



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.840 OF 2012  
AND MP NO.1 OF 2012

N.Dhayanithi

... Appellant/defendant

VS.

1.T.Velraja  
2.Senbagavalli

... Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 10.12.2011 in A.S.No.93 of 2009 passed by the IV Additional City Civil Judge, Chennai, reversing the decree and judgment dated 17.06.2008 in O.S.No.2721 of 2007 passed by the VIII Assistant City Civil Court, Chennai.

For Appellant : Mr.A.S.Alaguraja

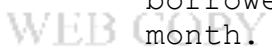
For Respondents : No appearance

#### J U D G M E N T

The defendant is the appellant. The plaintiffs are the respondents.

2. The respondents/plaintiffs filed a Suit for permanent injunction restraining the defendant from interfering with their peaceful possession and enjoyment of the Suit properties and for a mandatory injunction directing the defendant to return the original Title Deeds pertaining to the Suit properties and also the filled in Rs.10/- and Rs.20/- stamp papers signed by the plaintiffs and to receive a sum of Rs.1,00,000/- from the plaintiffs.

3. The case of the plaintiffs is that the Suit properties bearing Plot Nos.681 and 682, Door Nos.42 and 43, described in the Schedule was allotted in favour of one Malliga and Krishnaveni by the Tamil Nadu Slum Clearance Board on the basis of Lease cum Sale Agreement. From them, the plaintiffs



7. On the basis of the above pleading, the Trial Court framed appropriate issues. The first plaintiff examined himself as P.W.1 and his neighbour as P.W.2 and marked Exs.A1 to A3. Two witnesses were examined as C.W.1 and C.W.2 (Court Witness) and Exs.B1 to B4 were marked on the side of the defendant. The Trial Court, after considering the evidence has dismissed the Suit. On appeal, the judgment and decree of the Trial Court was set aside and the Suit was decreed in favour of the plaintiffs. Against which, the present Second Appeal has been preferred by the



defendant.

8. This Court has admitted the Second Appeal on 17.09.2012, on the following substantial questions of law:-

WEB COPY

"1.Whether the lower appellate court has committed an error in granting mandatory injunction for the return of original title deeds pertaining to the suit properties, whereas the said title deeds are not described either in the prayer or in a schedule annexed to the plaint ?

2.Whether the lower appellate court has erroneously shifted the burden of proof of possession on the appellant herein / defendant and decided the same against him? "

9. Heard the submissions made by the learned counsel for the appellant. There is no representation on behalf of the respondents. I have perused the materials placed before this Court.

10. On the face of it, it is noted that the plaintiffs claims possession over the property by themselves as tenants. Exs.A1 and A2 dated 16.11.2016 and 26.11.2006 are the rental agreements entered between the first plaintiff and one G.Shanmugam. Ex.A3 - dated 19.04.2007 is the copy of the complaint preferred by the first plaintiff before the Joint Commissioner of Police, Pulianthope, Chennai. In the evidence of P.W.1, it is categorically deposed that he purchased the property from the allottees of Tamil Nadu Slum Clearance Board and that he leased out it to one G.Shanmugam vide Exs.A1 and A2.

11. Curiously, neither the vendor of the plaintiffs nor the tenant who was in occupation of the portion were examined before the Court. There is no evidence with regard to his possession over the property through documents, such as electricity bill, ration card, license to run the business, rental receipts. When the evidence of P.W.2 is considered, he categorically deposed that the defendant has handed over Rs.100/- X 9 bundles and Rs.50/- X 1 bundle amounting to Rs.95,000/- in yellow bag to the plaintiffs. The first plaintiff signed blank stamp papers and on the insistence of the defendant, went to the first floor after obtaining the signature from the second plaintiff herein. But a perusal of Exs.B3 and B4, it is noted that signatures were not obtained in blank stamp papers and the signatures are exactly below the recitals and that the recitals of Exs.B3 and B4 were not typed above the signature previously obtained in blank stamp papers.



12. From the above materials, it is seen that the plaintiffs have handed over possession on executing an unregistered Sale Deeds in favour of the defendant. The Trial Court has rightly held that even though the unregistered Sale Deeds are not admissible in evidence, they were received for the collateral purpose, which proves possession of the defendant.

13. It is well settled principle of law that a person, who claim possession, shall prove it on the basis of oral and documentary evidence. But, in the instant case, the plaintiffs have desperately failed to prove the same. The First Appellate Court has relied on Exs.A1 and A2, the so-called rental agreements as unassailable proof of possession. But unfortunately, it has omitted to consider that the tenant was not examined and P.W.2 would speak about the payment of money and not about the tenant. In such circumstances, it is crystal clear that the plaintiffs have not proved possession over the Suit properties. Therefore, the findings of the First Appellate Court that the possession is proved and entitlement of the plaintiffs for permanent injunction without any basis.

14. Accordingly, the substantial questions of law are answered in favour of the appellant. The judgment and decree dated 10.12.2011 passed in A.S.No.93 of 2009 passed by the learned IV Additional Judge, City Civil Court, Chennai, is set aside and the judgment and decree dated 17.06.2008 in O.S.No.2721 of 2007 passed by the learned VIII Assistant Judge, City Civil Court, Chennai stands confirmed.

15. In fine, the Second Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

TK

To

1. The IV Additional Judge  
City Civil Court  
Chennai.
2. The VIII Assistant Judge  
City Civil Court  
Chennai.



COPY TO

The Section Officer,  
VR Section,  
High Court, Madras-104.

+1cc to Mr.S.Ponnarasi, Advocate, S.R.No.47339

SA NO.840 OF 2012

SSI (CO)  
CT 11/05/2022