
(2001) 10 MAD CK 0080
In the Madras High Court

Muniammal

APPELLANT

Vs

Jagannathan and Others

RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(1)

Citation : (2001) 10 MAD CK 0080

Hon'ble Judges : M. Chockalingam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—This appeal has been preferred from the judgment and decree of the Additional District Court, Vellore, made in A.S.No. 13 of 1990, dated 10.4.1990 confirming the judgment and decree of the learned District Munsif, Ranipet, rendered in O.S.No. 595 of 1986, dated 30.11.1989.

2. The respondents herein filed a suit seeking for declaration of title in respect of the suit schedule property and for delivery of possession alleging that the said property originally belong to one Pushpa Ammal who mortgaged the same for a sum of Rs. 700 on 11.7.1977 to the defendant under the registered simple mortgage deed; that a separate arrangement was executed between them by Muchalika on 17.7.1977 wherein the appellant agreed to occupy the suit property without paying any rent in lieu of interest for the mortgage and to deliver the possession of the same on payment of the mortgage amount; that the said Pushpa Ammal with her daughters and son discharged the mortgage on 15.5.1979 and sold the property to one Parvathi Ammal and also to the 5th plaintiff for a consideration of Rs. 400; that the appellant without delivering the possession of the property to Pushpa Ammal even after discharge of the mortgage amount has continued to be in illegal and unlawful possession; that the appellant issued a notice to the said Pushpa Ammal and to the 5th respondent and also to Parvathi Ammal contending false allegations which was suitably replied by the respondents; that the appellant was squatting over the suit

property without any manner of right, title or interest. Under the stated circumstances, the respondents have sought the relief of declaration and recovery of possession.

3. The appellant contested the suit by stating that she was not aware of the sale executed in favour of the first respondent's wife by name Parvathi Ammal and the 5th respondent by name Susila Ammal; that the property was mortgaged by Pushpa Ammal to the appellant as a vacant site for which the appellant agreed to pay the monthly rent of Rs. 17.50; that in the mortgaged vacant site the appellant built a pucca house by spending Rs. 6,000; that the said Pushpa Ammal executed an agreement on 15.7.1979 wherein the above facts were stated; that the said Pushpa Ammal was the necessary party to the suit; that she had also agreed orally that she would sell the property to the appellant in case if she was to sell the property, but only on the assurance of the said Pushpa Ammal, the appellant built a house by spending her money; that in view of the said agreement Pushpa Ammal could not alienate the property to any one and the same would not bind the appellant; that stating all these, the appellant issued a notice to Pushpa Ammal and others that Pushpa Ammal who was the owner of the vacant site could not convey the superstructure; that the respondents were not entitled to any relief in the suit property without any compensation to the appellant; that the appellant was entitled to the benefit of City Tenants Protection Act; that in order to overcome the legal lacuna, the respondents have filed the suit for declaration and possession; that the sale executed in favour of the 5th respondent and one Parvathi Ammal is fraudulent and it was intended to defeat the right of the appellant; that the mortgage effected by Pushpa Ammal in favour of the appellant is a conditional sale since the appellant was put into possession of the property and the said Pushpa Ammal had no individual right to deal with the property in view of the existing mortgage which was by way of the conditional sale; that the said Pushpa Ammal never paid taxes to the property; that the respondents have also not paid the subsequent tax and hence the respondents are not entitled to the relief and the suit has to be dismissed.

4. The trial Court after framing necessary issues tried and decreed the suit in its entirety. Aggrieved, the appellant preferred that appeal in A.S.No. 13 of 1990. The learned District Judge who determined the points for consideration, heard the submissions, scrutinised the available materials and dismissed the appeal confirming the judgment and decree of the lower Court which has culminated in this second appeal.

5. At the time of admission, the following substantial question of law were formulated for decision of this Court:

- (1) Whether Ex.B-1, lease agreement which provides for payment of monthly rents is inadmissible for want of registration under the Indian Registration Act?
- (2) Whether the suit as framed is maintainable in view of the statutory bar u/s

10(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960?

6. What is challenged herein is the judgment of the First appellate Court namely the Additional District Judge, Vellore, confirming the judgment of the trial Court granting relief of declaration of title of the respondents over the suit schedule property along with the delivery of possession of the same. The respondents sought the relief alleging that the suit schedule immovable property originally belongs to Pushpa Ammal; that she executed a registered simple mortgage deed on 11.7.1977 to the appellant for a sum of Rs. 700 which was discharged by her on 15.5.1979; that she sold the property to the 5th respondent and one Parvathi Ammal for a valid consideration of Rs. 4,000; that the respondent has been occupying the property without any manner of right, title or interest and hence her possession of property was illegal and unlawful and hence they are entitled for the reliefs asked for.

7. The said claim of the respondents was vehemently opposed to by the appellant stating what was mortgaged by Pushpa Ammal was only of vacant site and on her assurance to sell the property, the appellant made construction spending Rs. 6,000 and hence the sale executed by Pushpa Ammal was neither valid nor binding on the appellant; that Pushpa Ammal who was the owner of the vacant site could not convey the superstructure that belongs to the appellant; that the appellant was entitled to the benefit of the City Tenants Protection Act and hence the respondents were not entitled for their relief.

8. Both the Courts below agreed with the case put forth by the respondents and have decreed the suit on the concurrent finding and facts.

