

(2008) 04 MAD CK 0049
In the Madras High Court
Case No : S.A. No. 675 of 2007

A. Dorai, Chinnammal and Nirmala	Vs	APPELLANT
R. Sundara Naicker		RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madras City Tenants Protection Act, 1922 — Section 9, 9
Transfer of Property Act, 1882 — Section 109

Citation : (2008) 04 MAD CK 0049

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; M. Sridhar, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This second appeal has been filed against the judgment and decree, dated 30.11.2006, made in A.S. No. 524 of

2006, on the file of the II Additional City Civil Judge, Chennai, confirming the judgment and decree, dated 13.04.2006, made in O.S. No. 10158

of 1990, on the file of the VII Assistant City Civil Judge, Chennai.

2. For the sake of convenience, the parties in the appeal are referred to as they have been arrayed in the original suit in O.S. No. 10158 of 1990.

3. The defendants 1, 2 and 4 in the suit O.S. No. 10158 of 1990 are the appellants in the present second appeal. The plaintiff in the suit, who is

the respondent in the present second appeal had filed the suit, praying for the reliefs of declaration to declare the title of the plaintiff in the suit

properties and for a direction to the first defendant to put the plaintiff in possession of Item No. 1 of the suit schedule in his occupation and to

direct the second and the fourth defendants to put the plaintiff in possession of Item No. 2 of the suit schedule, which is in the possession of the said defendants.

4. It is the case of the plaintiff that the suit properties, more fully set out as Items Nos. 1 and 2 in the schedule forming part of the plaint belonged to

Jayalakshmi Ammal and Janakiraman. By registered sale deeds, dated 27.05.1988, the owners of the property had sold the property, described in

Item No. 1 of the schedule, comprising 264 sq.ft, for a sum of Rs. 13,750/- and they had sold the property, described in Item No. 2 of the

schedule, comprising 528 sq.ft, for a sum of Rs. 27,500/-, to the plaintiff. Both the items of the properties sold to the plaintiff were vacant sites. On

11.06.1990, the plaintiff had visited the suit properties and he had found that the first defendant was in occupation of the first item and the second

and third defendants were in occupation of the second Item of the suit properties, by putting up huts. Even though the said defendants had

promised to vacate the lands by removing the huts thereon, they did not do so. On 17.9.1990, when the plaintiff had again visited the lands, the

defendants had threatened the plaintiff and denied his title in the properties. Thus, the defendants had trespassed into the properties belonging to

the plaintiff and they were engaged in nefarious activities of trafficking in drugs and sale of contraband and spurious liquor and were also involved in

other illegal activities. In such circumstances, the plaintiff had filed the present suit, praying for the relief of declaration and for a direction as prayed

for in the plaint.

5. The defendant had filed an amended written statement, denying the claims made by the plaintiff. The defendants have stated that they have been

living in the suit property for more than four decades. The plaintiff was also one among the thirteen tenants, who were residing in the suit properties.

It has also been stated that the defendants were not involved in any illegal activity and they are law abiding citizens. The defendants had filed

petitions u/s 9 of The Chennai City Tenants' Protection Act, 1921, claiming the reliefs as provided thereunder. In such circumstances, the suit filed

by the plaintiff is devoid of merits and liable to be dismissed with costs.

6. Based on the pleadings of the plaintiff, as well as the defendants, the trial Court had framed the following issues for consideration:

i) Whether the plaintiff is the owner of the suit property? Whether he is entitled to the relief of recovery of possession of the suit property?

ii) Whether the defendants are entitled to the benefits of Section 9 of the Tamil Nadu City Tenants Protection Act?

iii) To what other relief?

7. Subsequently, the issues were recast as follows:

i) Whether the plaintiff is the owner of suit property?

ii) whether he is entitled to the recovery of possession of the suit property?

iii) Whether the defendants are entitled to the benefits u/s 9 of the City Tenants Protection Act?

iv) What other relief?

