



SA.No.879 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.879 of 2007
and
CMP.No.2707 of 2007

1. Muniamma @ Sekalamma
2. M.Munusamy @ Ottappa

... Appellants

- Vs -

1. Bommakka
2. Jayaraman
3. Narayanappa
4. Kanagamma
5. Dharmaraj

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.2/2003 on the file of Sub Court, Hosur and dated 30.12.2004 in confirming the judgment and decree in O.S.No.8/1999 on the file of District Munsif Court, Hosur and dated 21.10.2002.

For Appellants : Mr.V.Raghavachari

For Respondents : No Appearance



SA.No.879 of 2007

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JUDGMENT

The instant Second Appeal has been filed at the instance of the defendants. The respondents herein are the plaintiffs before the Trial Court.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant second appeal is that; the suit property was originally belongs to one Munisamy by virtue of a Sale Deed dated 09.01.1948. Under a family oral partition, the suit property fell to the share of the plaintiffs' father Mr.Venkataramanappa. Ever since the allotment, he has been in actual physical possession and enjoyment of the same. According to the plaintiffs, their father leased out the suit property to the 2nd defendant on a monthly rent of Rs.40/- since 1989. The 2nd defendant was irregular in payment of rent. While so, the defendant issued a legal notice on 16.11.1992 alleging that the plaintiff's father Mr.Venkataramanappa executed an Agreement of Sale and wanted a Specific Performance. The plaintiffs' father has sent a detailed reply and also requested the defendants to vacate the suit property. But the defendants neither paid the arrears of rent nor vacated the suit property. While so, there was a panchayat between the plaintiffs and the defendants. In which the



SA.No.879 of 2007

defendants agreed to vacate the premises in the month of January 1995 and agreed to pay rent from 01.10.1994 till vacating the house. In the meanwhile, the plaintiffs' father Mr.Venkataramanappa died on 19.06.1994 leaving behind the plaintiffs as his only legal heirs. Hence, the plaintiffs 2 and 5 approached the defendants in the month of January 1995 and requested them to vacate the suit property and pay the rents. According to the plaintiffs, the defendant was in supine indifference. Hence, the plaintiffs come forward with the suit for the relief of possession and also for recovery of rent.

4. The said suit was resisted by the defendants by contending that though Mr.Venkataramanappa was the owner of the suit property, he executed the Sale Agreement on 12.01.1986 in favour of the first defendant after receipt of the full sale consideration of Rs.2,700/- and delivered the possession of the property. Therefore, it is the submission of the defendants that they have been in possession and enjoyment of the property. By virtue of Section 53A of the Transfer of Property Act, the said Mr.Venkataramanappa has handed over the possession as a part performance to the Sale Agreement. It was further contended that there was no landlord-tenant relationship. Therefore, there is no obligation on his part to pay the



SA.No.879 of 2007

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rent. It was further contended that they are ready and willing to perform their part of the contract, but the plaintiffs have not come forward to execute the Sale Deed. It was also stated that the plaintiffs' father Mr.Venkataramanappa had filed a suit against the defendants in O.S.No.440 of 1992 and the same was dismissed on 01.10.1996. Therefore, the instant suit is hit by *res judicata*. Hence, the defendants prayed to dismiss the suit.

Evidence, Documents and Finding of the both the Court below:-

5. Before the Trial Court, the plaintiffs have marked as many as 5 documents as Exs.A1 to A5 and examined 2 witnesses as PW1 and PW2. On behalf of the defendants, 10 documents have been marked as Exs.B1 to B10 and 2 witnesses were examined as DW1 & DW2.

6. The Trial Court, after having gone into the oral and documentary evidence has decreed the suit as prayed for. Aggrieved with the said order, when the defendants preferred an appeal, the First Appellate Court has concurred with the finding of the Trial Court and has ultimately dismissed the appeal. Aggrieved with the same, the defendants have approached this Court by way of this Second Appeal.

Substantial Question of law:

7. At the time of admission on 28.09.2022, this Court has formulated



SA.No.879 of 2007

the following substantial question of law:-

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“(a) Whether the suit as framed is maintainable, when the rights of the plaintiffs to the suit property was disputed?

(b) Whether the Courts below are right in suspecting the agreement between the first plaintiff and Venkataramanappa, the father of the plaintiff, when DW2 had spoken to about the agreement and the said document was subjected to scrutiny of Court in the earlier suit?

(c) When admittedly improvements were made by the first defendant in and over the suit property, would it not infer an agreement pursuance to which the first defendant had been in possession of the property?

(d) Whether the order of the Courts below is not against the admission of the plaintiffs?

