



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.06.2022

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.367 of 2020

T.V.Madhan

.. Plaintiff

vs.

1.Mrs.G.Vijayalakshmi

2.Mrs.Rajalakshmi

.. Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendants for the following reliefs:

a)declaring that the plaintiff as the sole and absolute owner of the suit schedule property at Plot no.285, F-213, 1st Street, F-Block, Anna Nagar East, Chennai-600 102, measuring a total extent of one ground and 1200 sq.ft, morefully set out in the schedule hereunder and consequently grant a permanent injunction restraining the first and the second defendants, their men, agents, assigns or anyone claiming through them or under them from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.,

(b)to direct the defendants to pay the cost of the suit



For Plaintiff :Ms.R.V.Rukmani

For defendants :Set-exparte

J U D G M E N T

The suit has been laid by the plaintiff, claiming that he is the absolute owner of the property in respect of Plot no.285, Door no.F-213, Ist Street, F-Block, Anna Nagar East, Chennai, measuring a total extent of one ground and 1,200 sq.ft. more fully described in suit schedule.

2.According to the plaintiff, suit summons were served on the defendants, but there was no reply and hence, the service of suit summons was effected by way of publication and despite the same, there was no representation on behalf of the defendants either in person or through a counsel. Therefore, the defendants were set *ex parte*, vide order dated 28.02.2022.

3.The case of the plaintiff is that the suit property was purchased in



the plaintiff's name by his guardian, through two registered Sale Deeds, both dated 31.05.1984. Originally, the husband of the first defendant was allotted the suit property by the Tamil Nadu Housing Board on 15.11.1965 and a Lease cum Sale Agreement was also executed by the Tamil Nadu Housing Board in favour of the husband of the first defendant on 07.02.1966 and after taking possession of the suit property, the husband of the first defendant died on 19.02.1972. He died intestate leaving behind his wife and the first defendant herein as his legal heirs. Thereafter, the property was transferred in the name of the first defendant by the Tamil Nadu Housing Board on 06.08.1977 and that the Tamil Nadu Housing Board executed and registered a Sale Deed dated 25.05.1984 in favour of the first defendant. Subsequent to the execution of the above Sale Deed, the property was sold by the first defendant through the Power of Attorney namely, the second defendant herein to the plaintiff bearing document nos.1926 and 1927 of 1984 dated 31.05.1984.

4.The original Sale Deed was executed on 25.05.1984 in favour of the first defendant by the Tamil Nadu Housing Board to an extent of 3600



sq.ft. At the time of purchase of the suit property, since the petitioner requested for the purpose of income tax to divide the property into two parts and to transfer and sell the same into two parts, accordingly, the property was sold and while dividing the property, the Sale Deeds bearing document no.1926 of 1984 to the extent of 1350 sq ft and by virtue of Sale Deed bearing document no.1927 of 1984 to the extent of 2250 sq.ft were executed, including 250 sq.ft. which was inadvertently referred as common passage, not forming part of schedule property, but shown only as a bounday, however, the defendants have no right or interest over 250 sq.ft since the sale consideration was paid for total suit property, to a total extent of 3600 sq.ft. including 250 sq.ft. Therefore, it is only a single property containing a total extent of 3600 sq.ft, which was registered under Sale Deeds. The intention of the vendor was to transfer 3350 sq.ft and subsequently, the remaining 250 sq.ft was also conveyed and orally they made a request that they have not conveyed subsequently, they issued legal notice on 03.06.2020 and 15.09.2020. But the same was returned on 19.09.2020 by the first defendant. However, the second defendant received the legal notice, but not chosen to reply the same. According to the



plaintiff, the original property tax receipt was produced by him and the same was marked as Ex.P10. The property was assessed for entire extent of 3600 sq.ft and a original building plan was also obtained from the Corporation and marked as Ex.P12 to the entire extent of 3600 sq.ft. For the past 35 years, the plaintiff has been enjoying the suit property without any interruption. Therefore, the plaintiff is entitled for the decree of declaration to declare that the entire extent of suit property, towards which, the plaintiff has paid the entire sale consideration. Failure on the part of the defendants to execute the Sale Deed, the plaintiff also sent a legal notice, which was returned by the first defendant's Power of Attorney. The second defendant received the legal notice but no reply was sent. Even after service of summons and publication, no one entered appearance on behalf of the defendants. Therefore, they set *ex parte* by order dated 28.02.2022.

5. In order to prove his case, the plaintiff himself was not examined, since he was in Abroad i.e., in Singapore. Therefore, to act on his behalf and to give evidence, the plaintiff has given power in favour of his wife Mrs.Vidya Madhan. Mrs.Vidya Madhan, who is the wife of the plaintiff is



examined as PW.1 and marked Exs.P1 to P14. No challenge has been made to the testimony of PW1 and the documents marked as Exs.P1 to P14.

6.On a perusal of the evidence of PW1 and also the documents marked as Exs.P1 to P14, it is found that the plaintiff has established his claim.

7.Considering the submissions made by the learned counsel for the plaintiff and both the oral and documentary evidence, it is clear that the suit property was purchased in the year 1984 and the plaintiff has been enjoying the said property without any interruption for the past 35 years and the entire extent of the suit property is 3600 sq.ft (3350+250sq.ft). In view of the fact that the plaintiff has paid the property tax in the assessment of the property and he has also obtained original Building Plan for the entire extent of 3600 sq.ft, however, since the first defendant has been delaying to convey the property, the plaintiff has come forward with the present suit. On going through the documentary evidence, this Court is of the view that the plaintiff has made out the case and therefore, he is entitled to the relief



as sought for in the suit and even otherwise, the plaintiff is entitled to enjoy the suit property by way of adverse possession also.

8. Accordingly, the suit is decreed as prayed for. No costs.

16.06.2022

Speaking/Non speaking
Index: Yes/No

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KRISHNAN RAMASAMY.J.

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