



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.02.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A. (MD) .No.387 of 2015

and

M.P (MD) No.1 of 2015

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Kamatchi (Died)

1.T.Selvarani

2.T.Vijaya

3.Murugesan

4.Dhanalakshmi

5.Selvakumar

6.Ponni

7.Minor Muthupandi

8.Minor Pavithira

(Minors 7 and 8 represented through
their mother/respondent No.6 Ponni)

...Appellants/Appellants 2 to 9/ Defendants
Vs.

Jaithoon Beevi

...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed by the Additional District and Sessions Judge, Dindigul in A.S.No.45 of 2010 dated 24.03.2014 confirming the judgment and decree passed by the Additional Subordinate Judge, Dindigul in O.S.No.112 of 2005 dated 23.06.2010.

For Appellants

: Mr.S.Natesh Raja

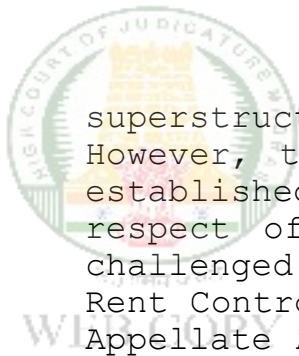
For Respondent

: Mr.H.Lakshmi Shankar

JUDGMENT

This second appeal is at the instance of the defendant, who suffered a decree for declaration of a title and recovery of possession at the hands of the Courts below.

2. The original suit in O.S.No.112 of 2005 on the file of the Additional District and Sessions Judge, Dindigul, was filed by the respondent/plaintiff seeking declaration of title and recovery of possession. According to the plaintiff, the suit property belonged to his father Haji Abdul Sammathu Ravuthar, who has executed a registered settlement deed dated 14.05.1958 settling the suit property along with other properties in her favour. In fact, the plaintiff claiming that the defendant is a tenant under her in respect of two door numbers ie., Door Nos.27 and 28 filed R.C.O.P.No.79 of 1980 on the file of the Rent Controller/Principal District Munsif, Dindigul, seeking eviction. In the said eviction proceedings, the defendant/tenant took a specific plea that the land in question belongs to the present plaintiff, who was the landlord and in the said land, the defendant was permitted to put up a



superstructure. The said claim was rejected by the Rent Controller. However, the Rent Controller found that the factum of tenancy was established and therefore, the Rent Controller ordered eviction in respect of both the door numbers. The said eviction order was challenged by the tenant in C.M.A.No.123 of 1981 on the file of the Rent Control Appellate Authority/Principal Sub-Court, Dindigul. The Appellate Authority found that the tenancy in respect of Door No.27 has not been proved and restricted the eviction order only to Door No.28.

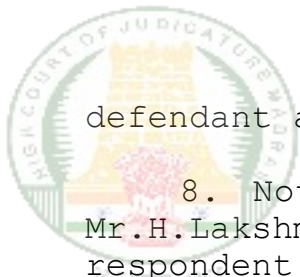
3. It is also stated that when execution proceeding was launched to execute the order passed by by Appellate Authority under the Tamil Nadu Building (Lease and Rent Control) Act, 1960, the Ameen returned the warrant saying that there is no Door No.28. The plaintiff therefore, came up with the present suit for declaration of a title and recovery of possession.

4. The suit was resisted by the defendant contending that the plaintiff is not the owner of the property at all and the property belongs to the Government and is classified as poramboke. He would also contend that house tax assessments have been made in his name as regards Door No.27 and hence, the plaintiff not being the owner of the property, cannot seek a decree for declaration of a title and recovery of possession.

5. At trial, the plaintiff was examined as P.W.1 and Ex.A1 to Ex.A11 were marked. On the side of the defendant, the defendant was examined as D.W.1 and Ex.B1 to Ex.B10 were marked. A Commissioner was appointed to identify the suit property and he has filed a report and plan and which were marked as Exs.C1 and C2.

6. The trial Court upon consideration of the oral and documentary evidence, concluded that the plaintiff has proved that the suit property is within four boundaries mentioned in settlement deed dated 14.05.1958 and as such, she has got title to the land. The claim of the defendant that the suit property is a Government poramboke land was rejected by the trial Court. Exs.B1 to B10 were not believed on the ground that they had emanated during the pendency of the Rent Control proceedings between the parties. The claim of the defendant that the findings in the Rent Control Proceedings would operate as *res judicata* in the suit was rejected by the trial Court on the ground that the findings of the Rent Control Tribunal, which is a Court of limited jurisdiction would not operate as *res judicata* in a suit filed for declaration of a title and recovery of possession. On the above findings, the trial Court decreed the suit as prayer for.

