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Court : Chennai

Decided On : Dec-18-1996

Reported in : 1997(1)CTC401

Judge : S.S. Subramani, J.

Acts : [Easements Act, 1882](#) - Sections 60

Appeal No. : S.A. No. 554 of 1988

Appellant : Rajaraman

Respondent : Kaliammal

Advocate for Def. : T.P. Manoharan, Adv.

Advocate for Pet/Ap. : K. Srinivasan, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

S.S. Subramani, J.

1. Plaintiff in O.S. No. 598 of 1982, on the file of Second Additional District Munsif s Court, Pondicherry, is the appellant.

2. Plaintiff and defendant are brother and sister.

3. Suit filed by plaintiff was to recover possession of the property after demolition of the superstructure.

4. The material averments in the plaint can be stated thus:-

The property was purchased by plaintiff on 15.11.1968, and thereafter, he has put up a construction on the vacant site in the year 1973 by spending a sum of Rs. 2,500/-. It is said that the defendant occupied the house constructed in the above plot on a monthly rent of Rs. 25/-, and she paid rent till February, 1981. Plaintiff filed H.R.C.O.P. No. 37 of 1981, against the defendant, for eviction, on the ground of wilful default, and the same was dismissed by the trial Court on the ground that the tenancy was not proved. In fact, it is the case of the plaintiff that the defendant is in occupation of the property as a tenant, and since there is absence of evidence to prove the tenancy, it may be treated that she is in possession with leave and licence of the plaintiff, and she has no right to continue in possession. Notice was issued as she refused to comply with the demand by the plaintiff to vacate the building. It is further averred that before the Rent Controller, defendant contended that she has put up the superstructure and the same is also admitted before the Commissioner, Pondicherry Municipality. It is further said that in view of the said contention by the defendant, plaintiff has given up his right over the superstructure, and the defendant, being his sister, he has filed the suit for delivery of vacant possession, after removing the superstructure.

5. In the written statement filed by defendant, she said that the notice under Section 106 of the Transfer of Property Act issued by the plaintiff is not proper. She further said that she was never a tenant under the plaintiff, and there is no such relationship.

6. She further said that the plaintiff has not constructed the superstructure, but she has spent more than Rs. 12,000 to put up the superstructure. It is further said that she is the elder sister of plaintiff, and the plaintiff, put of love and affection, and gratitude towards her, permitted her to make developments in the suit property and accordingly, she raised a residential superstructure at her cost and was

residing there gratuitously. Plaintiff also promised that he will not eject her from the property and also promised that he would sell the property to her on a later date for a meagre price. Defendant believed the plaintiff, and acting on the above solemn assurance, put up the superstructure in the suit property after making all developments at her cost to the tune of Rs. 12,000. Therefore, plaintiff is now estopped from evicting the defendant and claiming possession from the defendant. She prayed for dismissal of the suit.

7. On the above pleadings, both parties went on trial. Before the trial court, P. Ws. 1 and 2 were examined and Ex.A-1 to A-7 were marked. On the side of the defendant, D. Ws. 1 to 3 were examined and Ex. B-1 was marked.

8. The trial Court, after discussing the entire evidence, came to the conclusion that there is no tenancy relationship between plaintiff and defendant. It was further found that the defendant was only a licensee under the plaintiff in respect of the plaint property. It was further found that the defendant is also residing in the suit house. Regarding the right of the plaintiff to evict the defendant, in paragraph 11 of the judgment, trial Court found that the defendant is not entitled to continue in possession. Her claim under Section 60(b) of the Easements Act cannot be sustained. The trial Court found that the possession of the defendant is not on the basis of licence, but on the basis of an agreement for sale and, therefore, she cannot claim the benefits of Section 60(b) of the said Act. The suit was, therefore, decreed with costs.

9. Aggrieved by the judgment, defendant preferred A.S. No. 3 of 1984, on the file of Principal District Judge, Pondicherry. The lower appellate Court held that possession of the defendant is that of a licensee and she has put up construction of permanent nature acting on the licence and, therefore, the plaintiff is not entitled to recover the property. The suit was, therefore, dismissed.

10. It is against the said judgment, plaintiff has come up before this Court.

11. At the time of admission of the Second Appeal, the following substantial questions of law have been raised for consideration:-

'1) Whether the lower appellate Court is correct in holding that the respondent is entitled to the benefits of Section 60(b) of Easements Act in the absence of any pleadings or evidence to that effect? and

2) Whether the lower appellate Court is right in granting the relief that the respondent is entitled to the benefits of Section 60(b) of the Act especially when the respondent pleaded that she is entitled to be in possession permanently and a claim that the right to purchase the suit site is negated ?'.

