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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25/04/2022

CORAM :

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.642 OF 2017

AND

CMP NO.15865 OF 2017

G.Ravindran

...Appellant / Defendant

Vs.

D.Jayamala

...Respondent / Plaintiff

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, 1908, against the judgment and decree dated 31.07.2017 made in AS No.120 of 2013, on the file of the I Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 15.03.2012, made in OS No.2031 of 2004, on the file of the XVII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.Srinath Sridevan

For Respondent : Mr.D.Sreenivasan
for M/s.Karthik Raja

J U D G M E N T

Aggrieved over the reversal of the judgment and decree of the Trial Court, by the First Appellate Court, the defendant has preferred the above Second Appeal. For the sake of convenience, the parties are called as per their litigative status before the Trial Court.

2.According to the plaintiff, she purchased the suit property on 30.04.1998 by virtue of a registered Sale Deed Document No.1069/1998, registered at the Office of the Sub Registrar, Royapuram from her vendors namely one (1) D.Ragavalu (2) D.Ragavendra and (3) D.Ragaraju. The suit schedule property originally belonged to one Pullamma, who purchased the same from one Pappaiah, vide Sale Deed dated 07.12.1950. After the purchase of the suit property, the said Pullamma developed the property and constructed the present house. She died intestate on 19.11.1972 without any issues, leaving behind the above three persons viz., (1) D.Ragavalu (2) D.Ragavendra and (3) D.Ragaraju



as her legal heirs, who are none other than her younger sister's sons and also her husband's second wife's sons. From 1950 till the year 1998, the property was under possession and enjoyment of the said Pullamma and her legal heirs. She paid the house tax from 1957 till 1998 to the Corporation of Chennai and property tax also stands in her name since 1950. After purchase from the legal heirs, the Corporation of Chennai transferred the property tax in favour of the plaintiff and she has been paying property tax and water tax. The defendant even before the purchase was tenant in respect of the suit property. She approached the defendant to vacate the premises, but he failed to do so. Hence, she filed an eviction petition in RCOP No.2385/1999 on the file of XVI Small Causes Court, Chennai. Since there was a denial of landlord and tenant relationship, it was dismissed with a direction to approach the appropriate Forum.

3. In the meanwhile, the defendant filed O.S.No.2185 of 1998 and obtained an ex parte decree for permanent injunction not to interfere with his peaceful possession. It is relevant to state that O.S.No.2185 of 1998 was filed against the plaintiff's vendor and not against the plaintiff and therefore, the decree is not binding on her. The defendant, without having any legal right squatting the property and as such, he shall be considered as trespasser and liable to be evicted.

4. The defendant filed a written statement denying the averments made in the plaint. According to him, he has been in possession and enjoyment of the suit property as absolute owner for many decades and prescribed title over the suit property by adverse possession also. The defendant neither a tenant under the plaintiff nor under Pullamma or under the vendors of the plaintiff and never paid rentals to them. The claim of title has already been negatived in RCOP No.2385/1999 and the order has become final and hence, the present Suit is hit by res judicata. Further, the vendors of the plaintiff are not owners of the suit property and that they are not related to Pullamma or Ramaiah and they have no right to convey the title. The decree passed in O.S.No.2185 of 1998 filed against the vendors of the plaintiff will bind the plaintiff also and the Sale Deed dated 30.04.1998 is hit by lis pendens as the Suit was filed as early as on 30.03.1998 prior to the Sale Deed dated 30.04.1998.

5. Even as per the Sale Deed dated 30.04.1998, the land belongs to the Government and the plaintiff claims to have purchased only the superstructure and therefore, the plaintiff cannot pray for a decree of possession for the site owned by the Government. The defendant is still continuing in possession. Pursuant to the denial of title, the plaintiff amended the prayer from one of declaration of title into delivery of vacant possession.



6.The Trial Court after framing appropriate issues dismissed the Suit holding that the plaintiff has not proved her title. On appeal, the First Appellate Court reversed the finding and decreed the Suit holding that the plaintiff has better title than the defendant and she is entitled to the relief sought for by her. Aggrieved over the same, the defendant has preferred the above Second Appeal.

7.The Second Appeal was admitted on 09.03.2020 on the following substantial questions of law:-

"1.Whether the lower appellate Court was right in concluding that the predecessor in interest of the plaintiff would have better title on Ex.A37 which is admittedly an unregistered instrument of sale of immovable property of a value of about Rs.100/-?

2.Whether the lower appellate Court was right in concluding that the vendors of the plaintiffs are the legal heirs of the deceased Ramaiah and Pullammal in the absence of any evidence of marriage between two?

3.Whether the lower appellate Court was right in relying upon Ex.A40 in proof of legal heirship of the vendors of the plaintiff?"

8.The learned counsel for the appellant would vehemently contend that from the beginning, the defendant has never admitted the title of the plaintiff. He is holding the property in his independent capacity and he is residing there for years together which is amply proved by Exs.B7, B9 and B10. The property originally belonged to his grandfather Pappiah and that the said Pullamma was inducted as tenant in his property. Later, she claimed title over the same. But for decades, he is residing in the very same property as independent owner.

9.The learned counsel for the appellant would rely on a judgment of this Court in N.DHANALAKSHMI VS. THE DISTRICT REVENUE OFFICER, SALEM AND OTHERS [2002 (2) CTC 228] for the proposition that the legal heir certificates issued by the Revenue Officials are not based on any legal provision. The Competent Civil Court is bound to decide the disputes regarding determination of legal heirs and the legal heir certificates issued by the Revenue Officials will not confer any right or title over the property.

