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S.A. No. 775 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

S.A. No.775 of 2024
and
C.M.P.No. 24886 of 2024

Celine,
W/o. Sampath Kumar

... Appellant

Versus

Abdul Nazir,
S/o. Abdul Rahim

... Respondent

Prayer:- Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 20.02.2024 passed in A.S.No.32 of 2022 on the file of District Judge, Udhagamandalam confirming the judgment and decree passed in O.S.No.3 of 2020 on the file the Subordinate Judge, Coonoor.

For Appellant : Mr.B.Prashanth Nadaraj

For Respondent : Mr.J.P.Rajesh



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JUDGEMENT

The appellant, who is the 1st defendant in the suit in O.S.No. 3 of 2020 and challenging the concurrent findings of the courts below rendered in A.S.No. 32 of 2022 on the file of District Judge, Udthagamandalam arising out of trial court findings in O.S.No.3 of 2020 on the file of Subordinate Judge, Coonoor, this Second Appeal was preferred by her.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit for delivery of vacant possession of the suit schedule property to the plaintiff, in the event of such failure through court processes and the defendant to pay Rs.100/- per day as damages for unauthorised occupation. The case of plaintiff is that the suit property originally belongs to one M.C.Kari Gowder and after his demise, his legal heirs Parvathi, Ramu, Balaram, Mohan Ram, Seetha Lakshmi, Maniram, Vijayalakshmi and Rajaram Kari had conveyed the property to the plaintiff through a sale deed dated 09.11.2018. Eversince, he is in possession and enjoyment of the property. The defendant along with



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one Ganthimathi, were tenants under late Kari Gowder and after the purchase, the plaintiff demanded them to vacate and hand over the premises so as to enable him to make improvements in the said property to acquire higher income. All of them have accepted his demand and sought three months time to vacate and hand over the possession to him. But, strangely, the defendant/one of the tenant issued a notice on 14.01.2019 along with two of legal heirs of Kari Gowder stating that legal heir of Kari Gowder, who had cheated the client a sum of Rs.3,00,000/-, which they took as advance by the legal heirs of Kari Gowder and executed a sale agreement in his favour on 18.04.2014. When they failed to execute the sale deed, he filed a suit in O.S.No. 35 of 2019 before the District Munsif Court, Coonoor against the legal heirs of Kari Gowder, wherein the plaintiff had impleaded necessary parties. Furthermore, they were in possession and enjoyment of the suit property from 1949 onwards and paying tax and electricity bill, thereby they were not under the permission of the plaintiff and also contended that the plaintiff is not owner of property as the Cantonment has not recognised their ownership. Hence, the suit was filed.

4. Before the trial court, both parties have adduced evidence.



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Accordingly, the trial judge had framed five issues. The foremost issue is whether the sale deed is a sham and nominal one and the alleged sale agreement dated 18.04.2014 is enforceable or not along with other issues. Before the trial court, the plaintiff produced the sale deed marked as Ex.A1. Accordingly, he purchased the same from original legal heirs of Kari Gowder on 09.11.2018. But, the defendant though admits that he is residing in the property ever since 1946 under the landlord of Kari Gowder, they denied the alleged purchase made by the plaintiff. During the trial, D.W.2 admits that the plaintiff purchased the property for a valid consideration. Furthermore, referring the alleged sale agreement dated 18.04.2014, the plaintiff issued legal notice Ex.A2. It was contended by the defendant along with two of legal heirs of Kari Gowder executed a sale agreement on 18.04.2014. But it was denied by the plaintiff and at that time, the original owner Kari Gowder was alive and the same was admitted by D.W.1 during the cross-examination and the same was rightly observed by the trial judge while deciding Issue No.3, thereby the trial judge held that when the original owner was alive, his two sons have no right to execute the alleged sale agreement as such is not valid under law, since they are not entitled to



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execute the sale agreement. Accordingly, the said issue was decided against the defendants. Furthermore, under Sec.106 of Transfer of Property Act on 09.12.2019 the plaintiff terminated the tenancy and requested to hand over the possession of property from the tenant under original owner. Even after the new Amendment, the notice issued by the plaintiff was complied as per the requirements under Sec.106(3) of Transfer of Property Act. Therefore, the tenancy was terminated and the plaintiff is entitled for delivery of possession of the property. Accordingly, the suit was decreed and damages also awarded as he was in unauthorised occupation after issuance of notice fro 2019 December onwards.

5. The objections raised by the defendant that the plaintiff's title was accepted by the Contonment also not been proved by him as there is no provision of law that they have to obtain permission from the Contonment Board for transferring the property. Therefore, in all aspects, the defendant failed to prove the same and the plaintiff has proved the title as he is the absolute owner of the property, thereby he terminated tenancy and requested the defendant, who is a tenant to hand over the vacant possession and accordingly, the suit was decreed. Challenging the said findings, an appeal



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suit in A.S.No. 32 of 2022 was filed, wherein the first appellate judge also independently analysed the evidence on record and framed separate issues and finally held that as per Ex.A1 sale deed, the plaintiff is the owner of the property and already the tenancy was also terminated by issuing notice by the plaintiff and the alleged sale agreement executed by the defendant is also invalid, since it was executed by two of sons of original owner Kari Gowder and at that time, the original owner Kari Gowder was alive. Therefore, two sons have no right to execute the sale agreement in favour of defendants. Accordingly, the findings rendered by the trial judge is confirmed and appeal was dismissed. Challenging the concurrent findings, he preferred this Second Appeal. Accordingly, the appellant prayed to set aside the findings of the courts below by raising the following grounds:-

(i) The learned judges ought to have seen that the respondent has failed to prove with necessary evidence that the appellant was solely a permissive occupant and lost her status of a tenant on the sale of the property. Such a plea is self-contradicting and ought not to have been accepted. Such a plea is not rested on any concrete evidence.

