



WEB COPY

AS No. 372 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-03-2026

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

AS No. 372 of 2011

1. Irin Stephen
No.3, Old No.2, Kummalaman Koil St,
Kilpauk, Chennai.
2. Pradeep (died)
3. Shaji
No.3, Old No.2, Kummalaman Koil St,
Kilpauk, Chennai
4. Prem (died)
5. Vivia Rosslyne,
W/o.Late Prem
No.3, Kummalaman Koil Street, Kilpauk,
Chennai-600 010
6. Anny Bobblavatony (minor)
S/o.Late Prem
Minor Represented By His Mother And Natural
Guardian Viva Rosslyne, the proposed 5th
Appellant
No.3, Kummalaman Koil Street, Kilpauk,
Chennai-600 010

A4 Died, A5 And A6 Are Brought On Record
As LR's of deceased 4th Appellant viz, Prem,
Vide Order Of Court Dated 09/02/2023 made
in CMP.Nos.13754 And 13750/2022 In
AS.No.372/2011
7. Pameela,
W/o.Late Pradeep
Old No.3, Kummalaman Koil Street, Kilpauk,
Chennai-600 010



8. Mrs.Sabatine,
W/o.Binu
Old No.3, Kummalaman Koil Street, Kilpauk,
Chennai-600 010

A2 Died, A7 And A8 are brought on record as
LRs of deceased 2nd Appellant viz., Pradeep
vide Order of court dated 28/02/2023 made in
CMP.No.3433 Of 2023 in AS.No.372 of 2011

..Appellant(s)

Vs

1. J.Musafargani
23/5, Purasawalkam High Rd, Chennai.
2. Amirthammal
No.3, Old No.2, Kummalaman Koil St,
Kilpauk, Chennai
3. Vijaya
No.3, Old No.2, Kummalaman Koil St,
Kilpauk, Chennai

..Respondent(s)

PRAYER

First Appeal filed under Sec.96 r/w Order 41 Rule 1 and 2 C.P.C.,
praying to set aside the judgment and decree passed in O.S.No.11320 of 2010
dated 18.03.2011 on the file of learned VI Additional City Civil Judge, Chennai
and dismiss the suit.

For Appellant(s): Mr. T.V.Ramanujam,
Senior Advocate for
Mr. C. Girish Babu

For Respondent(s): Mr.R.Thiagarajan for R1
R2 and R3 - Vacated



payment of rent to the landlords and they are also disputing the title of Saradambal, who is owner of the property. Subsequently, one Liquat Ali Khan and others purchased the property in the year 1996 from the legal heirs of Saradambal and finally, the plaintiff became the absolute owner after the release deed from the other sharers in the year 1997. In the meanwhile, Stephen had filed a suit in O.S.No.4890 of 1999 with the prayer not to dispossess him except under due process of law and obtained a decree. Even thereafter, they are not inclined to pay the rent and disputed the title. However, the title holder P.M.S.Amrutheen secured possession from the other five tenants during the years 1997-1999, but the defendants 1 to 4 residing in the front portion occupying one room illegally and put up construction unauthorisedly. In the year 2003, P.M.S.Amrutheen sold the property to one T.Shaik Mohamed and through his power agent, the plaintiff purchased the property in the year 2006. The defendants not paid the rent to either of his vendors or plaintiff and also they have disputed the title of the plaintiff. Therefore, he came forward with the suit for a declaration and other consequential reliefs.

4. The plaintiff in order to prove his right and possession and his vendor's title produced documents along with the plaint. The defendants 1 to 4 filed the written statement stating that the plaintiff has no right and title over the property. The partition deed and other title deeds relied on by the plaintiff was concocted one and also disputed that his father was not a tenant through power



agent of Manoharan on behalf of one Saradambal. They have also submitted that the purchase made by the plaintiff as well as his vendors, who are not having valid title to transfer the same, thereby disputing the purchase made by the plaintiff. He would also submit that the plaintiff never issued any notice with regard to the purchase of the property and they were not put into knowledge of the sale. Further, the defendants 1 to 4 clearly stated that entire suit property was originally possessed and enjoyed by Stephen nearly about 35 years and he put up a thatched shed and living with his wife viz., 1st defendant and his children/defendants 2 to 4 till his death. After his death, the defendants 1 to 4 developed the property with tiled house and living there. Apart from that, two huts also put up by them, thereby they have denied the alleged tenancy and also claimed uninterrupted possession and perfected title by adverse possession. They have also submitted that the suit as such is not maintainable, even assuming that there is a tenancy, the Rent Control proceedings ought to have been initiated. Therefore, they prayed to dismiss the suit.