8. Two witnesses have been examined on behalf of the plaintiff and Exhibits A-1 and A-2 have been marked in his favour. Four witnesses have

been examined on behalf of the defendants and Exhibits 1 to 43 have been marked on behalf of the defendants.

9. The plaintiff had been examined as P.W.1. In the plaint as well as in his evidence, the plaintiff had relied on Exhibits A1 and A2 to show that he

had purchased the suit properties, which were vacant lands, on 27.5.1988, for a consideration of Rs. 13,750/- and Rs. 27,500/-. It was found that

one Jayalakshmi Ammal Wife of Jeevarathinam Pillai and their son Janakiraman have sold their properties to the plaintiff by way of Exhibits A-1

and A-2. The defendants have not refuted the said claims made by the plaintiff. On the contrary the defendants had marked Ex.B-1 stating that

there was a sale agreement with Jeevarathinam Pillai, relating to the suit properties. The trial Court had found that the fact that Jeevarathinam Pillai

had died has not been disputed and that his legal heirs have executed the sale deed in favour of the plaintiff. From the evidence of the witnesses

D.W.1, D.W.2 and D.W.3, the trial Court had found that no sale had taken place pursuant to the sale agreement said to have been entered into

relating to the suit properties. Thus, the trial Court had found that the plaintiff is the owner of the suit property having purchased the same by way

of the sale deeds marked as Exhibits A-1 and A-2.

10. The second issue has been decided in favour of the plaintiff. From the evidence available, the trial Court had found that the defendants were

occupying the suit property only as tenants. In such circumstances, it is not open to the defendants to claim adverse possession against the plaintiff,

who is the owner of the suit properties. It was further found that even though the defendants had contended that they have prescribed ownership in

the suit properties by adverse possession, the said claim has not been pleaded in the written statement filed on their behalf. Since the defendants

have been making contradictory claims, the trial Court, had found that their plea of ownership of the suit properties of adverse possession cannot

be accepted.

11. With regard to the third issue the trial Court had decided that the claims made by the defendants as tenants in the suit property by filing an

application/petition u/s 9 of the Chennai City Tenants' Protection Act had been rejected by this Court in a Civil Revision Petition. In such

circumstances, the claims made by the defendants as tenants in the suit property cannot be sustained. Thus, the trial Court had decreed the suit as

prayed for by the plaintiff by its judgment and decree, dated 13.04.2006, made in O.S. No. 10158 of 1990.

12. Aggrieved by the judgment and decree of the trial Court, the defendants had filed an appeal in A.S. No. 524 of 2006, on the file of the II

Additional City Civil Judge, Chennai.

13. The First Appellate Court had framed the following points for consideration:

1. Whether the plaintiff is entitled to declaration of title in respect of Items 1 and 2 of the plaint schedule property?

2. Whether the plaintiff is entitled to recovery of possession of Item No. 1 from the 2nd and 4th defendants?

3. Whether the defendants had prescribed right by adverse possession?

4. whether the defendants are entitled to protection u/s 9 of the City Tenants Protection Act?

5. Whether the lower Court judgment and decree is liable to be set aside?

6. Whether the appeal is allowable or not?

14. The First Appellate Court had found that the plaintiff had claimed that he had purchased Item No. 1 of the suit properties having an extent of

264 sq.ft, and Item No. 2 having an extent of 528 Sq.ft, from Jayalakshmi Ammal, wife of Jeevarathinam Pillai for a valuable consideration of Rs.

