



S.A.No.863 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.863 of 2023

M.Shanthi

...Appellant

Vs.

1.C.T.Saraswathi

2.Dr.Parameswaran

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 07.07.2023 made in A.S.No.300 of 2018 on the file of the Principal District Judge and Session Judge at Chennai confirming Judgement and Decree dated 05.03.2018 made in O.S.No.6298 of 2012 on the file of the 17th Assistant City Civil Court at Chennai.



S.A.No.863 of 2023

WEB COPY

For Appellant : Mr. C.B.Murali Krishnan

JUDGMENT

This Second Appeal is filed by the plaintiff challenging the Judgement and Decree passed in A.S.No.300 of 2018 on the file of the XX Additional Sessions Judge, Allikulam, Chennai in and by which the learned Judge has confirmed the Judgement and Decree passed by the XVII Assistant Judge, City Civil Court, Chennai in O.S.No.6298 of 2012. The facts necessary for disposing of the above Second Appeal which is today posted for admission is herein below set out and the parties are referred to in the same rank as before the Trial Court.

2. The plaintiff had filed a suit for permanent injunction restraining the defendants their men, agents, servants or anybody claiming under them from interfering with her peaceful possession



S.A.No.863 of 2023

and enjoyment of the suit properties. It is her case that the suit property forms a larger extent measuring 23 acres 78 cents and originally belonged to one M.A.Srinivasa Iyengar. The said M.A.Srinivasa Iyengar executed a settlement deed in respect of his property on 09.02.1935 giving a life estate to his wife one Srirangammal and vested remainder to his children.

3. The said Srirangammal had leased out the property to one Krishnappa Naicker and on his death in the year 1948 his wife Subhadrammal continued to be in possession. Thereafter, the lease was terminated by Srirangammal by issuing necessary notice and fresh lease was entered into in favour of one Vijayaranga Mudaliar. The said Subhadrammal filed a suit for ejectment and claiming rights under the City Tenants Protection Act. The matter was taken up to the High Court and compromise was entered into between the parties, where under Subhadrammal undertook that she would not make any claim under the City Tenants Protection Act and surrendered the



property. She further undertook that she would purchase a portion of the property as any third party from the owner Srirangammal.

4. The defendants had purchased a portion of the land out of extent of 49 grounds 2,213 sqft., which included the suit property under registered a sale deed dated 07.03.1963 and also in the year 1973 from one Balasubramaniam. Though the property was purchased by the defendants, the plaintiff's forefather and father had occupied portions and paid rent to Subhadrammal till 1963.

5. The plaintiff's case is that they are in continuous possession of the property till 2007 without any hindrance. In the year 2007, one Subasan along with rowdy elements had entered the suit property claiming to be the legal representatives of the original owner and attempted to evict the plaintiff. The plaintiff had immediately sent notice to Commissioner of Police and an enquiry was conducted by the



S.A.No.863 of 2023

Thiruvannamiyur Police. Though the defendants had stopped their activity, however, the pinpricks continued and therefore, the plaintiff has come forward with the suit in question.

6. The 2nd defendant had filed a written statement inter alia denying the entire contents of the plaint and the written statement has also been adopted by the 1st defendant. It is their contention that on 01.10.2007, the plaintiff had agreed to receive a sum of Rs.20,00,000/- from the 1st defendant's son and father of the 2nd defendant, one Sabesan and had received a sum of Rs.1,00,000/- as per agreement. The plaintiff had agreed to vacate the premises on receiving the balance amount of Rs.19,00,000/-. On 22.05.2008, the plaintiff and her family members have received a total sum of Rs.20,00,000/- and they had handed over the possession of the suit property along with the super structure. Thereafter, the defendants had demolished the superstructure and in possession of the property.



WEB COPY

7. The defendants had denied the allegations that Sabesan was a rowdy element who had come to forcibly evict the plaintiff. The plaintiff and her family had vacated the property on 22.05.2008 and thereafter they have never been in possession of the property. The plaintiff who has vacated the property has now come forward with this suit contending false allegations.

