



A.S..No.414 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

Transfer AS.No.414 of 2014

- 1.Devarasu (deceased)
- 2.D.Loganayagi
- 3.Siva @ Nagappan
- 4.Ganesan
- 5.Sakthivel
- 6.Radha
- 7.Muthulakshmi
- 8.Usha
- 9.Sumathi
- 10.Manjula
- 11.Parameswari

[Appellants 2 to 11 brought on record as LR's of the deceased sole appellant vide as per the order of the Court dated 24.07.2003 made in C.M.P.No.7094 of 2003 in Tr.A.S.No.414/2014]

... Appellants

Vs.

Narayanasamy

... Respondent



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PRAYER: Transfer Appeal Suit filed under Section 97 of the CPC, against the judgement and decree dated 10.03.1999 made in O.S.No.151 of 1996 on the file of the Additional Sub Judge, Pondicherry.

For Appellants : Mr.Rajarajan

For Respondent : Mr.T.R.Rajaraman

JUDGEMENT

This Transfer Appeal Suit is filed challenging the judgement and decree in OS.No.151 of 1996 filed by the respondent herein on the file of the Additional Sub Judge, Pondicherry. The brief facts are as follows:-

Plaintiff's Case.

2. The plaintiff had filed the suit OS.No.151 of 1996 for a declaration that he is the absolute owner of the suit property and for recovery of possession free of the superstructures put thereupon. It is the case of the plaintiff that the suit schedule property is situate in Ayyankuttipadayam and forms part of the larger extent of land comprised in R.S.No.10/15. These lands originally belonged to one Subraya Gounder son of Veeraraghav Gounder who died, leaving behind him surviving two sons Rangasamy and



Govindsamy, the father of the plaintiff. Subraya Gounder died intestate in 1951 and as per the Hindu Succession Act, Rangasamy and Govindsamy became jointly entitled to the property. Thereafter, Rangasamy also died intestate in the year 1951 itself and the entire property thereupon devolved on Govindsamy Gounder who was in possession and enjoyment of the property till his death on 07.04.1973. During his lifetime, Govindasamy Gounder had executed a Will dated 05.04.1973 bequeathing the properties on the plaintiff. The plaintiff became the absolute owner of the properties including the suit property.

3. It is the case of the plaintiff that the defendant was very close to his father and had helped his father for campaigning in the election for the Pondicherry Legislative Assembly. In a show of gratitude, the plaintiff's father had permitted the defendant to reside in the suit property and permitted him to put up a hut. After the death of his father, the plaintiff had revoked this right and demanded possession. To this, there was no positive response and therefore the plaintiff has come forward with the suit in question.



Written statement of the defendant.

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4. It is the defendant's contention that he has been in possession and enjoyment of the property since the year 1957, therefore, the said Govindsamy had executed an agreement of sale in favour of the defendant in respect of the suit property on 14.04.1969. The sale price was fixed at a sum of Rs.4,000/- and the defendant had paid a sum of Rs.3,500/- under the sale agreement to the plaintiff's father. Before executing the sale deed, the plaintiff's father had died in the year 1973. Despite the defendant's request, the plaintiff had not come forward to execute the sale deed and this constrained the defendant to file OS.No.250 of 1981 on the file of the III Additional District Munsif, Pondicherry for specific performance. The said suit was dismissed and the Appeal A.S.No.54 of 1990 was allowed and the matter remitted back to the Trial Court. As against the order, the plaintiff had filed CMA.No.7408 of 1996 which was pending. The defendant had pleaded that the suit had not been properly valued and that the defendant had acquired prescriptive title over the suit property which he has been continuously enjoying since 1956.



Trial Court:

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5. The Trial Court had framed the following issues and Additional issues:-

1. Whether the suit has not been properly valued and correct Court fee has not been paid?

2. Whether the suit is bad for want of a prayer for declaration of title to the suit property or whether the suit is bad for want of prayer regarding the status of the defendant in relation to the suit property?

3. Whether the trial of the suit is to be stayed u/s.10 of C.P.C. in view of the pendency of OS.No.250/81 in the Court of II Additional District Court, Pondicherry, and C.M.A.No.7408/96 in the High Court of Judicature at Madras or whether the suit is barred by Resjudicata in view of the proceedings?

4. Whether the defendant is only a permissive occupier in the suit property on the leave and licence granted by the Plaintiff's father Govindasamy Gounder? or Whether the defendant is occupying the suit property under



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the agreement to sell dated 14.04.1969 between the defendant and the plaintiff's father?

5. Whether the plaintiff validly revoked the leave and licence as against the defendant?

6. Whether the plaintiff is entitled to recover the suit property and obtain delivery of possession of it free from structures?

7. To what relief?

Additional Issues:-

1. Whether the Will dated 05.04.1973 executed by Govindasamy Gounder in favour of the plaintiff is valid?

2. Whether the defendant acquired prescriptive title over the suit property by enjoying it from 1956 onwards?

6. The plaintiff had examined himself as P.W.1 and one Balraj as P.W.2 and marked Ex.A.1 to A.13. The defendant on the other hand had examined himself as D.W.1 and marked Ex.B.1 to B.21.