13,750/- and Rs. 27,500/-, respectively. The plaintiff had further claimed that at the time of the purchase, the suit properties were vacant sites. On the contrary, the defendants had contended that they are in occupation of the plaint schedule property for more than four decades. According to the defendants, the plaintiff was also a tenant, along with the others, in the suit properties. It was not in dispute that the suit property originally belonged to one Jayalakshmi Ammal. The vendor of the plaintiff is a legal heir of Jeevarathinam Pillai. The defendants contended that they had entered into a sale agreement with Jeevarathinam Pillai, on 10.12.1969, for the purchase of Item No. 1 of the suit property for a sale consideration of Rs. 1320/-. The said sale agreement marked as Ex.B-1 had noted the fact that the defendants are in occupation of the land as lessees and that the superstructure in the said properties had been put up by the defendants. Therefore, the contention of the plaintiff that he has purchased the suit properties as vacant site and that the defendants are tenants in the suit property cannot be sustained. While the suit was pending the defendants had filed a petition, u/s 9 of the Chennai City Tenants' Protection Act and the petition was allowed by the trial Court. The plaintiff had filed appeals in C.M.A.Nos. 204 and 216 of 1996 and C.M.A. No. 188 of 1997 and the said appeals had been allowed by the High Court. It was observed by this Court that the defendants have not claimed that they were tenants in the suit property and the defendants had only claimed that they have been only living in the suit property for more than four decades. Thus, it was held that the defendants are not entitled to the protection under the City Tenants Protection Act. While allowing the appeals, this Court had held that the defendants are not entitled to the protection under the City Tenants Protection Act.

15. At the stage of the appeal, the defendants had contended that they are in open and continuous occupation of the suit properties and that they claim title over the suit properties by adverse possession. The First Appellate Court had held that it is a well settled principle of law that the defendants can raise inconsistent pleas in the written statement. However, at the time of the trial, they must elect to pursue any one of the pleas. Since the defendants had contended that they have prescribed title by adverse possession, the burden of proving such adverse possession, without

doubt, lies on the person claiming it. The First Appellate Court had found that the defendants have not pleaded in their written statement that they

are entitled to the suit property by adverse possession. Without any plea in the written statement, it is not open to the defendants to contend that

the defendants have prescribed title in the suit property by adverse possession.

16. The First Appellate Court had noted that in the grounds of appeal it was stated that the defendants were in possession of the property as

tenants and that they have been in continuous possession of the property pursuant to an agreement of sale entered into with Jeevarathinam Pillai.

The first Appellate Court had found that a tenant cannot claim adverse possession against the landlord and it also held that an agreement holder

cannot claim adverse possession against the real owner. A mere agreement for sale will not confer any right or title to the agreement holder. The

First Appellate Court had come to the conclusion that the defendants had failed to prove their plea of adverse possession. It was also held that the

defendants had trespassed into the suit property and had put up the huts. Even though it was pleaded by the counsel for the defendants that a pre-

suit notice was mandatory for eviction proceedings, it was held by the first Appellate Court that such a notice was required only when the

defendants are in possession of the property as a tenant. Once it is found that the defendants are trespassers, no such notice is required to be

issued. The First Appellate Court had found that the plaintiff had purchased the suit property for a valuable consideration from the true and lawful

owner of the suit properties, as found from the sale deeds marked as Exhibits A-1 and A-2. Thus, the first Appellate Court had dismissed the

appeal confirming the judgment and decree of the trial Court.

17. Aggrieved by the said judgment and decree of the Courts below the defendants had filed the present second appeal raising the following

substantial question of law:

In the absence of proof of antecedent title in the vendors of the plaintiff, whether the Courts below are correct in decreeing the suit for declaration

of title and recovery of possession.

18. The learned Counsel for the defendants/appellants had contended that the Courts below have erred in decreeing the suit for eviction, as the suit

filed by the plaintiff is not maintainable in law. Having rendered a finding that the

defendants are not encroachers the suit should have been

dismissed. On the contrary, the Courts below have wrongly held that the suit filed by the plaintiff is maintainable. The plaintiffs have not filed any

documents except Exhibits A-1 and A-2 sale deeds, dated 27.05.1988, to establish his claim. On the other hand, a number of documents have

been filed to support the contentions raised on the behalf of the defendants. Both the Courts below have failed to appreciate the evidence in favour

of the defendants. The defendants are tenants in the suit property under Jeevarathinam Pillai and they have put up superstructures thereon and thus

they cannot be evicted except following the due procedure established by law in accordance with the provisions of The Chennai City Tenants

Protection Act, 1921.