8. The defendants would further submit that most of the other occupants had vacated the premises after receiving compensation and therefore there is no necessity to threaten the plaintiff. The defendants would submit that there was no cause of action for filing the above suit.

9. The Trial Court had framed the issue as to, *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?*



S.A.No.863 of 2023

WEB COPY

10. The plaintiff had examined herself as P.W.1 and marked Ex.A.1 to A.8 and one Kumudha was examined as P.W.2 and Ex.A.9 and Ex.A.10 were marked through her. On the side of the defendants one Saravanan was examined as D.W.1. Ex.B.1 and Ex.B.2 were marked on the side of the defendants.

11. The Trial Court dismissed the suit stating that the plaintiff was not entitled to the relief. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.200 of 2018 on the file of the XX Additional Sessions Court, Chennai.

12. The Appellate Court had also confirmed the Judgement and Decree of the Trial Court and dismissed the appeal.



13. Aggrieved by this concurrent Judgement and Decree, the plaintiff is before this Court.

14. Heard Mr. C.B.Murali Krishnan for the appellant. The following is the admitted case of the parties:

(a)The suit property is a part of a larger extent of 23 acres 78 cents and belonged to one M.A.Srinivasa Iyenger.

(b)He had executed a settlement deed dated 09.02.1935 giving life estate to his wife and remaining to his children.

(c)The property was leased out to one Krishnappa Naicker and on his death, his wife continued in possession.

(d) Srirangammal, the life estate holder had terminated the lease in favour of the said Subhadrammal and entered into a fresh lease with one Vijayaranga



S.A.No.863 of 2023

Mudaliar.

(e)The said Subhadrammal filed a suit, which was compromised between the parties subject to the condition that the said Subhadrammal would not claim under the City Tenants Protection Act and that she would surrender the possession of the property and purchase the portion of the property as any other third party.

15. That defendants had purchased the suit property from one Balasubramaniam in the year 1973. Therefore, it is clear that Subhadrammal had herself given up her right to claim under the City Tenants Protection Act. Further, she had agreed to surrender the property. Though under the terms she had agreed to purchase a portion of the property from the original owner, Srirangammal, there is no evidence produced on the side of the plaintiff to show that she has purchased any portion from the original owner, Srirangammal.



S.A.No.863 of 2023

16. The plaintiff is claiming under this Subhadrammal stating that her forefather had been paying rent till 1963. That her forefather was paying rent to Subhadrammal till 1963 has also not been proved. Meanwhile, the plaintiff's forefather Kannan was impleaded as the defendant in the suit O.S.No.684 of 1965 filed by Sakthivel Investments seeking to evict him from the property. In the said suit, the learned Judge has held that the said Kannan was not entitled to claim any right under the City Tenants Protection Act and therefore he was liable to be evicted.

17. The plaintiff who claims to be in continuous possession has not produced any documents to show possession after 2008 or before 2008. The fact that the plaintiff does not have any documents to show possession of the property has confirmed the fact that the plaintiff on receiving the sum of Rs.20,00,000/- from Sabesan had handed over



S.A.No.863 of 2023

the property with super structure, as evidenced by Ex.B.1 and Ex.B.2.

WEB COPY

18. Interestingly, the plaintiff has not denied or questioned the authenticity of Ex.B.1 and Ex.B.2. Therefore, it is crystal clear that the plaintiff was not in possession of the property post 2008. Further, the plaintiff has also not been able to prove their allegation, namely, the alleged trespass by Sabesan and the others into the property. Therefore, the Courts below have rightly dismissed the suit and I see no reasons to interfere with the same.

19. In the result, the Second Appeal stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

21.12.2023



S.A.No.863 of 2023

Index : Yes/No
Internet : Yes/No
kan

To

1. The Principal District Judge and Session Judge,
Chennai

2. The 17th Assistant City Civil Court,
Chennai.

P.T. ASHA, J,

kan



WEB COPY



S.A.No.863 of 2023

S.A.No. 863 of 2023

21.12.2023