(ii) The learned Judges have contradicted their own findings in



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determining the nature of relationship between the parties. On one hand, the learned judges determine that the appellant was a permissive occupant alone, however, on the other hand, they rely on Sec.8 and 54 of the Transfer of Property Act to state that the transfer of title by the vendor of the respondent was with all incidents. If the latter reasoning is accepted and if it is assumed that the sale happened on an as is where is basis, without prejudice to the defence of the appellant, it is clear that the appellant does not lose her status as a tenant.

(iii) In deciding the question of whether the sale in favour of the respondent is valid without any explicit provision for handing over of possession, the learned Judges have unequivocally taken a view that the handing over of possession is symbolic and when such possession rests with the tenant who is holding over, then possession is handed over as a corollary to such tenancy. It was therefore impliedly concluded that the respondent was a tenant in the property.

(iv) The learned Judges while dispensing with the preconditions specified in Sec.106 of Transfer of Property Act on the ground that the tenancy was only month to month have once again impliedly determined the



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relationship of parties to be that of landlord and a tenant.

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(v) The learned judges have both failed to consider that the suit is barred in view of Sec.40 of the Tamil Nadu Rights and Responsibilities of Landlords and Tenants Act, 2017. The special law came into force on 22.02.2019 as per the notification of the State Government in (G.O.Ms.No.35, Housing and Urban Development (HB4). The suit was filed only on 22.01.2020 and was subsequently taken on file. However, the issue of permissive possession has been hastily and incorrectly decided by both the courts below and the bar under law has been forgone by both the courts below.

(vi) The plea of the appellant that they also hold an interest in the subject property created in view of the sale agreement executed in their favour dated 18.04.2014 and on the basis of which a suit came to be also filed in O.S.No.35 of 2019 was also not properly appreciated. Vide the sale agreement, an inevitable interest stands created in favour of the appellant and their possession is also protected under Sec.43 and Sec.53A of the Transfer of Property Act. The fact that the agreement of sale was executed not by Kari Gowder but by his successors in interest is also not relevant for



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the adjudication as it was specifically stated by the appellant that the successors in interest had represented that they held the lawful authority to make the transfer in view of old age of Kari Gowder and had obtained Rs.3,00,000/- from the appellant as part consideration. Ex.B1 is also not controverted as evidence as the proper parties were never included by the plaintiff to the suit despite the specific defence taken by the appellant in his written statement.

6. Considering the facts and circumstances as well as considering his submissions, this Second Appeal is admitted on the following question of law :-

- a) Whether the judgment and decree passed by the lower appellate court suffers from the infirmity of non-compliance of provision under Order 41 Rule 31 of C.P.C.?
- b) Whether the learned Subordinate Judges have erred in accepting the plea of the respondent that the appellant is a permissive occupant without any material to satisfy such burden of proof?
- c) Whether the appellant can be said to have no interest over the subject property created by Ex.B1 sale deed under Sec.43 and



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Sec.53A of the Transfer of Property Act?

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7. On perusal of records, it reveals that the respondent/plaintiff's father purchased the property and issued a notice terminating the tenancy of the tenant/defendant. When he refused and gave a false reply, he approached the court for delivery of vacant possession of the property with damages. Originally, the suit property belongs to one Kari Gowder by way of purchase and after his demise, from the legal heirs of Kari Gowder, the plaintiff purchased the property on 09.01.2018, at that time, the defendant and another were tenants under the original owner Kari Gowder and they were in possession of the suit property. Therefore, the plaintiff issued a notice calling upon them to hand over possession of the property, for which the defendants gave false reply stating that he entered into sale agreement with two sons of Kari Gowder on 18.04.2014 and the advance amount of Rs.3 lakhs paid by him was cheated by legal heirs of Kari Gowder. So also, the sale agreement also not been complied by his sons. Hence, he raised objections. But, admittedly, at the time of execution of alleged sale agreement, the original owner Kari Gowder was alive. Therefore, his two



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sons have no right to execute the sale agreement as they are not owners.

Therefore, the alleged sale agreement relied on by the defendant was not accepted by the courts below, which needs no interference. Another objection raised by the defendant is that to convey the property, the plaintiff ought not to have obtained the permission from the cantonment, but no provision of law was produced to support their contention and the courts below rightly concludes the said issue. Furthermore, the trial court as well as appellate court framed proper issues in respect of dispute between the parties. Moreover, the tenancy was also terminated as required under Sec.106(3) of Transfer of Property Act in the year 2019 itself. Therefore, the plaintiff not deposited any rent into the court. The trial court awarded the damages on considering the sale deed, thereby both the courts below held that the plaintiff is the absolute owner and entitled for delivery of possession ever since the purchase from the year 2018, but the plaintiff not able to get possession of the property. However, the tenancy was also terminated in the year of December 2012 itself. Therefore, the findings given by the courts below needs no interference and there is no question of law involved as alleged by the appellant/defendant. Accordingly, this



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Second Appeal is dismissed as no merit and the findings rendered by the first appellate court in A.S.No. 32 of 2022 on the file of District Judge, Udhagamandalam confirming the findings of the trial court in O.S.No.3 of 2020, on the file of Subordinate Judge, Coonoor is confirmed and the suit is decreed. Time is granted for the period of two months to vacate the premises from the date of receipt of copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

02.12.2024

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To

District Judge,
Uthagamandalam.



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T.V.THAMILSELVI, J.

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