9. Learned Counsel for the appellant would argue that the Lower Courts should have upheld the rights of the appellant under the Tamil Nadu City Tenants Protection Act; that both the Courts below proceeded on the wrong footing that the appellant is the tenant of a thatched house but only a vacant site was in fact leased out; that both the Courts below have not considered the fact that the appellant has constructed a house bearing door No. 25A in the suit property and hence the appellant had a right u/s 9 of the Tamil Nadu City Tenants Protection Act. The lower Courts were not correct in drawing adverse inference of the non-cross examination of P.W.2 in respect of the contents of Ex.B-1 since P.W.2 herself had admitted that herself and the appellant have executed Ex.B-1; that the trial Court has not considered Ex.B-1 lease agreement and Ex.A-6 mortgage deed in a proper perspective; that both the Courts below should have accepted the contention of the appellant that there was no house at the time of the execution of the mortgage deed but only there is a vacant site; that both the Courts below have unnecessarily given much reliance on Ex.A-7, Muchalika; that the judgment of the lower Courts were contrary to law since the suit was not maintainable in view of the applicability of Tamil Nadu Buildings (Lease and Rent Control) Act, and the appeal has got to be allowed, setting aside the judgment of the lower Courts.

10. After careful consideration of the rival submissions and the scrutiny of the available materials, the Court is of the view that this second appeal is without any merit whatsoever. Concededly, the original owner of the immovable property Pushpa Ammal mortgaged the same under registered mortgage deed on 11.7.1977 to the appellant and the same was also discharged by the mortgagor on 15.5.1979. The first contention of the appellant side is that what was mortgaged was only a vacant site without superstructure has got to be rejected in view of the recitals found in Ex.A-6 mortgage deed. The schedule of the property therein would clearly reveal what was mortgaged was not only the vacant site but also the thatched house.

11. The Courts below have pointed out that D.W.1 had categorically admitted that at the time of discharge of mortgage on 15.5.1979, a thatched shed was in the property and thus it would be abundantly clear that at the time of the execution of the mortgage and at the time of redemption of the same, there existed superstructure belonging to the mortgagor namely Pushpa Ammal. In order to substantiate the title, the respondents have filed the sale deed executed by the owner of the property Pushpa Ammal together with her daughters and son for a consideration of Rs. 4,000 wherein the schedule of the property included the superstructure also. This would clearly indicate what was conveyed to the 5th respondent and Parvathi Ammal was the property inclusive of the superstructure.

12. The appellant has not specifically pleaded any agreement of lease with the original owner but from the averments it would be clear that the appellant was to occupy the property in lieu of interest till the time of the discharge of the mortgage amount. It is not in dispute that the mortgage was redeemed by the original owner Pushpa Ammal. The appellant though claimed to be entitled to the benefit of the City Tenants Protection Act has not taken steps as required by law. An application filed by him before the first appellate Court, seeking condonation of delay in filing the application and the other application claiming the benefits under the City Tenants Protection Act were dismissed. Aggrieved over the same, the appellant has preferred two C.R.Ps. before this Court. It is admitted by the learned Counsel for the appellant that though the C.R.P. challenging the order of dismissal of the condonation of delay was allowed by this Court, the other C.R.P. claiming the benefits under the City Tenants Protection Act was dismissed. The contentions of the appellant side that the mortgage executed by Pushpa Ammal was a conditional sale and hence Pushpa Ammal could not execute the sale deed in favour of the respondents, cannot be upheld in the absence of any material whatsoever in that regard. Much reliance was placed by the appellant side on Ex.B-1 agreement dated 15.5.1970 to contend that the appellant took the vacant site on lease. Both the Courts below have rejected this contention pointing to that the Ex.B-1 document has come into existence on 15.5.1979, that is, on the date of redemption of the mortgage by the original owner, while the mortgage deed and the redemption endorsement would clearly speak to the fact that the superstructure was available and it belonged to the mortgagor Pushpa Ammal. The recitals found in Ex.B-1 that it was only in respect of the vacant site has to

be rejected as false.

13. Lastly, learned Counsel for the appellant would urge that the suit was not maintainable in view of the statutory bar u/s 10(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, since what was leased out to the appellant was a building. The Court is afraid whether, it could accept such a plea. The plaintiff did not seek the relief based on any lease of either the vacant site or the building. Nor it was also the defence put forth by the appellant in the trial Court that she was in possession of the property on the basis of the lease of the vacant site. But from the available evidence, it would be clear that the mortgagor when mortgaged the property with the appellant, permitted the appellant to be in possession in lieu of interest and the understanding between the parties could have been to surrender possession on the discharge of the mortgage amount. It was the admitted position that the mortgage was discharged by the appellant and the respondents thoroughly failed to surrender the possession. Under such circumstances, the provisions of Tamil Nadu Building (Lease and Rent Control) Act, 1960, have no application to the present facts of the case.

14. Above all, it was brought to the notice of the Court by the learned Counsel for the respondents that the property was taken possession by the respondents through Court on 10.1.1991 which fact is not disputed by the appellant side. Therefore nothing survives in this Appeal. The appeal is devoid of merits. The judgment of both the Courts below are based on sound reasoning and hence there is nothing to interfere.

15. The appeal fails and the same is dismissed, leaving the parties to bear their costs.