7. Aggrieved, the defendant filed an appeal in A.S.No.45 of 2010 on the file of the Additional District and Sessions Judge, Dindigul. The lower appellate Court concurred with the findings of the trial Court and dismissed the appeal, which resulted in the



defendant approaching this Court by way of this second appeal.

8. Notice of motion was ordered on 03.08.2015. Upon notice, Mr.H.Lakshmi Shankar, learned counsel had entered appearance for the respondent.

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9. I have heard Mr.S.Natesh Raja, learned counsel appearing for the appellants and Mr.H.Lakshmi Shankar, learned counsel for the respondent.

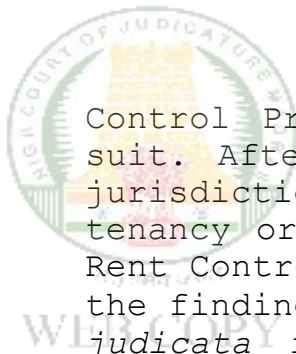
10. Mr.S.Natesh Raja, learned counsel appearing for the appellant would vehemently contend that once the Rent Controller found that there was no landlord and tenant relationship and dismissed the eviction petition, the plaintiff cannot seek declaration of a title and recovery of possession. He would also contend that the municipality has assessed the house tax in the name of the defendant and there is no evidence to show that the said assessment was cancelled. He would further contend that the land belongs to the Government and it has been classified as Government poramboke. Therefore, according to him, the Courts below are not right in decreeing the suit for declaration of a title and recovery of possession.

11. Contending contra, Mr.H.Lakshmi Shankar, learned counsel for the respondent would argue that the Commissioner's report shows that the suit property formed part of the larger extent of property that was settled in favour of the plaintiff under the settlement deed dated 14.05.1958. He would further contend that the tax assessments were obtained during the pendency of the Rent Control Proceedings and as such, they have been created only to usurp the property of the plaintiff. He would also claim that the defendant, who had admitted the title of the plaintiff before the Rent Control Authority, is estopped from claiming title or setting up title in the Government.

12. I have considered the rival submissions.

13. Both the Courts below have concurrently found that the suit property is situated within the four boundaries mentioned in the settlement deed dated 14.05.1958, which has been marked as Ex.A6. The claim of the defendant that the property was assessed to tax in his name was rejected by the Courts below on the ground that all those documents Ex.B1 to B10 had emanated during the pendency of the Rent Control Proceedings. Therefore, much evidentiary value cannot be attached to the same.

14. The defendant, who claims that the property is a poramboke land belonging to the Government has not chosen to produce any document to show that the property has been actually shown as poramboke in the revenue records. The Courts below have also



Control Proceedings would operate as *res judicata* in the present suit. After all, the Rent Control Tribunal is a Court of limited jurisdiction and dispute there is limited only to existence of tenancy or otherwise. The question of title cannot be decided by a Rent Controller. Therefore, the Courts below have rightly held that the findings in the Rent Control Proceedings will not operate as *res judicata* in the present suit, where the plaintiff had claimed declaration of a title and recovery of possession.

15. Having failed to prove his contention that the suit property is a part of a poramboke land and having admitted the title of the plaintiff in the earlier proceedings, the defendant cannot be heard to contend that he is in possession of the land and as such, the plaintiff is not entitled to a decree for declaration of a title and recovery of possession. Despite his best efforts, the learned counsel for the appellant is not able to point out any perversity in the findings of the trial Court or the appellate Court.

16. Being a concurrent finding, I do not think that I can interfere with the said finding unless it is shown to be perverse. On a reading of the evidence on record as well as the finding of the Courts below, I am able to see that the Courts below have appreciated the evidence and come to a just conclusion. I do not think that there is any factual error in the conclusions of the Courts below. I also do not see any question of law much less substantial question of law in order to enable me to entertain the second appeal. Hence, the second appeal fails and is dismissed, without being admitted. However, in the circumstances, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

pm

To

- 1.The Additional District and Sessions Judge, Dindigul.
- 2.The Additional Subordinate Judge, Dindigul.

Copy to:

The Section Officer, (2 copies)

V.R.Section, Madurai Bench of Madras High Court,Madurai.

+1 CC to M/s.S.NATESHRAJA, Advocate (SR-7981[F] dated 24/02/2020)

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-8296[F]

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