19. Though the second appeal had been admitted on the substantial question of law as to whether in the absence of proof of antecedent title in the

vendors of the plaintiff, the Courts below are correct in decreeing the suit for declaration of title and recovery of possession, the learned Counsel

for the appellants had submitted that the substantial questions of law which had already been raised in the memorandum of grounds of appeal may

also be considered by this Court at the time of the final hearing of the second appeal. They are as follows:

20. The learned Counsel appearing on behalf of the defendants/appellants had submitted that once the Courts below had come to the conclusion

that the appellants are tenants, the suit should be dismissed as not maintainable. The defendants have filed various documents before the trial Court

to prove their claim that they have been in occupation of the suit property as tenants for more than four decades having put up superstructures

therein.

21. Even though this Court while passing an order, dated 09.02.2004, in C.M.A.Nos. 204 and 216 of 1996 and 188 of 1997, has stated that the

defendants would not be entitled to file an application, u/s 9 of The Chennai City Tenants Protection Act, 1921, there is no conclusive and binding

finding that the defendants are not tenants in the suit properties. Even if such a finding has been given, it cannot be final and therefore, it would be

open to the defendants to contend that they are tenants in the suit properties and that they cannot be evicted without following the due procedures

established by law.

22. It was submitted that the trial Court, having found that the defendants were tenants in the suit properties, had refused to accept such a status,

since it has not been pleaded in the written statement. The plaintiff had accepted the fact that when he had visited the suit properties, on

11.06.1990, he had found that thatched house had been put up on the properties and the first defendant was in occupation of the first item and the

second and third defendants were in occupation of the second item of the suit properties and they were living in the said properties, along with their

family members. Even though the plaintiffs had claimed that the defendants had trespassed into the suit properties, it has not been stated as to when

the defendants had trespassed into the suit properties.

23. It was also contended that an interlocutory order, even if it is against the defendants, cannot be held to be binding on the defendants as it would

be open to them to reopen the issue as held by the Supreme Court in *Thailammal v. Janardhan Raju* 1991 STPL(LE) 16369 .

24. The learned Counsel for the defendants/appellants had also contended that the plaintiff cannot be permitted to abandon his original cause and

opt for a new plea as held by this Court in *Lodd Balamukundas Vs. K. Kothandapani and Others*, . of the said decision reads as follows:

8. It is not open to a plaintiff who came to the Court with a specific case and with a specific ground of relief to go back on them and abandon the

same and seek to claim the same relief on the facts alleged by the defendant....

25. In *Smt. Kalawati Tripathi and Others Vs. Smt. Damayanti Devi and Another* , it has been held as follows:

Generally the parties should not be allowed to travel beyond their pleading. However pleadings should be construed liberally and the Court should

not adopt a pedantic approach. If the substance of the essential material facts for grant of relief is stated in the pleading, the Court should not throw

away the same on the ground of defective form or the deficiency in the pleading. Even if the plea is not raised in the pleading even then a claim of

the party cannot be defeated, if the parties know the respective cases of each other on the said plea and led evidence in support of their cases.

Absence of exact nature of business is not a deficiency in the pleading in the instant case statements made in the plaint contained material facts

which were required to be proved for an order of eviction on the ground of personal necessity. The tenants had knowledge of exact nature of

business which the landlord wanted to start and has led evidence on the said point and as such he is not prejudiced in any way and, it was held

that the landlord's claim in such circumstances cannot be rejected on the ground that the exact nature of business was not stated in the plaint.

It was also contended that according to Section 109 of the Transfer of Property Act, the defendants cannot be evicted based on the principle of

attornment of tenancy.

26. It has also been contended that the trial Court had found the defendants to be tenants and the Appellate Court had confirmed the findings of

the trial Court. However, the First Appellate Court had held that the defendants are encroachers without giving proper reasons for coming to such

a conclusion.

