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Second Appeal No.174 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.174 of 2019
and C.M.P.No.14555 of 2021

Arulmighu Dharma Vinayagar
Dharmaraja Thirukkoil
represented by its Executive Officer
No.32, Linghi Chetty Street
Chennai 600 001.

.... Appellant

-Vs-

K.S.Rama Rao

.... Respondent

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 07.02.2008 made in A.S.No.6 of 2007 on the file of the learned VI Additional City Civil Court, Chennai confirming the judgment and decree dated 02.08.2006 made in O.S.No.1361 of 2005 on the file of the learned XVIII Assistant City Civil Court, Chennai.

For Appellants	: Mr.D.S.Sivakumar
For Respondents	: Mrs.S.Shyamala

J U D G M E N T

The present Second Appeal arises out of the judgment and decree of the Court of the VI Additional City Civil Court, Chennai in A.S.No.6 of 2007 dated



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07.02.2008 in confirming the judgment and decree of the Court of the XVIII Assistant City Civil Court, Chennai in O.S.No.1361 of 2005 dated 02.08.2006.

For the sake of convenience, the parties will be referred to as per their ranking in the suit.

2. O.S.No.1361 of 2005 was presented by the plaintiff seeking for the defendant to quit and deliver vacant possession of the property and for mesne profits. The plaint proceeds that the plaintiff is the owner of the property including the suit schedule mentioned property. According to it, the defendant was a tenant in the suit schedule mentioned property on rental basis. Since the rent was enhanced and the defendant defaulted in payment of the same to the tune of Rs.47,460/-, a notice was issued on 28.02.2004 to quit and deliver vacant possession in terms of Section 106 of the Transfer of Property Act. A reply was issued stating that the plaintiff is the owner of the land alone and not the owner of the building, and therefore the defendant refused to hand over possession. Hence, the aforesaid suit.

3. On service of summons, the defendant engaged a counsel and filed a written statement. While admitting to the title of the plaintiff, the defendant took a stand that he had purchased the property by way of a Court auction sale



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conducted pursuant to the orders in Application No.1277 of 1963 in C.S.No.526 of 1949 on the file of this Court. He would state that the sale was confirmed by this Court on 01.04.1965 and thereafter, he was remitting rents without any default. Due to excessive demand by the Executive Officer and exorbitant increase in the rent, the defendant pleaded that he is not liable to pay the same. The further plea was that issuing a notice of termination of tenancy as if the defendant / tenant is a trespasser is not in compliance of Section 106 of the Transfer of Property Act.

4. Pending the suit, an additional written statement seems to have been filed, pleading that by virtue of the sale certificate dated 01.04.1965, the defendant became absolute owner of the property and therefore he sought for dismissal of the suit. On the basis of these pleadings, the parties went for trial.

5. The learned Judge originally cast the issues and subsequently recasts the same in the following terms:

1. Whether the suit land belongs to the plaintiff and the defendant is tenant under the plaintiff?
2. Whether the plaintiff is entitled for the relief of recovery of possession as prayed for?
3. Whether the plaintiff is entitled for the relief of recovery of possession as prayed for?
4. To what other relief the Plaintiff is entitled?



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6. On the side of the plaintiff, the then Executive Officer was examined as P.W.1 and he marked only Exs.A1 and A2, a lawyer's notice and the reply thereof. On the side of the defendant, the sole defendant entered the witness box as D.W.1 and marked Exs.B1 to B12. The learned trial Judge came to a conclusion that by virtue of Ex.B2 read with Ex.B12, the defendant became the absolute owner of the property and therefore dismissed the suit.

7. Aggrieved by the same, a regular appeal was preferred by the plaintiff in A.S.No.6 of 2007 which met with the similar fate. Aggrieved by the same, the present Second Appeal is presented before this Court.

8. By an order dated 06.02.2019, notice regarding admission was ordered in the Second Appeal. Summons were served on the respondent and Mrs.S.Shyamala entered appearance on behalf of the respondent.

9. I heard this Second Appeal on the following substantial questions of law:

- (a) Whether the tenant of the land can deny the title of the landlord during the continuance of tenancy in view of Section 116 of the Evidence Act?



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(b) Whether the sale certificate issued by the Court wrongly including the land is binding on the appellant temple?

(c) Whether the Assistant Registrar is a civil officer to come under Section 17(2)(xii) of the Registration Act in view of the implied clarification in Section 88 and 89 of the Registration Act?

10. Pending the appeal, the plaintiff seeks to bring forth before this Court certain additional evidence in the form of documents.