7. The learned Trial Judge on considering the evidence on record had answered the question of Court Fee and suit valuation in favour of the plaintiff. Issue Nos. 2, 4 and 5 had been dealt with together. These issues are regarding the maintainability of the suit for want of a prayer for declaration of title and the plea of res-judicata, whether the defendant was a permissive occupier and whether the leave and the licence had been revoked. The learned Judge had returned a finding that the suit was not bad for want of prayer of declaration and that the defendant was only a permissive occupier under the plaintiff's father and not under the agreement of sale. It was also held that the plaintiff had terminated the license given in favour of the defendant. The learned Judge, therefore, held that the plaintiff was entitled to recover possession of the property free from all encumbrances. The Trial Court had also upheld the Will dated 05.04.1973 executed by Govindasamy Gounder in favour of the plaintiff. Ultimately, the Trial Court had decreed the suit as prayed for. Challenging the same the appellant/defendant is before this Court.



Points for consideration:

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8. The following points arise for consideration in the above Appeal:

a) Whether the defendant has prescribed title to the suit schedule property having been in occupation of the same from the year 1957?

b) Whether the plaintiff is in occupation of the suit property on the strength of the agreement of sale or on the basis of a leave and license granted by the plaintiff's father, Govindasamy Gounder.

c) Whether there has been a valid revocation of the leave and license by the plaintiff against the defendant?

9. Heard the counsels on either side.

10. The defense to this suit for declaration and recovery of possession is that the defendant had prescribed title to the property. Therefore it is necessary to first analyse as to when the defendant had occupied the suit schedule property and the nature of his occupation. Even according to the defendant he has been in possession of the property since 1957 and he has



also admitted that the property belonged to one Govindasamy, the father of the plaintiff. Therefore, it is clear that the defendant had been put in possession of the property by the said Govindasamy. The alleged agreement of sale is dated 14.04.1969 i.e; nearly 12 years after he has been put in possession of the property. Therefore, it is crystal clear that the defendant is only a permissive occupant of the suit schedule property. It is his case that he has been put in possession of the suit schedule property on the basis of the agreement of sale. Therefore it has to be analyzed on the basis of the available evidence as to whether the defendant is an agreement holder under the plaintiff's father.

11. The defendant has stated that he had entered into an agreement on the aforesaid date agreeing to purchase the property for a sum of Rs.4,000/- and a sum of Rs.3,500/- was paid by the defendant to the plaintiff's father leaving a balance of Rs.500/-. Before the sale deed could be executed, the said Govindasamy died in the year 1973. Therefore, it is clear that the defendant has not come forward to have the sale deed executed during the lifetime of the plaintiff's father. From the alleged date of the agreement of sale i.e; 14.04.1969, the plaintiff's father was alive for 4 years and steps



have not been taken by the defendant to have the sale deed executed. The agreement of sale is attacked on the ground that the same is fabricated which is evident from the fact that the value shown therein is not commensurate to the market value. That apart, the agreement of sale contains corrections and interpolations and there are several contradictions in the evidence of P.W.1 and P.W.2, attester with reference to the execution of the agreement.

12. A perusal of the agreement of sale, Ex.A.3 clearly shows the corrections and additions. Therefore, the agreement of sale, Ex.A.3 cannot be taken into consideration. Further, the Expert who had submitted her Report and which the Court had taken on file clearly shows that the signatures in Ex.A.3 (disputed signature) and the signature made in Ex.A.4 (admitted signature) of Govindasamy are made by two different persons. Therefore, in the light of this overwhelming evidence, the agreement of sale has not been proved and therefore, the defendant cannot contend that he is in occupation of the suit property in his capacity as an agreement holder.



13. Even according to the defendant he is in possession of the suit property since 1957, much prior to the alleged agreement of sale and the plaintiff would submit that the defendant had been put in possession by his father to show his gratitude for the defendant having worked tirelessly during the election campaigning for the plaintiff's father. It was also understood that the property was to be handed over as and when demanded. Therefore, the points for consideration A and B have to necessarily be answered against the defendant and this Court holds that the defendant has not prescribed title to the suit schedule property since he has been in permissive occupation of the suit schedule property and consequently his occupation is only on the basis of a leave and licence granted by the plaintiff's father, Govindasamy Gounder.

14. An argument has been put forward that there is no valid revocation of the leave of licence by the plaintiff. A perusal of Ex.A.1, legal notice dated 12.02.1996 shows that the plaintiff had called upon the defendant to deliver vacant possession of the suit schedule property. In the judgement reported in **2008 (3) MLJ 543 (SC) - Nopany Investments (P) Ltd., Vs. Santokh Singh** Hon'ble Supreme Court had hold that the finding



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of the suit is by itself a notice to quit and the non-issue of a notice is not fatal to the case. Therefore, it can be safely concluded that there has been a valid revocation of the leave and licence by the plaintiff. Therefore, I see no reasons to interfere with the judgement and decree of the Additional Sub-Judge, Pondicherry made in OS.No.151 of 1996. Consequently, the Transfer Appeal Suit stands dismissed. No costs.

07.02.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No
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To

1. The Additional Sub Judge, Pondicherry.



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P.T. ASHA, J,

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