



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.NO.1590 OF 2001

- 1.V.S.M.Subaida Beevi,
- 2.Ismath Beevi
- 3.Syed Ali Fathimal
- 4.Minor Samsul Alam
- 5.Asial
- 6.Jaleela
- 7.Katheeja(died)
- 8.Seik Mansoor
- 9.Hithayathullah
- 10.M.A.Mohammed Hussain
- 11.Noorjahan
- 12.M.S.Mohammed Yusuf Siddique
- 13.Mohammed Ansari Hussain
- 14.Sultan Aariba

(Appellants 8 and 9 are brought on record as legal representatives of the deceased 7th appellant as per order of this Court made in C.M.P(MD)No.3332 of 2020 in S.A.No.1590 of 2001, dated 22.11.2021)

(Appellants 10 to 14 are impleaded as per order of this Court made in M.P(MD)No.1 of 2013 in S.A.NO.1590 of 2001, dated 16.12.2021)



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:Plaintiffs 3 to 8 and 14th defendant/
Respondents 2 to 7 and 14th
Appellants
/vs/

1.Samsul Ulaman(died)

2.Achappa(died)

:Defendants 10-13-Appellants 1 to 4/
Respondents

3.Thasinniha

4.Samsu

5.Hassan Fathima(died)

:Ist Plaintiff/Ist Respondent/
Respondent

6.Ahamed

7.Rahamathulla

8.Bhagi

9.Sapoorra

10.Mohideen Pathu

:Defendants 4,6 to 9/
Respondents 9 to 13-
Respondents

11.Assan Fathu

12.Ali Hussain

13.Samsul Fatiria

14.Kader Meeral

:Respondents 11 to 14.

(Respondents 6 to 10 ex-parte in the Lower Court and hence batta not paid)

(Appellants 1 to 7 are recorded as legal representatives of the deceased 5th respondent as per order of this Court as per memo in U.S.R.No.3775 of 2012, dated 30.11.2012 as per order of this Court made in S.A.No.1590 of 2001, dated 18.12.2012)



made memo in U.S.R.No.3775 of 2012, dated 30.11.2012)

(Respondents 11 to 13 are brought on record as legal representatives of the deceased first respondent as per order of this Court made in C.M.P((MD)No.9725 of 2021 in S.A.No.1590 of 2001, dated 22.11.2021)

(14th respondent is brought on record as legal representative of the deceased second respondent as per order of this Court made in C.M.P(MD)Nos.9724 and 9726 of 2021 in S.A.No.1590 of 2001, dated 22.11.2021)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.120 of 1995, dated 10.8.2000, on the file of Second Additional District Judge, Tirunelveli preferred against the judgment and decree made in O.S.No.282 of 1982, dated 18.10.1995, on the file of Additional District Munsif Court, Tirunelveli.

For Appellants	:Mr.H.Arumugam for M/s.Uma Ramanathan
For Respondents 1 and 2	:Died
For Respondents 3 and 4	:Mr.M.P.Senthil
Respondent-5	:Died vide order of this Court dated 22.6.2023
Respondents 6 to 10	:Exparte
For Respondents 11 to 14	: No appearance

JUDGMENT



The plaintiffs in the suit are the appellants. The suit was filed for declaration of title and for injunction restraining the defendants 2 to 13 from withholding the rent due and payable to the plaintiffs. The plaintiffs also sought for a direction to the defendants 2 to 13 to pay the plaintiffs the rental arrears due to them. The suit was decreed by the trial Court. Aggrieved by the same, the respondents 1 to 4 filed an appeal and the same was allowed by dismissing the suit. Challenging the said findings, the plaintiffs are before this Court.

2. According to the plaintiffs, the suit property originally belonged to the husband of the first plaintiff and father of other plaintiffs namely Meera Mohideen Tharaganar. He executed a sale deed on 15.02.1950 in favour of plaintiffs.