5. Before the trial court, both parties adduced oral and documentary evidence and based on that, 11 issues were framed and on considering the evidence on record, the trial judge held that the defendants denied right and title of plaintiff and not paid any rent and also claimed right and title over the property based on the adverse possession. In such circumstances, the suit filed by the plaintiff before the civil court as such is maintainable and consequently,



the alternative proceedings not applicable to the facts of the case, since the civil court is having jurisdiction to declare right and title over the property. Further, the trial judge also held that with the help of the evidence of P.W.3, the vendor of the plaintiff, he was able to prove their tenancy and the occupation of the said premises by Irin Stephen Amirthammal and Vijaya, thereby they were inducted into possession as the tenants and they have put up some huts, but not proved that when the superstructure was put up by the said Stephen nor they proved that when they have continued tenancy after the demise of Stephen and also not produced any document that they have paid the rent. In such circumstances, they were occupying the premises illegally and held that the defendants failed to prove that they acquired the title by adverse possession. On the other hand, the plaintiff has proved his title as well as vendor's title, thereby he was entitled for the relief of declaration and finally concluded that the defendants 1 to 4 not able to prove, on what authority, they were in possession of the property. Therefore, they were directed to hand over the possession. Accordingly, the issue of recovery of possession was ordered and also held that they have made alteration in the superstructure, for which they were not entitled. Accordingly, the permanent injunction was also granted. Furthermore, the other tenants have agreed to hand over the possession. Therefore, the suit was dismissed as against them. Challenging the said findings, the defendants 1 to 4 have preferred this Second Appeal.



6. The learned counsel for appellant argues that the courts below ought to have held that since the plaintiff claimed that the defendants 1 to 4 are the tenants of the property, Rent Control Act alone is having jurisdiction to try the issue not by the civil court, but without considering the legal proposition, the trial judge erroneously granted the relief as prayed for to the plaintiff, more particularly, to deliver the possession of the property as such is illegal and liable to be set aside. Further, he would also argues that the trial court failed to take note that the predecessor in title not acquired right and title through proper document, but the same was also not been properly appreciated and also failed to take note of the fact that the defendants 1 to 4 acquired title over the suit property by adverse possession and also proved that they are in continuous possession for more than 40 years, but the same was not properly considered, on that score alone, the findings rendered by the trial judge is liable to be set aside. The learned counsel would further submit that the vendor, forefather of the tenancy and the claim of title will not give any right to the landlord to file a suit for recovery of possession. Therefore, the findings rendered by the trial judge are illegal and liable to be set aside. Even if the title is denied, the plaintiff is entitled to invoke Rent Control Act against the defendants 1 to 4. Therefore, the suit filed by the plaintiff as such is erroneous one and liable to be set aside and without any records, the damages fixed by the trial court also erroneous one and liable to be set aside.



7. By way of reply, the learned counsel for 1st respondent/plaintiff would submit that before the trial court, the plaintiff proved his right and title by producing his title deeds as well as his vendor's documents. Nearly about 45 documents were produced and on considering all the documents, the trial judge has rightly declared that the plaintiff is the absolute owner of the property, on the other hand, the defendants not produced any document in order to show that they were in possession of the property for more than 40 years in an uninterrupted possession nor produced any document to show that they have put up construction at their cost. To that effect, the findings rendered by the trial judge requires no interference, besides, the defendants have not paid any rent and they have also denied his title. Therefore, the plaintiff rightly approached the civil court. Since the Rent Control Court has no power to declare the right and title over the property, the trial judge has rightly held that the civil court is the competent court to decide the issue. Accordingly, the findings rendered by the trial judge is sustainable one. Hence, he prayed to dismiss the appeal no merit.

8. Considering both side submissions, now the points for consideration arises are as follows :-

(i) Whether the findings of the court below is perverse, erroneous one and liable to be set aside?



(ii) Whether the plaintiff is entitled for the relief of declaration and other consequential relief?

(iii) whether the defendants 1 to 4 perfected title over the property by way of adverse possession?

(iv) Whether the findings rendered by the trial court that the civil court alone is the competent court to entertain the suit as such is maintainable.