10.Therefore, reliance placed by the First Appellate Court upon Ex.A40, which is the Proper Person Certificate issued by Tahsildar, Venkatagiri, as proof of legal heirship is not sustainable. Besides this, the Marriage between the mother of



the vendors Rosamma and Ramaiah, the husband of Pullamma was not even proved. In the absence of proof of marriage, the legal heirship certificate cannot be relied on and the vendors of the plaintiff cannot be construed as legal heirs of Pullamma and thereby the owners of the property. Further, the application of Section 50 of the Indian Evidence Act, is not applicable to the case on hand as none of the relatives of Pullamma were examined.

11.The learned counsel for the respondent would contend that though Ex.A37 is an unregistered Sale Deed, the said Pullamma had been in continuous possession and enjoyment of the property. Vide Ex.A3, the property tax was assessed in the name of Pullamma and she had been paying the property tax from the year 1957 vide Exs.A3, A6, A7 to A12. Therefore, the continuous possession of the property tax in favour of Pullamma would equivocally prove that Pullamma is the owner. The defendant also admit that she is the owner, but would contend that the vendors of the plaintiff are not the legal heirs. Exs.A38 and A39 are death certificates of Ramaiah and Pullamma and Ex.A40 is the Proper Person Certificate issued by the Tahsildar, Venkatagiri. The vendors of the plaintiff, after having proved that they are the only certifying legal heirs of Pullamma, have sold the property by virtue of Sale Deed dated 30.04.1998 and property tax assessment was transferred in favour of the plaintiff as early as on 22.05.1998 vide Ex.A4 and property tax demand card was issued on 02.09.1991 vide Exs.A5 and A6. Ex.A7 is the Chennai Metro-water Supply and Sewerage Board card and the plaintiff is continuing to pay the property tax.

12.When the assessment over the property continues to be in the name of the plaintiff, without any challenge by the defendant, she cannot claim title as independent owner. Further, they have taken a contradictory plea of adverse possession against the plaintiff, without any specific details as to when the possession has become adverse, as to when they were established their adverse possession. No materials were placed in this aspect. Further, the claim of the plaintiff that the property was originally assigned in favour of his grandfather and he is continued to be in possession as owner is not corroborated by any material evidence. On the other hand, she has proved by documents that she is the owner of the property and therefore, would pray that the appellant shall be treated as trespasser and shall be directed to deliver vacant possession.

13.In this background, the questions of law have to be analysed. The admitted fact remains that from 1950 onwards, the said Pullamma is residing in the property claiming ownership. From the evidence, it is noted that Rosamma sister of Pullamma claims the very same rights as legal heirs of Pullamma after her demise. The property tax demand card, tax receipts, water tax



receipts from 1957 to 1998 goes to prove that Pullamma continued to be in possession after putting up construction over the property. This factum is not disputed by the defendant herein. Though the defendant claims that the property was originally assigned in favour of the grandfather Pappiah under Adi-Dravidar Welfare Scheme, he has not produced even a scrap of materials to prove the same. The defendant has not adduced any evidence to substantiate his claim to title. On the other hand, the plaintiff has produced Ex.A2, the registered sale deed dated 30.04.1998 and the subsequent transfer of ownership in the assessment of tax. In that event, the finding of the First Appellate Court that the plaintiff has proved title is supported by material evidence. It is relevant to note that Exs.B1 and B2 certified copies of the plaint as well as the judgment and decree passed in O.S.No.2185 of 1998 would prove that the defendant has filed the Suit restraining the vendors of the plaintiff, from evicting them by undue process of law, which means, the title of the vendors of the plaintiff was admitted by the defendant. He cannot turn around and state that the vendors of the plaintiff are not the owners of the property.

14.Taking the entire materials placed before this Court, it is well established that the plaintiff has a better title than the defendant who could not produce even a scrap of evidence to establish the title. Once it is admitted that he is a tenant and he shall not be evicted by undue process of law, he cannot turn around and claim title by possession. Once a tenant is always a tenant. Therefore, the first question of law is answered against the appellant.

15.In so far as the second question of law is concerned, the plaintiff may not be in a position to prove the marriage took place between Ramaiah and Pullamma or Ramaiah and Rosamma. Admittedly, the defendant did not dispute the relationship of Ramaiah and Pullamma as husband and wife. There is no dispute with regard to the relationship of Rosamma and Pullamma as well as Rosamma and Ramaiah. What is agitated is that the Proper Person Certificate produced by the plaintiff's vendor vide Ex.A40 cannot be relied on, as it will not confer any legal right or title over the property. It is true to state that the Revenue Officials are not the authorities to declare the legal heirship. They can only record the legal heirs after enquiry. But, it shall not be disputed by any other legal heir. The vendors of the plaintiff are not the legal heirs of Pullamma and Ramaiah. In the absence of any rival claim, the defendant cannot take advantage of the same. Therefore, it shall be presumed that the vendors of the plaintiff are the legal heirs as long as the Sale Deed executed by them remains in tact and until it is disproved that they are not the legal heirs by adducing legal evidence. Therefore, it is well established that the plaintiff



has proved to have a better title which is borne out by documentary evidence than the oral claim made by the defendant without any materials.

16. In such circumstances, I do not find any discrepancy in the findings of the First Appellate Court to interfere with the same. The Second Appeal merits no consideration and accordingly, stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

TK

To

1. The I Additional Judge
City Civil Court
Chennai.

2. The XVII Assistant Judge
City Civil Court
Chennai.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s.K.S.Karthik Raja, Advocate Sr.No.28539

+1cc to M/s.Srinath Sridevan, Advocate Sr.No.28534

S.A.NO.642 OF 2017

SR(CO)
RVM(18/05/2022)