3. It was claimed by the Plaintiffs that they have been in possession and enjoyment of the suit property from the date of purchase and the suit property was administered by the first plaintiff's sister's husband Abdul Salam. The defendants, except the first defendant, were inducted into the suit property as tenants under the plaintiffs. As there was default in payment of rents, notice was issued to the second defendant on 2.2.1981 seeking arrears of rent. He came up with a reply stating that the suit



property belonged to the first defendant. In these circumstances, plaintiffs were constrained to file a suit for declaration of title and for other consequential reliefs.

4.The defendants filed a written statement denying the title of the plaintiffs over the suit property. According to the defendants, even in the sale deed executed in favour of the plaintiffs by Meera Mohdeen Tharaganar, there was a recital directing the predecessors(Plaintiffs) to pay a sum of Rs.1000/- due to one Enan Pandaram. The plaintiffs failed to pay the amount as per the directions in the sale deed.The said Enan Pandaram filed a suit for recovery of the said amount against the plaintiffs and obtained a decree. The said decree was put into execution and the suit property was brought to sale and in the Court auction sale,Enan Pandaram himself had purchased the same. After the death of the said Enan Pandaram, the suit property was purchased by the first defendant from the legal representatives of Enan Pandaram by document, dated 18.8.1960. It was claimed by the defendants that from the date of purchase, the first defendant had been in possession and enjoyment of the suit property by leasing out the same to the other defendants. The defendants also made various averments regarding the litigations asserting the right over the suit property. Therefore, denying the title of the plaintiffs to



maintain the suit, the defendants sought for the dismissal of the suit.

5.Before the trial Court, the first plaintiff was examined as P.W.1 and eight documents were marked on her side as Ex.A1 to Ex.A8. On behalf of the defendants, one witness was examined as D.W.1 and 15 documents were marked as E.B1 to Ex.B15.

6.The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs established their title over the suit property as well as their right to collect rents from the tenants and decreed the suit. Aggrieved by the same, the respondents 1 to 4 filed an appeal in A.S.No.120 of 1995, on the file of II Additional District Court, Tirunelveli. The First Appellate Court came to the conclusion that the first defendant was the owner of the property and plaintiffs failed to establish the title over the same. As a necessary consequence, the First Appellate Court reversed the findings of the trial Court and dismissed the appeal. Aggrieved by the same, the plaintiffs are before this Court.

7.At the time of admission, this Court formulated the following substantial questions of law by order, dated 30.10.2001:



1. Whether the Lower Appellate Court is correct in holding that respondent's predecessor in title got absolute title to the suit property as court auction purchase in execution of decree against Meera Mohaideen Tharaganar when the debtor long prior to that sold the property to the appellants?

2. Whether the Lower Appellate Court is correct in holding that respondents are in possession when admittedly, no mutation of name is effected and property continued to be owned in the name of the appellants?

3. Whether the Lower Appellate Court is right in reversing the judgment and decree of the trial Court without any finding about possession with respondents?

8. The learned counsel for the appellants submitted that though the first defendant claim himself as Court auction purchaser under Ex.B2, absolutely there is no evidence available on record to show that in pursuance of Ex.B2, the first defendant's predecessor-in-interest namely, Enan Pandaram filed an application before the Court for taking delivery of the property purchased by him under Ex.B2. The learned counsel further submitted that in the absence of any evidence to show that the Court auction purchaser has taken possession of the suit property, the same deemed to be in possession of the plaintiffs through the defendants 2 to 13, who were inducted as tenants by the brother-in-law of the first plaintiff and hence they are bound to pay the rents to the plaintiffs till



possession is taken by the Court auction purchaser and his successor-in-interest in the manner known to law.

