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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.456 of 2017

P.Anandhavalli

... Appellant

Vs.

V.Ranjith

... Respondent

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 15.12.2016 delivered in A.S.No.43 of 2016 on the file of the III Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 16.12.2015 delivered in O.S.No.6202 of 2012 on the file of the XIIIth Assistant Judge, City Civil Court, Chennai.

For Appellant : M/s.V.Venkkatasamy

For Respondents: M/s.S.Rajendra Kumar

J U D G M E N T

Challenging the reversal order passed by the First Appellate Court setting aside the judgment and decree granted in his favour by the trial Court, the plaintiff has preferred the present Second Appeal.

2. According to the plaintiff, the defendant is the son of her brother. Thus, the defendant is closely related and was permitted to occupy a portion in her house. The house was constructed by her late husband out of his own earnings. After the death of her husband, she and her two sons succeeded the suit property and are enjoying the same as absolute owners. Her late husband permitted his younger brother to reside in a portion of the house, as he became alcoholic. The defendant's father died in the year 1992 and he left the defendant's mother along with male children including the defendant on pathetic circumstances. There is no dispute about the ownership of the property as the defendant's father himself has written a letter to the then Tahsildar (South-East) Madras - 4 that her late



husband was the owner of the property. Thereafter, the defendant's elder brother got employment on compassionate grounds and got married. After his marriage, the defendant's mother left to Kerala with other two younger brothers of the defendant. Thereafter, the defendant's elder brother, his wife and the defendant were permitted to reside in the same house and during September, 2010, he also shifted from the house. Considering the close blood relationship, the defendant was also permitted to reside in the said portion of the house. Since her two sons also got married and the place was not sufficient for them, she orally informed the defendant in the last week of November, 2011, to find out some other place and revoked the licence granted to them. She issued a lawyer's notice to the effect that the licence was revoked, but, it was replied by the defendant with untenable allegation. Hence, the suit is filed.

3. In the written statement, the defendant denied all the averments made in the plaint and stated that the plaintiff's husband was a Bachelor at the time of purchase of the suit property and the entire funds were contributed by the family members by selling the jewels of the grand-mother. Since the plaintiff was a senior male member in the family, it was purchased in the name of "Karthi" and it is a joint family property. Therefore, the defendant's family also have a share in the property. The allegation that the family was permitted to reside in the house, is false and no licence existed between the parties and the suit was not properly valued and instead of filing a suit for recovery of possession, in order to avail the Court fee, he filed the suit for mandatory injunction, which is not maintainable and is liable to be dismissed.

4. The trial Court framed appropriate issues and decreed the suit as prayed for. On appeal, the First Appellate Court, though concurred with the finding of the trial Court, had set aside the same on the ground that the suit property was not properly described. Aggrieved by the same, the plaintiff has preferred the above Second Appeal.

5. After notice, the respondent appeared through the counsel and both counsel have consented to argue the Second Appeal on the following substantial questions of law:-

(1) Whether the Lower Appellate Court is correct in law in applying the provisions of Order VII Rule 3 C.P.C in a suit for mandatory injunction to enforce the obligation?



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(2) Whether the Lower Appellate Court is correct in law in holding that in a suit for mandatory injunction, the decree is not executable without proper description of the subject matter in plaint suit schedule? and

(3) Is the reason for dismissal of suit sustainable in law especially when the Lower Appellate Court has not considered the provisions of Section 39 of the Specific Relief Act and Order XXI Rule 32 (5) C.P.C. for granting decree in a suit for mandatory injunction?

6. Insofar as the title of the property is concerned, both the Courts below have concurrently found that the appellant/plaintiff is the absolute owner of the property. The evidence of the defendant as D.W.1 shows that though he has claimed the share in the property, he has not filed any document to show that his family contributed for the purchase of the house. In other words, there is no iota of evidence as pleaded by him that the property was purchased by the joint contribution of all the members of the joint family, particularly his grand-mother. It is also in evidence that D.W.2, elder brother of the defendant was not residing in the house and that his mother and other brothers went to Kerala after his marriage. He also affirmed that they have not produced any document to prove that they are the owners.

7. From the oral and documentary evidence of the defendant, it is categorically inferred that the findings of the Court below that the plaintiff, who is the owner is obvious and there is no dispute about it.

8. It has to be seen as to whether the property was not properly described or not? From the year 2012, both the parties were litigating for the same property and that the defendant claimed that he was the co-sharer in respect of very same property. In that view of the matter, a linear measurement of the property or the specific description of the boundaries, is irrelevant and immaterial. When both the parties admitted that they are living in a particular premises and after contesting the case on merits, they cannot turn around and take advantage on technicalities that description is not proper. On the merits of the issue, there is no dispute that they are residing in the subject matter of the suit and description will not take away the factual matrix. Therefore, I do not agree with the finding of the First Appellate Court.



9. In the instant case, it is pleaded and proved that the defendant and his family were permitted to reside in the house, considering their plight. There is no contra evidence that they are entitled to reside in other terms. Therefore, their residence shall be considered as permissive occupants, on the basis of the close relationship between them. The defendant cannot take advantage of the same and once the legal notice was issued revoking the licence, it is the bounden duty of the licensee to vacate and hand over the possession. The licensee does not have a better route other than complying with the demand made by the licensor. When an obligation is breached, the licensor is entitled to revoke Section 39 of the Specific Relief Act and file a suit for mandatory injunction directing the defendant to hand over possession for breach of his obligation. Therefore, the plaintiff is entitled to get possession of the property and all the substantial questions of law are answered in favour of the appellant/plaintiff.

10. The finding of the First Appellate Court that the suit property was not properly described, cannot be a ground for denying the relief to the plaintiff. Therefore, the decree and judgment passed in A.S.No.43 of 2016 dated 15.12.2016 on the file of the III Additional Judge, City Civil Court, Chennai, stands set aside and the decree and judgment passed in O.S.No.6202 of 2012 dated 16.12.2015 on the file of the XIII Assistant Judge, City Civil Court, Chennai, stands restored. The appellant is entitled to take possession of the suit property.

11. During the course of the arguments, an offer was made to the defendant to hand over possession in a specific time. However, the learned counsel for the respondent vehemently opposed such offer and contended on merits that they are entitled to the relief and the suit is liable to be dismissed. However, this Court is of the considered opinion that the defendant is not entitled to any relief for consideration. Thus, the Second Appeal is allowed for the reasons observed above. Two months' time is granted to the respondent/ defendant for vacating and handing over the property. There shall be no order as to costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR



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To

1. The III Additional Judge,
City Civil Court, Chennai.
2. The XIII Assistant Judge,
City Civil Court, Chennai.
3. The Section Officer,
VR Section, High Court of Madras.

+lcc to Mr.V.Venkkatasamy, Advocate Sr.2163
+lcc to Mr.S.Rajendrakumar, Advocate Sr.1927

S.A.No.456 of 2017

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