9. On perusal of records, the fact reveals that the plaintiff derived right and title based on the sale deed dated 13.06.2006 marked as Ex.A43, the plaintiff claimed right and title over the property. According to the plaintiff, the property was originally belong to one Muthusamy Pillai by way of purchase, to that effect, the sale deed was produced. Thereafter, the property was divided among his legal heirs in the year 1984. To that effect, the family arrangement was marked as Ex.A35. Thereafter, one Saradambal, one of the legal heirs from the Muthusamy Pillai's family derived right and title over the property. After that, she had executed a sale deed in favour of plaintiff's vendor. Based on the 2006 sale deed, the fact reveals that through Ex.A43, the plaintiff derived right and title over the property, but the defendants disputed not only right and title of the plaintiff and also his predecessor's title. Apart from the documents, the plaintiff examined P.W.3, who is daughter of the said Saradambal, deposed in her evidence that at the time of execution of sale, the property was in



occupation of Antony Pernad, C.K.Mani, Abdul Rahuman Gouse, Thangapushpam and Thirumalai, besides Irin Stephen Amirthammal and Vijaya, She had also stated that one Manoharan was the power agent of her grandmother Sarathambal, who inducted Stephen as tenant in the suit property. Her evidence was not disputed by the defendants. Therefore, with the help of oral and documentary evidence, the plaintiff is able to establish his right and title over the property as well as proved that Stephen was inducted as a tenant through power agent Manoharan long back. To that effect, the findings rendered by the learned trial judge requires no interference.

10. As per the written statement of defendants 1 to 4, they have perfected right and title over the property by way of adverse possession, for that they have contended that Stephen was in occupation of the property and he put up a thatched shed and later his legal heirs developed the superstructure, but they have not specifically pleaded that whose property was under occupation of Stephen about 40 years back. When the plaintiff claimed that his vendor was in possession of the property, the defendants 1 to 4 ought to have specifically pleaded, against whom they perfected right and title by adverse possession. To that effect, there is no pleadings nor any other evidence and the same was rightly observed by the trial judge and also rightly concluded that they perfected title by adverse possession as such is valid one and it requires no interference. Accordingly, the issue No.(iii) is answered.



11. From the evidence of P.W.3, it reveals that Stephen was in occupation of the property and he was inducted as tenant, but he has not paid rent regularly.

Thereafter, after his demise, his legal heirs, defendants 1 to 4 also not paid rent nor attended it before any of the court. Therefore, they were in illegal occupation of the property for more than decades, thereby disputed the right and title of plaintiff. Though the defendants have obtained interim injunction not to evict them except under due process of law, based on that, they have claimed that they are the tenants and they ought to have paid rent, but they have not tendered rent to the plaintiff nor deposited the rent before any court. Apart from that, they have claimed right and title for themselves and disputing right and title of the plaintiff. Hence, the plaintiff rightly approached the court for the relief of declaration and recovery of possession. To that effect, the trial judge rightly held that the right and title over the property should be decided only by the civil court not by the Rent Control proceedings. To that effect the findings rendered by the court below as such is valid. Accordingly, the issue No.(iv) is answered.

12. Admittedly, the plaintiff is the absolute owner of the property. So, relief of declaration granted by the trial court is sustainable in law. The defendants 1 to 4 denying the plaintiff's right and title not inclined to pay any rent and also attempted to alter the superstructure in the said land. Therefore, the relief of injunction granted by the trial court is also sustainable one.



13. With regard to damages, the trial judge had granted the relief of damages stating that the property is located within the heart of Chennai City and the defendants 1 to 4 are running a tiffin centre, but not inclined to pay any rent. Accordingly, the fixation of damages at Rs.5,500/-, Rs.2,500/-, Rs.2000/- respectively per month payable by the defendants 1 to 4 to the plaintiff was allowed. However, admittedly, there is no proof that the defendants 1 to 4 paying the rent. It is an undisputed fact that the property is situated in the heart of Chennai city. Therefore, the damages granted by the court below is also sustainable one.

14. Furthermore, some of the tenants have no objection to hand over the possession. So, they have not preferred any appeal. Only the defendants 1 to 4 have preferred the present appeal. Accordingly, this Appeal Suit is dismissed as no merit and the findings of the trial court rendered in O.S.No.11320 of 2010 is confirmed. Time is granted to the defendants 1 to 4 to hand over the possession of the property within two months from the date of receipt of copy of this judgment. No costs.

06-03-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

RPP

To

1. The VI Additional City Civil Judge, Chennai.

2. The Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI J.

RPP

**Pre-delivery judgment in
AS No. 372 of 2011**

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