9.Per contra, the learned counsel for the respondents 3 and 4 submitted that the plaintiffs have not raised any plea disputing the possession of Enan Pandaram in the pleadings. Further, the learned counsel submitted that P.W.1 during the course of her cross-examination clearly admitted that the tenants have been inducted by the first defendant and therefore, the Ist Appellate Court is justified in reversing the findings of the trial Court. In support of the contentions, the learned counsel relied on the following judgments:

(1)Veluran @ Muthusamy Gounder(deceased and others .vs. Perumal Gounder reported in 2011(4)CTC 720 and

(2)Pethaperumal Ambalam .vs. Chidambaram Chettiar reported in 1954(1)MLJ 585

10.Answer to Substantial Questions 1 to 3:

Even as per the admitted case of the plaintiffs, they purchased the suit property from the first plaintiff's husband

Meera Mohideen Tharaganar under Ex.A1, dated 15.2.1950. A



perusal of the said document would suggest that there is a clear recital in the document directing the purchaser to pay a sum of Rs. 1,000/- due to one Enan Pandaram. Ex.B2 would indicate that the said Enan Pandaram filed the suit for recovery of the amount mentioned in Ex.A1 and obtained a decree and in execution of the said decree, the suit property was brought for sale and the plaintiff Enan Pandaram himself had purchased the same. Ex.B2 establish the confirmation of the sale in favour of Enan Pandaram. Ex.B1 is the sale deed in favour of the first defendant executed by the legal representatives of Enan Pandaram. Therefore, the title of the first defendant over the property is established by Ex.A1, Ex.B1 and Ex.B2. However, the learned counsel submitted that the respondents have failed to lead in any evidence to show that in pursuance of the sale certificate issued by the Court, the first defendant's predecessor-in-interest Enan Pandaram had taken possession of the property through Court. This Court feels that without going into the question whether possession was taken by Enan Pandaram through Court or not, issues that have arisen for consideration in the suit can be decided. The first prayer in the suit is for declaration of title of the plaintiffs. As mentioned earlier, the title of the first defendant is established by a combined reading of Ex.A1, Ex.B1 and Ex.B2. Therefore, the primary prayer in the suit regarding declaration of title fails. The other prayer for



injunction restraining the other defendants from retaining the rental amount allegedly due to the plaintiffs and for a direction to the other defendants to pay the arrears, are only consequential to the primary relief of declaration sought for. Since this Court has come to the conclusion that the plaintiffs failed to establish their title, as a necessary consequence, the plaintiffs are not entitled to the other reliefs.

11.The rights and liabilities of a buyer and seller of immovable property are defined under Section 55 of the Transfer of Property Act. Section 55(4)(a) of the above Act explains one of the rights of seller as follows:

“55(4)(a): The Seller is entitled to the rents and profits of the property till the ownership thereof passes to the buyer;”

12.Section 55(6)(a) of the above Act explains rights of buyer to rents and profits. The same reads as follows:

“55(6)(a):The buyer is entitled, where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;”



13.A combined reading of Section 55(4)(a) and 55(6)(a) of the above Act would indicate that once the ownership of the property is transferred to the purchaser by a document in the manner known to law, the purchaser is entitled to rents and profits of the property. It is also clear that seller is entitled to rents and profits of the property, only till right of ownership of the property passes on to the buyer. The law is very well settled that one sale certificate is issued to the Court auction purchaser, his title becomes perfect as against the Judgment Debtor. In this regard, it would be appropriate to refer to the decision of Division Bench of this Court in ***Pethaperumal Amabalam .vs. Chidambaram Chettiar reported in 1954(1)MLJ 585***. The relevant observation of Division Bench reads as follows:

“.....On the issue of a sale certificate to the purchaser under Order 21 Rule 94, the latter's title becomes perfected and complete and his right to possession unimpeachable as against the parties to the suit as well as those claiming under them.....”.

14.In the case on hand, as mentioned earlier, ownership of the property passed on to Enan Pandaram on 11.9.1954 under Ex.B2 and then it passed on to the first defendant on 18.8.1960 under Ex.B1. Therefore the consequential prayer of the plaintiffs



for injunction restraining the other defendants from withholding the payment of rent and direction to the other defendants to pay the rental arrears are not maintainable in law, as they are not entitled to rents and profits of the property after ownership passed on to Enan Pandaram under Ex.B2. Accordingly, all the substantial questions of law formulated at the time of admission are answered as against the appellants and the Second Appeal stands dismissed. No costs.

17.04.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

- 1.The IInd Additional District Judge,
Tirunelveli..
- 2.The Additional District Munsif,
Tiruneveli.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A.NO.1590 OF 2001

17.04.2024