

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 10TH DAY OF MARCH 2021

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

A.No.1827 of 2020
in
C.S.No.116 of 2020

Tmt.A.Shanthi,
W/o.Alagesan,
No.2, Kamaraj Street,
Shenoy Nagar,
Chennai-600 030.

..Plaintiff

Greater Chenani Corporation,
Rep. by its Commissioner,
Ripon Buildings,
Park Town,
Chennai-600 003.

Vs

..Defendant

A.No.1827 of 2020:

Greater Chenani Corporation,
Rep. by its Commissioner,
Ripon Buildings,
Park Town,
Chennai-600 003.

..Applicant

Vs

Tmt.A.Shanthi,
W/o.Alagesan,
No.2, Kamaraj Street,
Shenoy Nagar,
Chennai-600 030.

..Respondent

Application praying that this Hon'ble Court be pleased to reject the plaint in the above Suit in C.S.No.116 of 2020.

This Application coming on this day before this court for hearing, the Court made the following order:

The defendant in C.S.No.116 of 2020, has filed this application under Order XIV Rule 8 of the Original Side Rules, r/w Order VII Rule 11 of CPC, praying to reject the plaint filed in the above referred suit.

2. The averments found in the application filed by the applicant/defendant is as follows:

(i) Earlier, the property in larger extent situated in Periyakoodal village had been acquired for the public purpose. In the said process, Survey No.22/1A (part) had been acquired for the housing sites. The housing layout was promoted and the suit property, is the portion earmarked for road and the land adjacent to the disputed suit property, is the land earmarked for the public purposes. The public purpose land was given on lease to the School, run by the Trust in the name of Sundara Vadanam School. The school had one of its exit like a small way out and at one end of the road/land abutting the Brewery Road, the road was subject to encroachment by one Dhakshinamoorthy and his wife Selvammal, which was removed after the long struggle and interruption of the

applicant/defendant.

(ii) The permanent land register extract maintained by the Revenue Department pertaining to the property in Survey No.22 carries the name of the respondent/plaintiff. More evidentially, adjacent to the subject property, the vast extent of land measuring 4.3 acres in Schedule Block 'C' and 1.35 acres in Schedule Block 'D' reserved for school purpose had been leased out to a Trust via., Thiru.Vi.Ka Dr.Mu.va Education Trust, to function and maintain the school. The boundaries shown in the registered lease document stands to prove that the suit property is a road and the same belongs to the applicant/defendant Corporation.

(iii) Previously, one M/s. South Coast Constructions Pvt. Ltd., vide two sale deeds dated 28.11.1995, fraudulently purchased a portion of the suit property. The Corporation had the absolute right over the property. The entries in the revenue records had been manipulated and more clandestinely without any document of title in history and without any origin for the Title, the name transfer had been carried out from the name of the Corporation to the respondent/plaintiff's name. In the same way, patta has also been changed in the name of the respondent/plaintiff. There is no practice for

change of patta in respect to a public property. After knowing the mischief

committed by the respondent/plaintiff, the Revenue Divisional Officer concerned conducted enquiry and cancelled the patta. The cancellation proceedings dated 29.11.2019 had been communicated to the respondent/plaintiff. The payment and collection of property tax does not confer title of the property in any of the nature, either the adverse possession or the ownership.

(iv) Filing the suit against the applicant/defendant is an abuse of process of law. It is a well settled position of law that when the respondent/plaintiff is not sure about the owner and ownership of the suit scheduled property, the suit for adverse possession does not arise and cannot be entertained. In the settlement deed executed by the plaintiff's father, he had recited that he had succeeded in the suit filed against one Dhakshinamoorthy and Selvammal in O.S.No.4296 of 1991. The decree obtained by the father of the respondent/plaintiff in the said O.S.No.4295 of 1991 and the other suit filed against the Corporation in O.S.No.6984 of 1993 were known to the Corporation only from the affidavit of the petitioner in W.P.No.34844 of 2019.

(v) Conferring decree in favour of the respondent/plaintiff without the knowledge of the applicant/defendant would not create any right to the applicant/defendant. The respondent/plaintiff had chosen to file this suit

claiming title perfecting the adverse possession. Further, under Section 15 of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, this court is not having any jurisdiction to entertain the suit or proceedings in respect to eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of Section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the Government or the corporate authority under sub-section (5) of Section 9 or any portion of such rent, damages or costs. Therefore, the plaint filed by the respondent/plaintiff is not having any cause of action and liable for rejection.

3. In response to the application filed by the applicant/defendant, the respondent/plaintiff filed a counter affidavit and states as follows:

(i) The story narrated by the applicant/defendant, is highly misleading of facts and nothing to do with the facts of the case. The plaintiff's family lands were acquired for extension of road under Award No.1/87, for which the plaintiff's family never received any compensation. The land acquisition authority recommended the plaintiff's family to utilize the land in question as alternate site. Hence, the allegations relating to Award No.2/1953, has nothing to do with the plaintiff and her property.

