



S.A.No.242 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

MR.JUSTICE N.SESHASAYEE

S.A.No.242 of 2023
and C.M.P.No.7010 of 2023

1.K.Manohar
2.K.Kumar
3.K.Krishnan
4.Suriyakala
5.Poondinathan
6.Kavitha
7.Sivagami
8.Baby
9.Neela
10.Ammuni

... Appellants

Vs.

1.J.Saifulrahman
2.G.Nagarajan
3.M.Surendar
4.Kalaivanan

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 02.09.2022 passed in A.S.No.315 of 2018 on the file of the learned IV Additional City Civil Judge at Chennai, reversing the judgment and decree dated 12.04.2018 passed in



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O.S.No.4604 of 2014 on the file of the learned XVIII Assistant City Civil Judge at Chennai.

For Appellants : M/s.Kanda Kumar
For Respondents : Mr.K.P.Ashok for R1 to R3

ORDER

The defendants in O.S.No.4604 of 2014 on the file of the XVIII Assistant City Civil Court, Chennai are the appellants herein. The suit is laid for recovery of property. The trial Court dismissed the suit, whereas the first appellate Court in A.S.No.315 of 2018 had reversed the decree of the trial Court and decreed the suit. This is now in challenge.

2.The quintessential fact involved in this litigation is that the plaintiff claims right to the property site under Ex.A2 sale deed dated 12.04.2010. The defendants claim right to the superstructure vide Ex.A1 partition deed dated 31.01.1985. Ex.A1 itself indicates that the plaintiff's vendor is the owner of the site. The mother of the defendants was the lessee of the said site and she was the title holder of the superstructure.



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3. Learned counsel for the appellants made the following submission :

- The suit property is part of a larger extent of 7 Kanis or about 9.5 acres. It was purchased by a certain Mohamed Abdul Hug Sahib in a Court auction sale in 1912. The defendants seek title to occupy the property under Ex.A1 partition deed that was executed within the family of the defendants, dated 31.01.1985. While it is true in Ext.A1, that the property partitioned thereunder is described as a property held in leasehold and belonging to certain Abdul Kadar, the property which the plaintiff has purchased under Ex.A2 dated 12.04.2010 is only a fraction of the larger extent of about 9.5 acres stated above. It is not the same property as the 'A' Schedule in Ex.A1. In short, there is a dispute as to the identity of the property.
- The defendants deny the title of the plaintiff and when the burden is on the plaintiff, the first Appellate Court has cast the burden on the defendants and decided the case essentially on the basis of the defendants' case.



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4.This Court is not able to appreciate the submission of the learned counsel and the reasons are :

a) The case of the defendants open with a statement in Ex.A1 partition deed wherein the property that was divided is stated to be the property held in leasehold under certain Abdul Kadar. The plaintiff has purchased a plot measuring 1811 sq.ft. under Ex.A2 dated 12.04.2010 which details how the property has devolved from the Court auction purchaser Mohamed Abdul Hug Sahib to Abdul Kadar and thereafter. It is not the case of the defendants that they were not lessees under Abdul Kadar. The pleadings of the defendants is carefully scanned. They dispute the title of the plaintiff which is permissible only if they are not lessees under Abdul Kadar.

b) Turning to the other aspects, there is hardly any plea regarding the identity of the property. So far as burden of proof is concerned, in a suit for recovery of property, which is



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held in lease, all that the plaintiff is required to do is to terminate the lease and to file a suit for recovery of property and no more. The burden therefore, will be on the defendants to plea every alternate pleas that may help the defendants to non-suit the plaintiff. Here in this case, the defendants have chosen an easy path and chose to attack the title of the landlord. Here lies the reason for failure before the first appellate Court.

5.In the end, this Court does not find that the case involves any substantial questions of law to be decided. This second appeal stands dismissed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

19.06.2023

kas

To:

1.The IV Additional City Civil Judge
Chennai

2.The XVIII Assistant City Civil Judge
Chennai.

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N.SESHASAYEE, J.
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