



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 10.01.2022
JUDGMENT DELIEVERED ON : 10.02.2022

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.604 of 2019

T.N. Kalpana ...Appellant/Plaintiff
Versus

1. V.N.J.L. Surekha
2. M. Viswanathan ...Respondents/Defendants

Prayer : First Appeal has been filed under Section 96 of the Civil Procedure Code to allow this appeal and decree the relief of possession also by setting aside its judgment and decree dated 26.10.2018 in O.S.No.222 of 2018 on the file of the IV Additional District Judge, Ponneri.

For Appellant : Mr. K. Prabhakaran
For Respondents : Ms. R. Poornima

JUDGMENT

D. BHARATHA CHAKRAVARTHY, J.

This Appeal suit in A.S.No.604 of 2019 is filed by the plaintiff, namely T.N. Kalpana aggrieved by the judgment and decree of the learned IV Additional District Judge, Ponneri dated 26.10.2018, in and by which, the suit filed by the appellant for a declaration and recovery of possession of the suit schedule property is partly decreed by granting the relief of declaration but however the relief of recovery of possession is refused.

2. The parties are described as per their array in the original suit itself in this judgment.

3. The plaintiff T.N. Kalpana claims to be the owner of the suit property upon being settled by a registered deed of settlement by her brother T.N. Janarthanan along with her father and mother. It is her case that originally the first defendant V.N.J.L Surekha had filed O.S.No. 81 of 2013 against the



plaintiff's brother for a permanent injunction stating that she is the owner of the property in Survey No. 15/3B2B1 and the said Janarthanan is interfering with her possession and enjoyment without any right and title whatsoever. After trial, the said suit was dismissed by the District Munsif, Thiruvotiyur by a judgment and decree dated 10.11.2016 in which it was held that the property of the defendant in the said suit is actually comprised in Survey No. 15/3A2B and there is a distance of 180 feet between the two properties. Thereafter, the plaintiff's brother had filed a suit in O.S.No.134 of 2013 praying for permanent injunction against the said V.N.J.L. Surekha and one Udhyabaskar and by a judgment and decree dated 10.11.2016, the District Munsif, Thiruvotiyur had decreed the suit. It is the claim of the plaintiff that thereafter the first respondent namely V.N.J.L. Surekha had set up her tenant by name M.Viswanathan and the said tenant filed O.S.No. 147 of 2013 stating that he was in lawful possession in the suit property and therefore he should not be evicted save by due process of law. The said suit was again decreed by the learned District Munsif, Thiruvotiyur by a judgment and decree dated 10.11.2016.

4. In view of the above decree, restraining the plaintiff from interfering with the possession of the suit property except by due process of law, the plaintiff filed the present suit in O.S.No.222 of 2018 for a declaration and recovery of possession.

5. After trial, while agreeing with the plaintiff, the Trial Court granted the relief of declaration in respect of possession and held as follows:

12. On the face of the plaintiff averments and the allegations and the Chief affidavit filed by the plaintiff/PW-1 it is seen that the suit O.S.No.147/2013 filed by the 2nd defendant herein on the file of District Munsif, Thiruvottiyur was decreed and that an appeal was filed by T.N. Janarthanan in A.S.No.3/2017 was pending on the file of Sub court, Ponneri. Thus the possession of the property in the hands of the 2nd defendant is a matter in sub-judice and pending on the file of Sub court, Ponneri. In other words the so called possession by the 2nd defendant may be uphold or negatived by the Sub court, Ponneri and in which case a 2nd appeal is also open to the aggrieved party. This would go to show that the present suit by the present plaintiff



WEB COPY

Kalpana would be a premature one to ask for the relief of recovery of possession. Though the plaintiff herein may be entitled to the relief of declaration, yet the suit would be undoubtedly premature regarding the relief of possession. It can also be said, without any fear of contradiction, there is no cause of action at all for the relief of possession. In the aforesaid it can be safely concluded that the plaintiff is entitled to the relief of declaration of title alone and the plaintiff is not entitled to any further relief.'

6. Therefore, aggrieved by the refusal of the relief of recovery of possession, the present appeal suit is laid before us.

7. Mr. K. Prabakaran, learned counsel appearing on behalf of the appellant would submit that the title to the suit property has already been concluded in the earlier round of litigation itself whereby the suit filed by the first respondent was dismissed, while the suit filed by the plaintiff's predecessor in title was decreed. While so, the first respondent had cleverly set up her tenant, the second respondent in the suit and only because the learned District Munsif had decreed the suit in O.S.No.147 of 2013, the present suit for declaration and recovery of possession is filed.

8. He would further submit that it is true that the plaintiff's predecessor in title, namely, her brother T.N. Janarthanan has filed appeal aggrieved by the said decree, granting the limited relief of eviction by due process of law is pending but that does not in any manner will dis-entitle the plaintiff from filing the present suit for the relief for declaration and recovery of possession and the Trial Court having cited pendency of appeal alone as a reason, has erred and therefore he would pray that this court should set aside the judgment of the Trial Court in as much as it refuses the relief of recovery of possession.

9. Per contra, Ms. R. Poornima, learned counsel appearing on behalf of the first and second respondent would submit that while it is correct that the decisions were rendered as stated by the learned counsel for the appellant, she would draw our attention to the copy of the report of the Advocate Commissioner to submit that actually the dispute in this case is regarding the



identity of the property and therefore without establishing the identity of the property, the suit cannot be decreed as there is no such separate property as prayed for by the plaintiff.

10. We have considered the rival submissions made on behalf of the parties and the pleadings of the parties in this case and the evidence on record. The only reason which was adduced by the Trial Court for refusing the relief of recovery of possession is that the earlier appeal is pending and hence the suit is premature. The plaintiff claims that she is the absolute owner of 14 cents comprised in S.No.15/3A2B at Mathur Village, Madhavaram Taluk, and as the per the schedule, the said property is to the North of Inner Ring Road (S.No.14), South of S.No.15/3B1, East of S.No.15/3A3A and West of 15/3A2A. Originally, the said property belonged to the Government and thereafter, it was assigned to the plaintiff's brother T.N.Janardhanan through the assignment order dated 24.01.2013 by the Assistant Commissioner (Land Reforms), Villupuram. Subsequently, necessary mutations were also made in the revenue records. Whiles, it is the claim of the plaintiff that the aforesaid suit property was executed in her favour by her brother, father and mother jointly through a settlement deed dated 12.09.2017 registered as Document No.6702/2017 on the file of the Sub Registrar Office, Thiruvottiyur, and hence, by this way, she became absolute owner of the property in question. Thus, when this being the factual position, even after filing of the suit, the defendants 1 and 2 remained exparte and they have not filed any appeal whatsoever challenging the exparte decree. Therefore, in view thereof, the trial Court, while granting the decree for declaration, ought to have granted the consequential relief of recovery of possession as well. Thus, on this count, we do not find any reason to support the findings of the trial Court refusing to grant the relief of recovery of possession.

11. In fine, the findings of the Trial Court as far as the issue relating to the grant of recovery of possession is set aside and the suit filed by the plaintiff is decreed as prayed for with costs.

12. The Appeal Suit is allowed with costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



1. The IV Additional District Judge
Ponneri.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to M/s.R. Poornima, Advocate sr 8593.

+2 Ccs to Mr.K. Prabakaran, Advocate sr 8896.

A.S.No.604 of 2019

PA(CO)
SP(26/04/2022)