(e) Whether the suit is not barred under Order 9 Rule 9 of CPC?”

Submission of appellants' counsel:-

8. The learned counsel for the appellants/defendants would vehemently submit that when there was a Sale Agreement in favour of the defendant and that the possession was handed over to the defendants by way of a part performance, it was contended by the learned counsel for the appellants that the relationship between the plaintiffs and the defendants as



SA.No.879 of 2007

landlord and tenant become ceased to exist. Therefore, there is no obligation on the part of the defendants to pay the rent and would also further contend that the plaintiffs are not entitled to delivery of possession. Hence, prayed to allow the Second Appeal.

9. There is no representation on behalf of the respondents.

10. I have given my anxious consideration to the submissions made by the learned counsel for the appellants.

Analysis of the submissions:-

11. The appellants have categorically admitted that the suit property belongs to the plaintiffs' father Mr.Venkataramanappa and after his demise, it devolves upon the plaintiffs. However, it is the specific contention of the defendants that the plaintiffs' father has executed an Agreement of Sale on 12.01.1986 and by way of a part performance, he was put in possession of the property. But, the plaintiffs pleaded that the defendants are only tenant. In this regard, while perusing the order of the First Appellate Court, the First Appellate Court has extracted a portion of the notice issued by the defendants in Ex.B2 during 1992. For ready reference, this Court would like to extract Ex.B2-notice from the First Appellate Court judgment:-

“The defendants state that they were originally tenants



SA.No.879 of 2007

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under the plaintiff for a period of 10 years prior to the date of agreement to sell.....”

12. While reading the above notice, the defendants have categorically admitted that originally they were put in possession of the property as a tenant. Therefore, the plaintiffs' contention that the defendant is a tenant was categorically admitted by the defendants.

13. However, the defendants would contend that though he was initially inducted as a tenant, his nature and character of possession has been changed after the execution of the Sale Agreement dated 12.01.1986. On and after 12.01.1986, his possession was in pursuance of the part performance made by the plaintiffs' father Mr.Venkataramanappa. In this regard, the First Appellate Court gone into various aspects and ultimately found that the defendants have not submitted any document so as to prove the alleged Sale Agreement and that his possession was in pursuance of the Sale Agreement.

14. It is pertinent to mention here that mere Agreement of Sale will not bring a cessation of relationship as a landlord and tenant relationship unless, there is a unequivocal understanding to that effect. Here, admittedly even the Sale Agreement has not been submitted before this Court, which was rightly appreciated by both the Courts below and has come to the conclusion



SA.No.879 of 2007

that the defendants have not proved the alleged Sale Agreement. Once, the defendants have not established their possession is in pursuance of the part performance, and when his initial induction into the possession of property as tenant, the findings recorded by both the Courts below that the defendants are tenant cannot held to be a perverse finding. This Court is of the firm view that from the available records the findings recorded by both the Court below that the defendants are the tenant in the suit property and that there was a landlord-tenant relationship between the plaintiffs and the defendants is well merited and this Court could not find any reason to interfere or deviate with the above finding.

15. At this juncture, the learned counsel for the appellants would invite the attention of this Court in respect of the order passed in the previous suit in O.S.No.440 of 1992 on 01.10.1996. Therefore, would contend that by virtue of the previous judgment and decree [Exs.B3 and B4], the instant suit is barred by *res judicata*. In this regard, while perusing the records, Ex.A5 has been marked to prove the date of death of the plaintiffs' father. From Ex.A5, this Court can safely arrive at a conclusion that the plaintiffs' father Mr.Venkataramanappa died on 19.06.1994. Whereas, the suit in O.S.No.440 of 1992 was dismissed on 01.10.1996, subsequent to the death of



SA.No.879 of 2007

WEB COPY

Mr.Venkataramanappa. It was also further found that the suit was dismissed for default, due to the absence of Mr.Venkataramanappa. Whereas, he died prior to the date of dismissal. Therefore, the findings recorded by the Trial Court as well as the First Appellate Court in O.S.No.440 of 1992 cannot be *res judicata* for the instant suit is perfectly in order, and such finding is liable to be confirmed.

16. Therefore, in view of the above discussion, all the substantial questions of law are answered in favour of the respondents. Further, this Court finds no reason to deviate from the well considered findings of both the Courts below.

17. In the result, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected CMP is also closed.

18.12.2023

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

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To

1. The Sub Court,
Hosur.
2. The District Munsif Court,
Hosur.



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SA.No.879 of 2007

C. KUMARAPPAN, J

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S.A.No.879 of 2007

18.12.2023