



S.A.No.351 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.351 of 2017
and C.M.P.Nos.8310, 8238 of 2017 & 6055 of 2022

C.Chellamuthu

...Appellant

Vs.

1. G.V.Veerappan (Died)

2. The Executive Engineer
Coimbatore Housing Unit,
Tamil Nadu Housing Board
Cowly Brown Road, RS Puram,
Coimbatore- 2

3. Saradha

4. Suseela

5. Bharathi

6. Subashmohan

...Respondents

(Respondents 3 to 6 as Legal Representatives
of the deceased 1st respondent viz., G.V.Veerappan
vide order dated 21.12.2021 in C.M.P.No.20699 of 2021)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 10.01.2017 made in A.S.No.133 of 2013 and I.A.No.310 of 2016 on the file of I Additional Subordinate Judge, Coimbatore in confirming judgment and decree dated 10.06.2013 passed in O.S.No.2734 of 2008 on the file of III Additional District Munsif, Coimbatore.



S.A.No.351 of 2017

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For Appellant : Mr.J.Pothiraj
For Respondent 1 : Died
For Respondent 2 : No appearance
For Respondents 3 to 6 : Mr.D.Bharathy

J U D G M E N T

The unsuccessful second defendant in the suit is the appellant. The first respondent herein filed the suit for mandatory injunction directing the second respondent Housing Board to execute the sale deed in his favour after receiving the balance sale consideration and also for direction to the appellant /second defendant to hand over the possession of the suit property. The suit was decreed by the Trial Court and the appeal filed by the appellant was also dismissed by the First Appellate Court. Hence, he is before this Court.

2. According to the first respondent/plaintiff, the suit property was allotted to him by the second respondent Housing Board with a condition that the sale price shall be paid by the first respondent through monthly installments and on payment of the entire sale consideration, a regular sale deed would be executed by the second respondent in favour of the first



S.A.No.351 of 2017

respondent. It was also claimed by the first respondent that monthly installments payable by him was deducted from his salary and credited into the account of the second respondent. During 1996, the first respondent wanted to shift his residence in order to take care of his mother, who was ill and permitted the appellant to occupy the suit property on his behalf. The said permission was cancelled by the first respondent in the year 1999. However, the appellant refused to hand over possession and laid a suit for permanent injunction in O.S.No.148 of 1999 on the file of Additional District Munsif, Coimbatore.

3. When the first respondent approached the second respondent for execution of pucca sale deed, the sale was opposed by the appellant citing the pendency of the civil suit. Ultimately, the suit for permanent injunction filed by the appellant was dismissed on 14.07.2005. As the second respondent failed to execute the sale deed as per the allotment order, the first respondent was constrained to file the present suit. The second respondent filed the written statement claiming that the first respondent violated the allotment condition by sub-letting the suit property in favour of the appellant, as he was not found to be in possession of the suit property and therefore, the second



S.A.No.351 of 2017

respondent was not in a position to execute the pucca sale deed as per the allotment order.

4. The appellant herein filed the written statement and claimed that the first respondent borrowed a sum of Rs.1,00,000/- from him and allowed him to occupy the suit property and therefore, he is a legal occupant of the suit property and the first respondent was not entitled to seek recovery of possession from him. The appellant also raised a plea that the first respondent violated the condition of allotment order and therefore, he was not entitled to maintain a suit.

5. Before the Trial Court, the first respondent was examined as P.W.1 and 23 documents were marked on his side as Ex.A1 to Ex.A23. One of the officials of the second respondent was examined as D.W.1 and 4 documents were marked on their behalf as Ex.B1 to Ex.B4.

6. The Trial Court, on appreciation of the oral and documentary



S.A.No.351 of 2017

evidence available on record, came to the conclusion that the suit property was allotted to the first respondent by the second respondent and in case of any violation of the allotment order, the second respondent could claim only double the rent. However, the Trial Court factually came to a conclusion that there was no violation of allotment condition by the first respondent and hence, granted a decree directing the second respondent to execute the sale deed in favour of the first respondent. The Trial Court also found that the possession of the appellant was illegal and hence, granted a decree of possession as prayed for. Aggrieved by the same, the appellant preferred an appeal in A.S.No.133 of 2013 on the file of I Additional Subordinate Court, Coimbatore. Along with the first appeal, the appellant also filed an application in I.A.No.310 of 2016 for leading additional evidence. The First Appellate Court concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by the same, the appellant is before this Court.

7. At the time of admission, this Court formulated the following substantial questions of law and the same read as follows;

"(a) Whether the learned Judges is right in not considering the question of limitation, as the suit property was allotted on 26.08.1971 and the plaintiff vacated the suit



S.A.No.351 of 2017

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property during the year 1996 and chose to lay the suit during the year 2008, which act is clearly barred by law of limitation?

