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S.A. No.755 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A. No.755 of 2021
and
C.M.P. No.14727 of 2021

1. Pappu @ Nallammal
2. Venkatachalam
3. Tamil Selvi
4. Uma Maheswari
5. Rajammal @ Rajamani
6. Anjalam

.... Appellants

vs.

Indirani

.... Respondent

Prayer : Second Appeal filed under Section 100 CPC, against the decree and judgment dated 22.07.2020 passed in A.S. No.4 of 2020 on the file of the Principal District Judge, Salem confirming the decree and judgment dated 03.10.2019 passed in O.S. No.211 of 2015 by the I Additional Subordinate Judge at Salem.

For Appellants
For Respondent

: Mr.R. Nalliyappan
: Mr.Umesh Rao.K.
Asst. by Ms.K.Vaiyavi
for Mr.K. Jagannadha Rao

JUDGMENT

This Second Appeal has been filed by the defendants in the suit challenging the concurrent findings of the Courts below.



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2. Heard, Mr.R.Nalliyappan, learned counsel for the appellants and

Mr.Umesh K. Rao, learned counsel appearing for the respondent.

3. In the suit, the appellants herein are the defendants and the respondent herein is the plaintiff. The suit was filed for recovery of possession and for mesne profits. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

4. The plaintiff and the defendants belong to the very same family. The 1st defendant is the mother of the plaintiff and the defendants 2, 4 to 6 are the siblings of the plaintiff. The 3rd defendant is the wife of the 2nd defendant.

5. The plaintiff claims that based on an allotment made in her favour on 07.06.2001 by Mettupatti Gokulanatha Co-operative Land Colonization Society (in short “the Society”), she has been put in possession of the suit schedule property. However, according to the plaintiff, the defendants who are her family members, have continued to occupy the suit schedule property based on an earlier allotment made by the very same Society in favour of the plaintiff's father P. Sengottaiyan,



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which was subsequently cancelled on the death of P. Sengottaiyan on 29.01.2000 by the Society. According to the plaintiff, based on a request made by her, the allotment of land was made in her favour by the Society, through the allotment letter dated 07.06.2001 (Ex.A4) issued subsequent to the death of P.Sengottaiyan, the plaintiff's father. According to the plaintiff, despite a request, the defendants continue to remain in unlawful possession of the suit schedule property which constrained her to file the suit for recovery of possession and for mesne profits.

5. The defendants, who are the appellants herein, had contended in the written statement that they are in lawful possession of the suit schedule property by virtue of the earlier allotment made by the said Society in favour of P.Sengottaiyan their father. They have also contended that the plaintiff is not entitled for mesne profits as they are in lawful possession.

6. Based on the pleadings of the respective parties, the Trial Court framed the following issues :-

A. Whether the plaintiff is entitled for a relief of recovery of possession as sought for in the plaint?

B. Whether the plaintiff is entitled for mesne profit as prayed in



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the *plaint?*

C. To what other reliefs the plaintiff is entitled for ?

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6. The Trial Court, by its judgment and decree dated 03.10.2019, passed in O.S. No.211 of 2015, decreed the suit in favour of the plaintiff by granting the relief of recovery of possession and also granted the relief of mesne profits. While decreeing the suit in favour of the plaintiff, the Trial Court has given the following findings :-

a) The suit land belongs to the plaintiff by virtue of the allotment made in her favour by the society in the year 2001.

b) The plaintiff had permitted her mother and other family members to maintain the land subsequent to the allotment made by the Society in her favour. The representative of the Society (PW3) has also confirmed in his deposition that the suit property was allotted to the plaintiff by the Society in the year 2001. The plaintiff's brother and sisters were also allotted with the lands by the very same Society of different extents. The allotment made by the Society for the suit schedule property in favour of the plaintiff in the year 2001 has not been challenged by the defendants.

c) The defendants' claim that they are in actual possession of the suit schedule property holding right over the property, is not sustainable.



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The plea of limitation taken by the defendants has also been rejected on the ground that the question of deriving title by possession does not arise as the title vests always with the Society. When the plaintiff was made as a Member in the Society and the land was allotted to her, she is the person having legal right to enjoy the property. Under Ex.A21, the Society has explained about the possession of the plaintiff and has also given a reply to the complaint made by the defendants. Ex.A21 also confirms that the plaintiff was allotted with the suit property.

d) Until the allotment in favour of the plaintiff is cancelled by the said Society or invalidated or set aside by the Competent Authority, the allotment in favour of the plaintiff is binding for the period specified and the plaintiff is entitled for mesne profits.

