

(1949) 01 MAD CK 0029
In the Madras High Court

Amina alias Beepathumma and Another	APPELLANT
Vs	
B. Ahmed bin Chayabba	RESPONDENT

Date of Decision : 18-01-1949

Acts Referred:

Citation : (1949) 1 MLJ 465

Hon'ble Judges : Satyanarayana Rao, J

Bench : Division Bench

Judgement

Satyanarayana Rao, J.—The defendants are the appellants. The suit out of which this second appeal arises was instituted for recovery of possession of the suit property with building standing thereon together with profits, past and future.. The suit was decreed by the trial Court and was confirmed on appeal by the lower appellate Court. Hence this second appeal.

2. The plaintiff's predecessor-in-title let the suit property on 6th May, 1903, to one Hamed Beary, the predecessor of the defendant. The lessee died and the property came into the possession of his sister Kunhi Pathumma. The plaintiff's predecessor-in-title instituted a suit, O.S. No. 155 of 191 7 against Kunhi Pathumma and another for recovery of possession on the strength of the lease in favour of Hamed Beary. That suit was dismissed on the ground that there was no apportionment of rent. After the death of Kunhi Pathumma, the defendants who are her daughters continued in possession of the property. In 1930, the plaintiff's predecessor Akbar Khan issued a notice determining the tenancy and instituted the suit O.S. No. 198 of 1930 for recovery of possession of the property. That suit was compromised and a compromise decree was passed on 25th March, 1931. Under the compromise the plaintiff Akbar Khan had to pay a sum of Rs. 175 to the defendants for improvements and he undertook to deposit the amount into Court. The defendants were permitted to continue in possession of the property till 31st December, 1931 and they agreed to surrender the property with all the buildings after the expiry of that date, failing which liberty was given to the plaintiff to deposit the, amount of Rs. 175 in Court and recover

possession of the property together with the buildings, and profits at the rate of Rs. 5 per mensem until delivery of possession by executing the decree itself. The parties also gave up their respective contentions in the suit. After this decree the plaintiff Akbar Khan did not pay or deposit the amount of Rs. 175 into Court and in 1935 there was a rent note, Ex. P-1, executed by the first defendant in favour of Akbar Khan.. The second defendant also continued in possession of the property; but she was. not a party to Ex. P-1. As the defendants did not surrender possession of the property notwithstanding the lawyer's notice dated 9th February, 1943, determining the tenancy under the rent bond, the plaintiff instituted the present suit for recovery of possession.

3. The defence to the suit was that the plaintiff had no subsisting title to the suit property and that the suit was barred by reason of the decree in O.S. No. 198: of 1930 and that the plaintiff's only remedy was to work out his rights by executing the decree in the suit and not to institute a separate suit. There was also an issue, relating to the rent or damages claimed by the plaintiff.

4. The learned District Munsiff who tried the suit overruled the contention of the defendants and decreed the suit for possession on condition of the plaintiff paying into Court Rs. 175 for the improvements. This decree was confirmed on appeal by the Subordinate Judge.

5. In this second appeal two questions were raised by the learned advocate For the appellant : firstly, that a second suit for possession was not maintainable and that the plaintiff's only remedy was to execute the decree in O.S. No. 198 of 1930 and as he allowed execution to become barred he was not entitled to sue for possession and secondly, that the suit was barred by limitation as the plaintiff had not possession within 12 years prior to suit.

6. The earlier suit, it will be seen from a perusal of the plaint which was filed and exhibited as Ex. D-1, was based on tenancy and tenancy alone. At the time of the compromise the defendants abandoned all their contentions and recognised the right of the plaintiff Akbar Khan as landlord to recover possession of the property. The landlord agreed to pay Rs. 175 for the improvements and the defendants-agreed to surrender possession of the property after the 31st December, 1931. The present suit is based oh title and the title was found by both the Courts in; favour of the plaintiff. On the principle of the decision in Kutli Ali v. Chindan (1900) ILR Mad. 629 I think that the second suit based on title is not barred when the defendants admitted the title of the plaintiff as landlord in the earlier suit. A suit based on tenancy is very narrow in its scope and it is unnecessary very often for the plaintiff landlord to plead his title; it is enough for him in such a suit to prove the lease and the tenancy and that it was validly terminated. If these are established, the. plaintiff would be entitled to a decree for possession as the defendant in such a case would be estopped from disputing the title of the landlord at the inception of the tenancy. That is the reason why on such claims lesser court-fee is payable u/s 7(xi)(cc) of the Court-Fees Act. In such suits the question of title, it has been held, cannot be gone into. It is on this

principle, it was held in *Kutti Ali v. Chindan* (I.L.R. 1900) Mad. 629 that if there is no dispute about the right of the plaintiff as landlord in a suit against the tenant, a second suit based on title was not barred. The contention, therefore, that by reason of the decree in the earlier suit, the plaintiff is precluded from instituting the present suit must be overruled.

7. There is no substance in the contention that the plaintiff's suit is barred by limitation as admittedly the suit was filed within 12 years from the date fixed under the decree in the earlier suit, viz., 31st December, 1931. The possession of the defendants under the compromise decree was permissive and was not adverse to the plaintiff. As the suit was filed within 12 years from that date the plea that the suit is barred by limitation must be rejected.

8. The result is that the second appeal fails and is dismissed with costs. (No leave).