27. The learned Counsel for the plaintiff had submitted that there is no specific claim by the defendants that they are tenants under the plaintiff. The

defendants have not been in a position to prove that there is a landlord-tenant relationship existing between the plaintiff and the defendants with

regard to the suit properties. The sale deeds, marked as Exhibits A-1 and A-2, clearly show that the plaintiff had purchased only vacant sites. It

was further contended that this Court had found that the defendants have not claimed, in the written statements filed on their behalf, that they are

tenants in the suit properties, except stating that they were living in the suit properties for more than four decades. Since the defendants could not

prove that they are tenants under the plaintiff in the suit properties by virtue of a lease with a liability to pay rents, they can be termed only as

encroachers and not as tenants.

28. It was also contended that from the findings of this Court in its common orders, dated 09.02.2004, made in C.M.A.Nos. 204 and 216 of

1996 and C.M.A. No. 188 of 1997, it is clear that the defendants cannot plead that they are entitled to the protection under the provisions of The

Chennai City Tenants' Protection Act, 1921. Even though the defendants had claimed title in the suit properties by adverse possession, such a

claim has been rightly rejected. To prove adverse possession the defendants have to show certain ingredients, including the animus to possess the

property as held by the Supreme Court in the cases reported in Nagarajan Vs. Rajamani Aiyar and seven others, , Mannangatti Gounder v.

Janarthanam 2002(4) CTC 193, Pandurangan v. Sakkubai and 6 Ors. 2004(4) L.W 495 and A. Vedanayagam (Tmt.) and Ors. v. Annakili and

Ors. 2006(3) MLJ 465.

29. It was also contended by the learned Counsel for the plaintiff that the various documents filed in support of the defendants do not relate to the

suit property. The findings recorded by this Court in its order, dated 09.02.2004, in C.M.A.Nos. 204 and 216 of 1996 and C.M.A. No. 188 of

1997 are binding and it is not open to the defendant to re-agitate the matter at this stage, especially, when a statutory right claimed by the

defendants have been decided. In support of the above contention, the learned Counsel had relied on the decision reported in Venkatarama Iyer

alias Kunju and Anr. v. Thiruvidadamarudur Sri Mahalingaswami Devasthanam by its hereditary trustee Sri La Sri Subramania Pandara Sannadhi Avl.

(since dead) and Ors. 1972 (2) MLJ 252.

30. In view of the contentions raised by the learned Counsel appearing on behalf of the plaintiff/respondent and the learned Counsel appearing on

behalf of the defendants 1, 2 and 4/appellants and in view the records available before this Court it is seen that both the Courts below have arrived

at the right conclusion in granting the relief sought for by the plaintiff in the suit O.S. No. 10158 of 1990.

31. The contention raised on behalf of the plaintiff that the plaintiff is the owner of the suit properties and that the defendants are encroachers,

having no right to occupy the said properties and that the defendants had not proved that they were in occupation of the suit properties as tenants

as claimed by them is acceptable. Further, it has been rightly held by the Courts below that the defendants have not been in a position to show that

they have prescribed title in the suit property by adverse possession. It is also clear that the defendants could not show that the documents marked

in support of their contentions are relating to the suit properties to show landlord-tenant relationship between the plaintiff and the defendants with

regard to the suit properties.

32. Once it has been found by a Division Bench of this Court, in its order made in C.M.A.Nos. 204 and 216 of 1996 and C.M.A. No. 188 of

1997, that there is no landlord-tenant relationship between the plaintiff and the defendants and when it has become final, it cannot be said that it is

once again open to the defendants to contest the settled issues. When this Court had clearly held in the said order that the defendants are not

entitled to the protection under The Chennai City Tenants' Protection Act, 1921, as tenants and when both the Courts below have come to the

conclusion, based on the available evidence, that the defendants have not proved that they are tenants under the plaintiff, this Court does not desire

to take a contrary view, unless the concurrent findings of facts are so perverse so as to invite the indulgence of this Court.

33. In such view of the matter, the concurrent findings and conclusions arrived at by the Courts below cannot be interfered with by this Court in the

present second appeal filed u/s 100 of the Civil Procedure Code, as held by the Supreme Court in Gurdev Kaur and Ors. v. Kaki and Ors. 2006

(4) L.W. 942. Accordingly, the second appeal stands dismissed, confirming the judgment and decree of the Courts below. No costs.