11. Mr.D.S.Sivakumar learned counsel for the appellant would argue that the order of sale under Ex.B2 is an unregistered document in terms of Section 17 of the Registration Act and therefore the Courts below could not have placed reliance upon the same. He would further urge that a decree in which the temple is not a party to the proceedings, cannot confer title and therefore no reliance ought to have been placed by the Courts below on the said document.

12. Per contra, Mrs.S.Shyamala would submit that the original deed under Ex.B12 would show that the defendant had purchased the property pursuant to a Court auction sale and therefore he is the absolute owner of the property. Since he is the absolute owner of the property, the temple does not have any right or interest calling upon him to quit and deliver vacant possession. She would further urge that being a Court auction sale, the defendant has accrued



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title to the property and therefore the Courts below had rightly dismissed the suit.

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13. I heard the learned counsel on either side and have perused the materials placed before me.

14. Insofar as the first point urged by Mr.D.S.Sivakumar that a Court auction certificate must be registered in terms of Section 17(1) of the Registration Act, a certificate granted to a purchaser of any property sold in a Court auction by a Civil or Revenue Court does not fall within the teeth of Section 17(1)(b) or (c). Such a sale requires only filing, that too at the hands of the person holding the sale in terms of Section 89 of the Registration Act.

15. The fact that the document need not be registered does not mean the defendant has an absolute right over the property. The Court auction sale does not carry with it any warranty of title. The burden still lies on the defendant to show that the parties to C.S.No.526 of 1949 viz., Devaraja Pillai and others who were parties to the suit, had pre-existing title to the property. The mere fact that a Court auction sale certificate is filed does not suffice the requirement of proof of title that is required to non-suit the plaintiff.



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16. Apart from this, there are two other aspects which loom large. In the reply under Ex.A2, the defendant has conceded to the fact that the plaintiff is the landlord and the defendant is the tenant. No doubt, there cannot be a title conferred by plea of estoppel. Further, when the matter was brought before the Court, this plea taken by the defendant was captured in the written statement. Whether the provisions of Section 116 would apply in such a case is a matter that have to be gone into by the trial Court. Sadly, the learned trial Judge as well as the appellate Court without taking note of this aspect have been swayed by Ex.B12 to dismiss the suit.

17. Apart from that, there is a serious lacuna in the plaint itself. When the defendant has come forward with a written statement and has taken two pleas, one admitting to the title of the plaintiff and other denying the said title, the burden was on the plaintiff to amend the plaint and seek for appropriate relief of declaration of title and for recovery of possession. Unfortunately, the religious institution, which is in the nature of an infant, did not take such a plea.

18. I have gone through Ex.B12 and nowhere the plaintiff is shown as a party to the said litigation. It seems that C.S.No.526 of 1949 was a suit for partition. In such a suit for partition, where even the mortgagors have been impleaded, does not the law require that the actual owner of the land viz., the



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temple to be made party to the suit. In fact a partition suit is maintainable even with respect to Poramboke lands as the Court is only granting a decree with respect to the property under possession and enjoyment of the family. But such a decree does not confer any title over the same.

19. The additional documents that have been presented by the plaintiff/appellant cannot be received straight away by this Court since it requires oral and documentary evidence to substantiate the same.

20. In the light of the above discussion, I am of the view that the parties to the appeal must be given an opportunity to prove their respective pleas. Therefore, while setting aside the judgment and decree of the Court of the VII Additional Judge, City Civil Court, Chennai in A.S.No.6 of 2007 dated 06.02.2008 and that of the learned XVIII Assistant Judge, City Civil Court, Chennai in O.S.No.1361 of 2005 dated 02.08.2006, I am remitting the matter to the trial Court in order to enable both the parties to the litigation to let in evidence to substantiate their respective pleas. The learned XVIII Assistant Judge, City Civil Court, Chennai shall conduct a *de novo* trial. Both the parties shall appear before the trial Court on **29.07.2024**.



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21. It is made clear that in case the plaintiff comes forward with an application to amend the plaint, the same shall be considered by the trial Court.

It shall receive the additional written statement from the defendant in order to state his pleas against the said amendment. The matter is remitted to the trial Court in order to enable both the parties to give a quietus to the issue which is simmering before the Courts below for more than 19 years. The plaintiff and the defendant are given opportunity to let in evidence in order to substantiate their respective case. The plaintiff is given opportunity to produce all the documents including the documents filed along with CMP No.14555 of 2021.

22. The Second Appeal is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

01.07.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking Order / Non-speaking order

KST

Note to the Registry: The original records have been sent to this court. The same shall be sent back to the XVIII Assistant Judge, City Civil Court as expeditiously as possible.



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V.LAKSHMINARAYANAN, J.

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To

- 1.The XVIII Assistant Judge,
City Civil Court, Chennai.
- 2.The VII Additional Judge,
City Civil Court, Chennai.

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