(ii) The applicant himself admitted that the name of the plaintiff's father reflected in the revenue records. Corporation of Chennai assessed the property tax in the name of the plaintiff's father in the year of 2004. The Revenue Divisional Officer, has no power to cancel the patta. For the civil dispute, the Corporation authority purposely lodged a false complaint and initiated criminal proceedings. The allegations levelled by the applicant/defendant, are all denied. The applicant/defendant has nothing to do with the 'South Coast Constructions Company'. In the writ petition, it is ordered that "this Court will not stand in the way of the applicant therein to independently agitate her right and title in the pending suit". The respondent/plaintiff has narrated the cause of action. Lengthy and irrelevant allegations will not take away the valuable right of the respondent/plaintiff. Only after the completion of trial, the title has to be decided and hence, prayed for dismissal of the application.

4. Heard Mrs.Karthikaa Ashok, learned counsel appearing for the applicant/defendant and Mr.M.Balasubramanian, learned counsel appearing for the respondent/plaintiff and perused the documents.

5. The contention raised by the learned counsel appearing for the applicant/defendant is that the suit mentioned property was acquired for public purpose and thereafter, after developing the Shenoy Nagar, the suit

scheduled property was classified as a road. Further, the same was abutting to the school, which was leased out by the Corporation. Though the records now relied on by the respondent/plaintiff are all reflected the name of the respondent/plaintiff, the applicant/defendant is the title holder to the suit scheduled property. Now, on considering the said submission with the relevant records, this Court is of the opinion that the said submissions are nothing but the defence taken by the applicant/defendant to the suit filed by the respondent/plaintiff.

6. At this juncture, it is relevant to see the judgment of our Hon'ble Apex Court in **Soumitra Kumar Sen Vs. Shyamal Kumar Sen and others**, reported in 2018 (5) SCC 644, wherein, our Hon'ble Apex Court has held as follows:

“while considering application for rejection of plaint, averments in plaint must be considered and not what is stated in written statement”.

7. Now, by following the dictum laid down by our Hon'ble Apex Court and on going through the averments found in the plaint, it shows that the suit scheduled property is the ancestral property of the respondent/plaintiff. Further, in respect to the enjoyment, the father of the

respondent/plaintiff had filed a suit in O.S.No.4295 of 1991 against one Dhatchanamoorthy and Selvammal and the same was decreed on 19.08.1992. Further, in the year 1993, the plaintiff's father filed one another suit in O.S.No.6984 of 1993 against the applicant/defendant for the relief of permanent injunction and the said suit has also been decreed on 26.10.1993. Therefore, the order passed in the above two suits confirms that the petitioner's father was in the possession of the suit scheduled property.

8. It was also admitted on the side of the applicant/defendant that prior to the order dated 29.11.2019 by the Revenue Divisional Officer, all the documents related to the suit scheduled property stand in the name of the respondent/plaintiff's father. Moreover, it is also admitted that the property tax and water tax are all paid by the plaintiff's father for the past two decades. In otherwise, it is the case of the respondent/plaintiff, that she and her family are residing in the suit scheduled property for well over 63 years.

9. It is a settled law that even if a person is in unlawful possession, if the possession is a settled possession, he cannot be evicted without recourse to due process of law. Therefore, to find out the title, it is necessary to find out whether the suit scheduled property was acquired earlier in the year 1953. Further, it has to be decided whether the plaintiff is in the possession of the suit scheduled property.

10. More than that, it is for the respondent/plaintiff to prove his title, only during the time of trial. In otherwise, the plaint averments and also the admission made by the applicant/defendant reveals the fact that the respondent/plaintiff is in the possession of the suit scheduled property. Therefore, whether the possession is a lawful possession or unlawful possession, has to be decided only at the time of trial. Further, whether the claim made by the applicant/defendant that they had perfected title through adverse possession is also a matter for trial.

11. Now, on going through the provision under Order VII Rule 11 of CPC, for invoking Order VII Rule 11 of CPC, the applicant/defendant has to necessarily prove the following facts:

- (i) the plaint does not disclose a cause of action.
- (ii) the relief claimed by the plaintiff is under valued.
- (iii) though the plaint is properly valued, the same is written upon paper insufficiently stamped.
- (iv) the suit appears from the statement in the plaint to be barred by any law.

12. Now, as rightly pointed out by the learned counsel appearing for the respondent/plaintiff, the applicant/defendant did not indicate the above necessary ingredients which found in the plaint filed by the

respondent/plaintiff. After admitting the possession of the respondent/plaintiff, it cannot be said that no cause of action has arisen in the suit. In respect to the valuation of the suit and for the payment of Court fee, the applicant/defendant had not raised any objection. In otherwise, if the applicant/defendant proves the factum of adverse possession, they are entitled to the relief of declaration and injunction. Therefore, in all ways the ground raised by the applicant/defendant is not having any merits for allowing this application and hence, A.No.1827 of 2020 is dismissed.

13. List the suit for hearing on 31.03.2021 and for filing written statement.

Sd/-R.P.A.J

10.03.2021

// Certified to be true copy//

Dated at Madras this day of 2021.

Court Officer(O.S.)

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Jj 18/03/2021