



SA.No.663 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2024

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.663 of 2011

and

MP.No.1 of 2011 & CMP.No.19008 of 2022

R.Devadoss

... Appellant

- Vs -

M.Jalendiran

... Respondent

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree made in A.S.No.394 of 2008 on the file of the Additional District Judge (Fast Track Court-V) Chennai dated 05.11.2008 reversing the well considered judgment and decree made in O.S.No.5279 of 2005 dated 23.01.2008 on the file of the XIII Assistant City Civil Judge, Chennai.

For Appellant : Mr.M.Arunkumar

For Respondent : No Appearance

J U D G M E N T

The instant Second Appeal has been filed by the plaintiff. The



SA.No.663 of 2011

respondent herein is the defendant before the Trial Court.

2. For the sake of convenience, the parties will be referred to 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 is a Flat measuring about 350 sq.ft situated at No.126/10 [second floor] Nochikuppam, Mylapore, Chennai. It is the submission of the plaintiff that the suit property was allotted to him during 1973 and he was in occupation of the said Flat upto 1991. However, due to the chronic ailments of his wife, he was compelled to stay away from the Flat after 1991 and that he has been staying in Royapuram. According to the plaintiff, while he was moving away from the suit property, he permitted the defendant to occupy the suit property. As such according to the plaintiff, the defendant is a permissive occupant. However, when the plaintiff requested the defendant to vacate and hand over the possession of the premises, he evaded the same. Hence, the plaintiff has come forward with a suit for delivery of possession.

4. The said suit was resisted by the defendant on the sole ground that the plaintiff has executed a sale deed on 21.09.1991. Therefore, by virtue of the Sale Deed, he became the owner of the suit property. Hence, he prayed



SA.No.663 of 2011

to dismiss the suit.

5. Before the Trial Court, the plaintiff himself examined as PW1 and marked 5 documents as Exs.A1 to A5. On behalf of the defendant, 3 witnesses were examined as DW1 to DW3 and as many as 9 documents have been marked as Exs.B1 to B9.

6. The Trial Court, after having considered the oral and documentary evidence, decreed the suit as prayed for. Not satisfying with the same, when the defendant preferred the First Appeal, the First Appellate Court reversed the said finding, on the ground that notwithstanding the unregistered Sale Deed dated 21.09.1991, since the defendant has been in continuous, uninterrupted and hostile possession for more than 14 years, he has perfected title by way of adverse possession and ultimately, allowed the appeal by dismissing the suit. Aggrieved with the said finding of the First Appellate Court, the plaintiff is before this Court by way of the instant Second Appeal.

7. When the matter was taken up on 14.03.2024, this Court has formulated the following substantial question of law:-



SA.No.663 of 2011

WEB COPY

“(i) Whether the suit filed in respect of eviction of the defendant without obtaining an approval from Slum Clearance Board is maintainable, in view of Section 29 of Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971.”

8. The learned counsel for the appellant would vehemently submit that when it is an admitted case that the plaintiff is the owner of the suit property, mere unregistered Sale Deed, even if the same was executed by the plaintiff, will not confer any title to the defendant. It was also contended by the learned counsel that the First Appellate Court without there being any pleadings for adverse possession reversed the finding of the Trial Court. Therefore, would vehemently submit that the order of the First Appellate Court is perverse and liable to be interfered with by allowing the Second Appeal.

9. On behalf of the respondent, no one has appeared.

10. I have given my anxious consideration upon the submissions made by the learned counsel for the Appellant.

11. The sum and substance of the submissions of the learned counsel



SA.No.663 of 2011

for the appellant is that, by virtue of Ex.B3-Sale Deed dated 21.09.1991, no title would confer upon the defendant. It is a rudimentary principle that any Sale Deed of an immovable property for a sale consideration more than Rs.100/- is to be registered, otherwise, the said document will not confer any right title upon the purchaser. Here, admittedly Ex.B3 is the unregistered Sale Deed. Therefore, the findings recorded by the Trial Court that Ex.B3 could not be relied is perfectly in order. Once Ex.B3 is not accepted, then as per the admitted case of both the parties, the plaintiff is the owner of the property. Therefore, the defendant being in illegal occupation is liable to vacate and hand over the possession.

12. However, the First Appellate Court, without there being any pleadings in respect of the adverse possession, and when the defendant has come up with a specific defence of ownership as he acquired title by way of a unregistered Sale Deed, the First Appellate Court misdirected itself and has given a finding beyond the scope of pleading. In order to have a relief under adverse possession, the pleading is the primordial requirement and that such pleadings should be specific as to when the possession of the defendant become adverse to the real owner, and that such possession should be as per the legal maxim of *nec vi, nec clam, nec precario*. However, there are no



SA.No.663 of 2011

iota of pleadings in the written statement of the defendant towards adverse possession.

13. Therefore, this Court is of the firm view that the findings rendered by the Trial Court that the defendant perfected title by way of adverse possession is without there being any pleadings and evidence. Hence, such finding is perverse and liable to be interfered with.

14. It is also pertinent to mention here that this Court has formulated a substantial question of law that, in view of Section 29 of “Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971” (hereinafter shall be referred to as “the Act”) whether a suit is barred. According to the above act, in order to attract Section 29, the area must be declared as a slum area as defined under the Act. But it is nobody's case that the suit property is a Slum area. Therefore, Section 29 will have no application in this matter.

15. In view of the above detailed discussion, this Court is of the firm view that the reversal finding rendered by the First Appellate Court is without evidence and pleadings. Hence, the same is pervers and liable to be interfered with. In view of the above detailed discussion, the substantial question of law is answered in favour of the appellant.



SA.No.663 of 2011

WEB COPY

16. In the result, the Second Appeal is allowed. As a concomitant, the judgment and decree made in A.S.No.394 of 2008 by the learned Additional District Judge (Fast Track Court-V) Chennai dated 05.11.2008 reversing the well considered judgment and decree made in O.S.No.5279 of 2005 dated 23.01.2008 on the file of the XIII Assistant City Civil Judge, Chennai, is hereby set aside by restoring the decree in O.S.No.5279 of 2005. There shall be no order as to costs. Consequently, connected Miscellaneous petitions are closed.

05.04.2024

kmi

Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No

To

1. The XIII Assistant City Civil Court,
Chennai,
2. The Additional District Judge,
(Fast Track Court-V),
Chennai.



WEB COPY



SA.No.663 of 2011

C.KUMARAPPAN, J

kmi

S.A.No.663 of 2011

05.04.2024