



IN THE HIGH COURT OF JUDICATURE AT MADRAS  
12.08.2021  
CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.571 of 2021 &  
CMP. No.12246 of 2021

Gunasekaran

.. Appellant/Appellant/Defendant

Vs.

Singaravelui

... Respondent/ Respondent/Plaintiff

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code against the Judgement and Decree passed in in A.S.No.6 of 2015 dated 10.12.2020 by the learned Sub Judge, Nagapattinam confirming the judgment and decree passed in OS.NO.215/12 dated 16.10.2014 by the District Munsif, Nagapattinam.

For Appellant : Mr.S.Parthasarathy

#### JUDGMENT

The unsuccessful defendant before the Courts below is the Appellant before this Court. The Second Appeal arises out of a suit filed for declaration, recovery of possession and future mesne profits. The parties, for ease of understanding, is referred to the same ranking as before the trial Court.

2. The plaintiff has filed a suit in O.S.No.215 of 2012 on the file of the District Munsif, Nagapattinam, alleging that he had purchased an extent of 4077 sq.ft. which included the suit property from the legal heirs of one Ganapathy Chettiyar under the sale deed dated 14.06.2010. The property in question is comprised in T.S.No.195. Even before his purchase, the plaintiff was a 'Paguthidhar' in respect of the entire extent of 4077 sq.ft. He had put up a thatched house and was in occupation of the same. He had also put up a thatched hut in the Northern corner and rented the same to the defendant. It is this property that constituted the suit property. The defendant was highly irregular in the payment of rents and further the house on the south side had become dilapidated. Therefore, the plaintiff contemplated putting up a new construction and for this purpose, requested the defendant to vacate the suit property. Since the defendant was not complying with the request, the plaintiff had issued a notice dated 27.12.2010, terminating the



oral tenancy. A reply was issued by the defendant wherein he had denied the relationship of landlord and tenant between himself and the plaintiff in respect of the suit property. The defendant had also filed a suit in O.S.No.84 of 2012 for permanent injunction and mandatory injunction against the plaintiff. Therefore, by his reply and the act of filing the suit, the defendant had demonstrated that he did not recognize the plaintiff's title to the suit property. Therefore, the plaintiff had come forward with the instant suit.

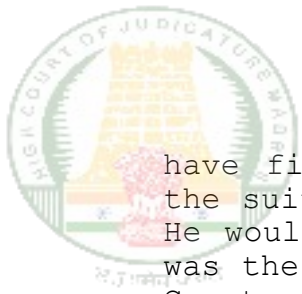
3. The defendant had filed a written statement inter alia reiterating that there was no landlord and tenant relationship between himself and the plaintiff in respect of the suit property. He had also put the plaintiff on strict proof that the plaintiff had purchased the suit property from the legal heirs of Ganapathy Chettiyar. It was his contention that he is the paguthidharar in respect of the vacant site and has been in possession over 30 years under his previous owner. He would further contend that if the sale deed in favour of the plaintiff was found to be true and valid, the plaintiff could only claim a 'paguthi' (rent) in respect of the site in the occupation of the defendant. The defendant therefore sought for dismissal of the suit.

4. The learned District Munsif had framed the issues regarding the validity of the sale deed, the right of the plaintiff to claim a declaration, recovery of possession and mesne profits. The parties had gone to trial on the above issues and the plaintiff had examined himself as PW1 and marked Exs.A1 to A7. On the side of the defendants, the defendant had examined himself as DW1 and marked Exs.B1 to B8.

5. The learned District Munsif taking into account the admissions of the defendant as DW1 returned a finding that the plaintiff had proved his title to the property and was therefore, entitled for the relief of declaration and considering the fact that the defendant had denied the title and had stopped making payments, the learned Judge had directed the defendant to hand over the possession of the suit property. The mesne profit enquiry was relegated to separate proceedings.

6. Challenging this judgment and decree, the defendant had filed an appeal in A.S.No.6 of 2015 on the file of the Sub Judge, Nagapattinam. The Appellate Court also concurred with the findings of the learned Judge and confirmed the judgment and decree of the trial Court. Aggrieved by the same, the appellant is before this Court.

7. When the matter had come up for admission, Mr.Parthasarathy, learned counsel appearing on behalf of the appellant/defendant would submit that the plaintiff ought to



have filed a proceeding before the learned Rent Controller and the suit filed for recovery of possession was without any basis. He would submit that once the Court had held that the plaintiff was the owner of the property and the defendant is a tenant, the Courts below ought to have asked the parties to approach the learned Rent Control Court for seeking eviction.

8. Heard the learned counsel for the appellant and perused the records.

9. The plaintiff was constrained to file the suit only on account of the fact that the defendant had denied that the plaintiff was the owner of the suit property and that there existed a landlord and tenant relationship between the parties. It is this the plaintiff that had catapulted the plaintiff to institute the suit to have his title to the suit property declared. Even after filing of the suit, the defendant had reiterated that there was no landlord and tenant relationship between the parties and that the plaintiff had to prove that his vendor had a title to the property.

10. Once the Courts below have held that the plaintiff was the owner of the property and the defendant contends that he has not been inducted as a tenant in respect of the suit property under the plaintiff, then, he is only to be treated as a trespasser insofar as the plaintiff was concerned. Therefore, the Courts below were well within their jurisdiction to entertain the suit and pass the judgment. The defendant/appellant has not been able to highlight any miscarriage of justice by the Courts below. Therefore, since no grounds have been made out for interference of this Court in the judgment and decree of the Courts below and as the appellant has not been able to put forth a substantial question of law, the Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif, Nagapattinam.

2. The Sub Judge, Nagapattinam.

+1 cc to Mr.S.Parthasarathy, Advocate Sr.NO. 40245

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RSV(CO)

A.SK(22.11.2021)