

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 12.03.2021

CORAM

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

C.S.No.751 of 2018

Dr.(Mrs.) Merkhana Freya Raghavan .. Plaintiff

vs.

N. Elumalai .. Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 CPC praying for the judgment and decree against the defendant, directing him to vacate from premises at Old Door No.2, New Door No.6, Netaji Salai, Maduvankarai, Chennai 600032 and hand over the vacant possession of the suit property to the Plaintiff; directing the defendant to pay the plaintiff a sum of Rs.14,40,000/- towards damages for a period of three years prior to the filing of the above suit and directing that an enquiry conducted as regarding the damages payable by the Defendant to the Plaintiff from the date of filing of the above suit, until possession is handed over to the plaintiff by the defendant with costs.

For Plaintiff : Mr.B. Balachandar

For defendant : No Appearance
Defendant Set exparte

J U D G M E N T

The suit is filed for directing the Defendant to vacate from premises at Old Door No.2, New Door No.6, Netaji Salai, Maduvankarai, Chennai 600032 and hand over the vacant possession of the suit property to the Plaintiff; directing the defendant to pay the plaintiff a sum of Rs.14,40,000/- towards damages for a period of three years prior to the filing of the above suit and directing that an enquiry conducted as regarding the damages payable by the Defendant to the Plaintiff from the date of filing of the above suit, until possession is handed over to the plaintiff by the defendant with costs.

2.The brief facts of the case of the plaintiffs are as follows:

2(a) The case of the plaintiffs is that that plaintiff is the absolute owner of the suit property. Originally the suit property belonged to the plaintiff's grandmother Mrs. Indira Nair, who had two daughters. Plaintiff's mother is the younger daughter of Mrs.Indira Nair. The said Mrs. Indira

Nair purchased the suit property in the year 1980 and executed her last Will and Testament on 9.3.1995, bequeathed the suit property to the Plaintiff. Mrs. Indira Devi died in Chennai on 23.4.1996. Thereafter proceedings were initiated for probate of the Will of the Plaintiff's grandmother, Mrs.Indira Nair and probate was granted by this Court on 15.04.2008 in O.P.No.728 of 2007. Till her demise, the plaintiff's grandmother resided in the suit property along with her husband. After her death plaintiff's maternal grandfather Lt.Col.P.M. Nair, continued to reside in the suit property till 2003, after which he left to a place Ambalapuzha in Kerala State and expired there in the year 2005. When he left for Kerala he had entrusted the maintenance of the sit property to the Plaintiff's father. In the year when the plaintiff's father came to the suit property after the demise of plaintiff's maternal grandfather Mr.P.M.Nair, he was told by one of his nieghbours that the Defendant was available to function as a care taker in the suit property.

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2(b) After the grant of Probate of the Will of her late grandmother Mrs. Indira Nair on 15.4.2008, the plaintiff decided to sell the suit property

and in the year 2011, the plaintiff and her father made it known to their relatives and friends in Chennai that the Plaintiff was desirous of selling the suit property. Consequently many prospective buyers started coming to the suit property the defendant prevented them entering into the compound, by saying that he was residing in the suit property under a Leave and License Agreement allegedly given by the Plaintiff's grandfather Mr.P.M. Nair. Hence the Plaintiff's father told the Defendant that the permission granted to him for permissive occupation of the premises was being withdrawn and asked him to vacate the premises forthwith, since the property was to be shortly sold.

2(c) Thereafter, the Defendant filed O.S.No.506 of 2012 before the learned VII Assistant Judge, City Civil Court, Chennai for a Permanent Injunction restraining the Plaintiff's father, his men, from disturbing the defendant's alleged possession of the suit property, except through process of law. The above suit was dismissed on merits on 3.9.2014. The Defendant has not filed any appeal and the judgment and decree has become final. The Plaintiff states that since the Defendant is a tress-passer in the suit property

and he has no legal right whatsoever to continue in the property. In spite of several requests, the defendant has not vacated so far, forcing the plaintiff to file this suit. Since the Defendant is in wrongful use and occupation the Plaintiff is entitled for damages for wrongful use and occupation. Hence she filed the suit.

3. Though summons was served to the Defendant he has not appeared before this Court. In spite of repeated opportunities were given the defendant has not chosen to enter his appearance and file written statement. Hence the suit was directed to be posted under the caption Undefended Board. Even after showing the suit in the undefended board there was also no representation for the Defendant. Hence the Defendant was set exparte.

4. On the side of the plaintiff, her father was examined as P.W.1 and Ex.P.1 to Ex.P.7 were marked.

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibits	Date	Description
1.	P-1	31.12.2019	Original Power of Attorney

S.No.	Exhibits	Date	Description
2.	P-2	15.04.2008	Certified copy of the order in O.P.No.728 of 2007
3.	P-3	---	Copy of the plaint in O.S.No.506 of 2012
4.	P-4	---	Copy of the written statement in O.S.No.506 of 2012
5.	P-5	31.01.2014	Copy of the Judgment in O.S.No.506 of 2012
6.	P-6	31.01.2014	Certified copy of the Decree in O.S.No.506 of 2012
7.	P-7	12.10.2018	Guideline value of the suit property

Witnesses examined on the side of the plaintiffs:

P.W.1. - GP.Capt.Padinjarote Vijaya Raghavan

5. Heard the learned counsel for the plaintiff and perused the records.

6. P.W.1, in his proof affidavit has stated that the suit property was originally belonged to Mrs.Indira Nair, grandmother of the Plaintiff. She had executed her Last Will and Testament on 09.03.1995 bequeathing the suit property to the Plaintiff. She expired on 23.04.1996. Thereafter proceedings were initiate to probate the Will and probate was ordered by this Court in O.P.No.728 of 2007 in favour of the plaintiff. After the demise

of Mrs.Indira Nair her husband Lt.Col.P.M. Nair resided in the suit property and in the year 2003 he left to Kerala State and expired there in the year 2005. He entrusted the maintenance of the suit property to the P.W.1. P.W.1 periodically came to the suit property and got it cleaned. In the year 2005 he was told by the neighbours about the Defendant and that the Defendant was available to function as a care taker in the suit property. After enquired him P.W.1 allowed the Defendant to function as a care taker of the property.

7. P.W.1 further stated that after the grant of probate of the Will the Plaintiff decided to sell the suit property in the year 2011. At that time the Defendant prevented the prospective buyers from entering into the compound by saying that he was residing in the suit property under a Leave and Lease Agreement. Thereafter the Defendant filed suit in O.S.No.506 of 2012 before the City Civil Court, for permanent injunction. The same was dismissed on merits. He has not challenged the about suit till today. Hence, the Plaintiff filed the suit for the reliefs as stated above.

8. In support of his evidence, P.W.1 has marked the documents Exs.P.1 to P.79 which all are prove the plaintiff is the absolute owner of the property. To challenge claim, the Defendant has not appeared before this Court either in person or through his counsel. Hence the defendant set exparte. Since the evidence of P.W.1 and documents filed on behalf of the plaintiff remains unchallenged and there is no rebuttable evidence against the case of the plaintiff this Court is of the view that the Plaintiff has proved her case.

9. In the result, the suit is decreed as prayed for with costs.

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Index : Yes/No

Internet : Yes

Speaking/Non-speaking order

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R. PONGIAPPAN, J.

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