(b) Whether the lower appellate court has not erred in dismissing the I.A.No.310 of 2016 filed by the appellant seeking to permit examining himself as a witness before the trial court as sufficient opportunity was not provided to him by the trial court, as due to the dismissal of the said application along with the appeal the appellant has lost an opportunity to establish his case before the trial court?

8. The learned counsel for the appellant submitted that the first respondent vacated the suit property as early as 1996 and has chosen to file the present suit in the year 2008. Hence, the suit filed by the first respondent is barred by limitation. The learned counsel further submitted that the appellant by virtue of his long possession has acquired title by adverse possession and hence, the first respondent is not entitled to seek possession of the suit property.

9. The learned counsel further submitted that the First Appellate Court had erroneously dismissed the application filed for leading additional evidence in I.A.No.310 of 2016. The first respondent examined himself as P.W.1 and



S.A.No.351 of 2017

deposed as per the averments found in the plaint. The allotment order passed by the second respondent in favour of the appellant was marked as Ex.A2. The certificate issued by the employer of the first respondent/plaintiff for having deducted monthly installment from the salary of the first respondent and credited the same into the account of the second respondent was marked as Ex.A3. Therefore, it is clear that monthly installment payable by the first respondent was deducted from the salary of the first respondent till 30.09.1987. The witness examined on behalf of the second respondent as D.W.1 also admitted during the course of evidence that the first respondent/plaintiff was entitled to the execution of sale deed in his favour.

10. Both the Courts below, on perusal of the allotment order in favour of the first respondent/plaintiff came to the conclusion that in case of violation of allotment conditions, the second respondent Housing Board was entitled to collect double the rate of rent, however, there is nothing on record to suggest that the second respondent had taken any action against the first respondent for the alleged violation of allotment conditions. Both the Courts below factually came to the conclusion that the first respondent allowed the appellant to occupy the suit property as a permissive occupant. In such circumstances,



S.A.No.351 of 2017

the allegation as if the first respondent let out the suit property to the appellant was not proved. Hence, there is no violation of allotment conditions. In such circumstances, the Courts below are right in coming to the conclusion that the first respondent was entitled to the execution of sale deed in his favour. In fact, as there was no interim order, the second respondent Housing Board appeared to have executed the sale deed as per the decree on 30.12.2021 in favour of the first respondent and a copy of the same has been produced before this Court.

11. Both the Courts below, on appreciation of documentary evidence, came to the conclusion that the possession of appellant over the suit property is illegal. Though the appellant claimed that the first respondent borrowed a sum of Rs.1,00,000/- from him and he was allowed to occupy the suit property, the said contention was negatived in the earlier injunction suit between the parties in O.S.No.148 of 1999. The judgment passed by the Court below in the earlier suit between the parties was marked as Ex.A15. After perusal of the said documentary evidence, both the Courts below came to the conclusion that the claim of the appellant regarding borrowal and his entitlement to occupy the suit property were all negatived by the Court in the earlier proceedings. In such circumstances, both the Courts below came to the correct conclusion that



S.A.No.351 of 2017

the appellant is in illegal possession of the suit property and hence, liable to surrender the possession to the first respondent. I do not find any reason to interfere with the findings rendered by the Courts below with regard to the entitlement of the first respondent to get possession of the suit property.

12. Even though the learned counsel for the appellant tried to canvas the question of limitation and adverse possession as mentioned earlier, the Courts below came to the factual conclusion that the first respondent permitted the appellant to occupy the suit property in the year 1996 and the said permission was cancelled in the year 1999. In such circumstances, being permissive occupant, the appellant is not entitled to raise a plea of adverse possession or limitation. Even the permission granted to the appellant was cancelled in the year 1999 and the suit was filed within the period of 12 years in the year 2008. Therefore, the questions of limitation and adverse possession raised by the appellant are not found in his favour.

13. The petition filed by the appellants for raising additional evidence was dismissed by the First Appellate Court by recording counsel for appellant made an endorsement on 27.02.2013 before Trial Court that his client had no



S.A.No.351 of 2017

evidence and hence, averment of appellant in his petition as if he was not afforded with opportunity to adduce any oral and documentary evidence could not be accepted. Further, along with petition no document was filed. Having made such an endorsement before Trial Court, the appellant is not entitled to file petition to raise additional evidence before First Appellate Court.

S.SOUNTHAR, J.

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14. Accordingly, the substantial questions of law framed at the time of admission are answered against the appellant and the second appeal stands dismissed

a) by affirming the judgment and decree dated 10.01.2017 passed by the I Additional Subordinate Judge, Coimbatore in A.S.No.133 of 2013 affirming the judgment and decree dated 10.06.2013 passed by the III Additional District Judge, Coimbatore in O.S.No.2734 of 2008; and

b) In the above facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.



S.A.No.351 of 2017

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06.11.2023

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

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2. The III Additional District Judge, Coimbatore.

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