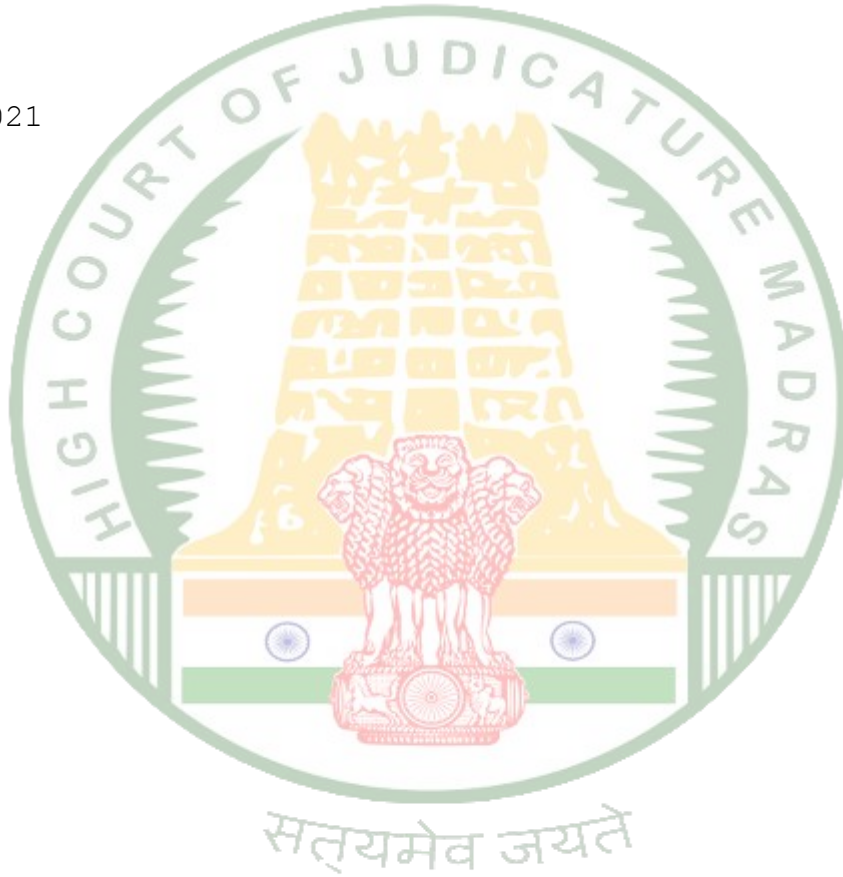
1. VIII -Assistant City Civil Court, Chennai.

2. VII - Additional City Civil Court, Chennai.

+2 ccs to Mr.R.Vijayaraghavan Advocate sr21484,21485

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