7. The defendants have preferred a first appeal, aggrieved by the judgment and decree dated 03.10.2019 passed in O.S. No.211 of 2015 before the Principal District Court, Salem in A.S. No.4 of 2020. The Lower Appellate Court, by its judgement and decree dated 22.07.2020 passed in A.S. No.4 of 2020, also confirmed the findings of the Trial Court by dismissing the first appeal filed by the defendants. Aggrieved



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by the concurrent findings of the Courts below, the present Second Appeal has been filed by the defendants in the suit.

8. The learned counsel for the appellants reiterated the contentions of the defendants in the suit by submitting that the suit for recovery of possession and for mesne profits filed by the plaintiff is not maintainable and the suit is also barred by limitation as the suit for recovery of possession and mesne profits has been filed beyond the period of 12 years from the date of allotment in favour of the plaintiff and is hit by Article 65 of the limitation Act.

Discussion :-

9. Originally, the suit schedule property was owned by a Society by name “Mettupatty Gokulnatha Co-operative Land Colonization Society”. The said Society has allotted the suit property in favour of the plaintiff by an allotment letter dated 07.06.2001, which has been marked as Ex.A4. The said allotment was also not disputed by the defendants as seen from the evidence available on record. Even though the very same suit property was allotted earlier by the very same Society to Mr.P.Sengottaiyan, the father of the plaintiff, the same came to be



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cancelled on account of the death of P.Sengottaiyan and subsequently allotment was made in favour of the plaintiff.

10. The plaintiff is the Daughter of the 1st defendant and she is the Sister of the 2nd, 4, 5 and 6 defendants in the suit. The plaintiff has also availed loan subsequent to the allotment made in her favour by the Society. Documentary evidence has also been produced by the plaintiff which has been marked as Exhibit A-20 to prove that subsequent to the allotment, the plaintiff has availed loan. The said document has also not been disputed by the defendants, as seen from the evidence available on record.

11. As per the terms and conditions of the allotment made by Mettupatty Gokulnatha Co-operative Land Colonization Society, once the allottee dies, the allotment automatically stands cancelled and the land is restored back to the Society. As seen from the evidence available on record, it is clear that the appellants have also not disputed the said fact. The allotment executed in favour of the plaintiff in respect of the suit property in the year 2001 still stands. PW3, the representative of the Society, who has executed the allotment letter in favour of the plaintiff,



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has also confirmed through his deposition that the allotment made in favour of the plaintiff is still in force from the year 2001.

12. A plea of limitation was taken by the defendants in the suit claiming that the suit has been filed by the plaintiff beyond the period of 12 years as prescribed under Article 65 of the Limitation Act and therefore, the suit is barred by limitation. The plaintiff has himself pleaded in the plaint that since the defendants are his family members, they were allowed to occupy the suit schedule property despite the fact that she alone is entitled for possession as per the allotment letter executed by the Society in her favour on 07.06.2001. The plaintiff has also availed loan subsequent to the allotment made in her favour as seen from Ex.A20, which confirms that the plaintiff had availed loan and she had repaid the said loan to the Society on 24.12.2014. The cause of action for filing of the suit arose only when the defendants had refused to vacate the suit schedule property. When the plaintiff and the defendants are family members, it is clear from the evidence available on record that the defendants were only permissible occupants of the suit schedule property and only when the defendants had failed to vacate the suit schedule property and hand over the vacant possession to the plaintiff,



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there became a necessity for the plaintiff to file a suit. Therefore, the contention of the defendants that the suit is barred by limitation is unsustainable.

13. Both the Courts below, only based on the pleadings and evidence available on record, have come to the right conclusion that the plaintiff is entitled for the relief of recovery of possession and is also entitled for the recovery of mesne profits as decreed by the Trial Court. There are no debatable issues of fact or law involved in this Second Appeal and there is no substantial question of law required for this Court's consideration as pleaded by the appellants in the Second Appeal.

14. In the result there is no merit in this Second Appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

ABDUL QUDDHOSE, J.

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To

1.The Principal District Judge,
Salem.

2. The I Additional Subordinate Judge
Salem.

3.The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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