

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.01.2020

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1207 of 2019

1.Vanitha
2.D.Sekar
3.Kalidoss
4.Maada
5.Sumathi
6.Devi

...Appellants/Defendants

Vs

1.G.Nara Singh Ban Singh,
2.G.Vidhya Shankar Singh
3.G.Mohan Singh
4.G.Gajalakshmi

...Respondents/Plaintiffs

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree passed by the III Addl. Judge at City Civil Court, Chennai on 23.10.2018 in A.S.No.38 of 2018 reversing the judgment and Decree dated 21.09.2017 passed by XVIII Asst. Judge, City Civil Court at Chennai in O.S.No.3115 of 2015.

For Appellants : Mr.M.Chinnaswamy

For Respondents : Mr.E.Sampath Kumar for Mr.S.Venkatesh

JUDGMENT

This Second Appeal is directed against the Judgment and Decree of the III Additional Judge at City Civil Court, Chennai, passed in A.S.No.38 of 2018 reversing the Judgment of the Trial Court in O.S.No.3115 of 2015.

2.The Appellants are the Defendants in the suit and the suit was filed for delivery of possession of the suit property and for permanent injunction and for damages.

3.The case of the plaintiffs is that they are Legal heirs of one Ganesh Singh. The land belongs to Sri. Prasanna Venkata Narasimha Perumal Devasthanam Temple and in the year 1936, the temple leased out the property to the plaintiffs' father for a period of 21 years. The plaintiffs' father inducted the husband of the first defendant namely, Rajabathar as a lessee, but from

01.05.1976 the said Rajabathar defaulted in paying the monthly rent. Hence, R.C.O.P.No.2977 of 1985 was filed against the said Rajabathar for eviction on the ground of Willful default and the same was allowed on 30.08.1990. The tenant taken up the matter to the Appellate Court in R.C.A.No.301 of 1991 and the same was dismissed.

4.The Plaintiffs' would further contend that the mother of the plaintiffs filed a suit in O.S.No.3659 of 1985 before the XII Assistant City Civil Court for permanent injunction restraining the said Rajabathar from altering the suit schedule property and the suit was Decreed, but no Appeal was preferred against the Judgment and Decree.

5.While so, the second defendant has filed O.S.No.5347 of 1999 before the XIII Assistant City Civil Court for permanent injunction restraining the plaintiffs from interfering with their peaceful possession and enjoyment of the property. Subsequently, a compromise was entered into and the suit property was handed over to them on 23.08.1999. When the plaintiffs sought permission from the temple authorities to divide the suit property in the year 2003, the defendants have encroached the suit property and hence the complaint was lodged on 05.10.2013 and thereafter the suit has been filed.

6.The suit was resisted by the defendants by contending that the first defendant's father-in-law had encroached the suit and put up the superstructure. Since then, the defendants have been in possession and enjoyment of the same. It is further stated that the defendant had no knowledge about the proceedings initiated against the said Rajabathar and Parvathi. It is their further case that Ex.A3 compromise agreement was false and a created document. They prayed for dismissal of the suit on the ground for non joinder of necessary parties.

7.On the basis of the pleadings, the trial Court framed necessary issues. During trial, on the side of the plaintiffs, the second plaintiff was examined as P.W.2 and EX.A.1 to Ex.A18 were marked. On the side of the defendants, the 3rd defendant gave evidence as DW1 and Ex.B1 to Ex.B.8 were marked.

8. After considering the material evidence available on record, the trial Court dismissed the suit. Aggreived by the same, the plaintiffs preferred an appeal in A.S.No.38 of 2018 before the III Addl. City Civil Court, Chennai. The First Appellate Court allowed the appeal and decreed the suit, challenging the same, the present Second Appeal is preferred by the defendants.

9. Mr.M.Chinnasamy learned counsel for the appellant would urge that there was no lease agreement in favour of the father of the plaintiffs' namely Mr.Ganesh. The lease agreement was registered in the year 1918 in favour of one Roy. Hence, the plaintiffs have no right to institute the present suit. The defendants have been in possession of the property since 1930. Next, it is contended that the temple is a necessary and proper party to the suit, hence the suit was rightly dismissed on the ground of non joinder of necessary party. Further proper Court fee was not paid, but the appellate Court erroneously allowed the appeal.

10. Per contra, Mr.Sampath learned counsel for the respondent would submit that the father of the Defendants namely Rajabathar became the tenant under the plaintiff and for the default in payment of rent, eviction petition was filed and it is allowed by the Rent Control Court and the findings was confirmed up to the revision filed by the tenant in C.R.P.No.1412 of 1992. The learned counsel further submitted that after handing over possession of the suit property to the plaintiffs, again it was encroached by the defendants in the year 2013 which necessitated the plaintiffs to file the suit. it is the submission of the learned counsel that the factual finding arrived at by the Appellate Court based on the evidence does not warrant interference of this Court and prays for dismissal of the appeal.

11. In the case on hand, it is not disputed that the plaintiffs are the legal heirs of one Ganesan and the defendants are the legal heirs of one Rajabathar. It is the case of the plaintiffs that the said Rajabathar was a tenant under the plaintiffs and for default in payment of the rent, eviction proceeding was initiated in R.C.O.P.No.2977 of 1985. It is seen from Ex.A6, the eviction petition was allowed on 30.10.1990 and the appeal preferred against the RCOP proceedings in R.C.A.No.301 of 1990 was dismissed by the Appellate Court. It is not disputed that the order of the appellate Court was also confirmed by this Court.

12. It is further evident that from Ex.A5 that the plaintiff's mother Parvathi bai instituted O.S.No.3659 of 1985 against the tenant Rajabathar and obtained permanent injunction and the suit was decreed, but no appeal was preferred against the judgment and hence it has attained finality. It is further seen that in pursuance of the compromise under Ex.A.3, the property was handed over to the plaintiffs on 23.08.1999 and thereafter, the defendants encroached the property.

13. The appellate Court in Para 23 of the Judgement and has been held that the plaintiffs' father put up construction and

leased out the suit property in favour of Rajabathar. It is relevant to note that appellants herein have not adduced cojent evidence to prove their case. Since the plaintiffs have not claimed title over the land it was held that the temple was not a necessary party. Though the Trial Court dismissed the suit on the ground that the defendants have been in possession of the suit property for a long period, the Appellate Court after analysing the entire evidence, reversed the findings of the trial Court by assaing valid reasons.

14. In the light of the above facts, I do not find any illegality or irregularity or perversify in the Judgment passed by the First appellate Court. In that view, this Second appeal fails and the same is dissmitted. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vsn
To

1.The III Additional Judge
City Civil Court,
Chennai

2.The XVIII Assistant Judge,
City Civil Court
Chennai

+1 CC to Mr.S.Venkatesh, Advocate sr 2793.

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