12. Both these questions could be considered together. But, before going into the questions of law, we have to take into consideration the exact case put forward by defendant in her written statement. In paragraph 5 of the written statement, she has pleaded thus :-

'The defendant is the sister of the plaintiff and she had brought up the plaintiff from his childhood and the defendant is responsible for the present status of the plaintiff. The plaintiff out of affection, love and gratitude to the defendant, the plaintiff permitted the defendant to make developments in the suit property and raise a residential superstructure at her own costs and reside therein gratuitously. The plaintiff had also promised the defendant that he would not at any cost eject her from and out of the suit property and that she could reside there for her life. The plaintiff had also promised that he would sell the suit property to the defendant at a later date for a nominal and meager price. The defendant believed the plaintiff and, acting on the above said solemn assurances, the defendant raised the present superstructure in the suit property after making all the developments at their own costs to the tune of Rs. 12,000 only in the year 1972. The plaintiff was present and in fact was encouraging the defendant to raise the present superstructure by assuring that he would sell the suit manai to the defendant. Therefore, the plaintiff is now estopped from evicting the defendant and claiming possession from the defendant. The plaintiff is bound to sell the suit property to the defendant as per his assurances.'

A reading of the said paragraph (extracted above) makes it clear that the construction was made on the basis of the agreement for sale. The case of the plaintiff was that the defendant was a tenant and since that relationship could not

be proved, she cannot be treated as a licensee. That case was not accepted by the defendant. She has got a definite case that due to love and affection, she was asked to develop the property on the assurance that she will not be evicted, and with a further assurance that whenever the property is sold, it will be sold to her for a meager price. The defendant says that it was after this understanding, she raised the present superstructure in the suit property. So, from the wordings, it is clear that it is not a licence coming under Easements and Licence Act the defendant claims right over the property. She claims right over the property on the basis of the agreement averred in paragraph 5.

13. D.Ws. 1 to 3 also speak in terms of paragraph 5 of the written statement. They also say about the agreement for sale and pursuant to the same, the defendant put up the construction.

14. The contention in the written statement was rightly interpreted by the trial Court and it passed a decree in favour of the plaintiff. It said that Section 60(b) of the Easements Act will have no application, to the facts of this case.

15. But, when the matter was taken in Appeal, the lower appellate Court took a different stand. The wordings given by the plaintiff as well as the observation made by the trial Court were taken by the lower appellate Court to come to the conclusion that the defendant is licensee and acting on the licence, she has put up a construction which is of a permanent nature.

16. When defendant claims that she is entitled to the benefits of Section 60(b) of the Easements Act, she has to plead and prove the same. In fact, paragraph 5 of the written statement is not a pleading under Section 60(b) of the Easements Act. It is a pleading regarding agreement of sale and the assurance of the plaintiff.

17. In *Iyyappan v. Dharmalayam Co.*, AIR. 1966 S.C. 1917, in paragraph 11 of the judgment, their Lordships said that a case falling under Section 60(b) has to be pleaded and the licence must be a licence as defined under that Act.

18. The said decision again came for consideration before the Supreme Court and, in the decision reported in *Shankar Gopinath Apte v. Gangabai Hariharrao*

Patwardhan, : [1977]1SCR411 their Lordships said that Section 60(b) of the Easements Act will have no application for a person who claims to be in possession on the basis of agreement for sale. In paragraph 14 of the judgment, this question was considered, and their Lordships have held thus :

' Faced with this difficulty, learned counsel for the appellant was driven to raise points on which there is no pleading, no issue and naturally no satisfactory evidence. The first of such contentions raised by Mr. Bal is that the appellant must be deemed to be a licensee of the respondent and since he has executed work of a permanent character on the land involving heavy expenses, the licence would be irrevocable under Section 60(b) of the [Easements Act, 1882](#). This argument was made expressly on the assumption that the power of attorney was a nominal document and therefore inoperative. In view of our finding that the document was intended to be acted upon and was in fact noted upon, the argument of irrevocable licence does not survive for consideration. But having spent some time in chasing the argument, we are constrained to say that such evidence as there is on the record seems inadequate to prove the improvements made or the expenses incurred by the appellant. He has admitted in his evidence that the figure which he gave in his examination- in-chief as regards the amount spent on improvements were stated from memory and that he had not produced his accounts to corroborate the oral word. Only one more thing need be stated even assuming that the appellant has executed work of a permanent character on the land it cannot be said that he has done so 'acting upon the licence', as required by Section 60(b) of the Easements Act. If he really improved the land by executing a work of a permanent character, he did so in the belief that being a tenant he will become a statutory purchaser of the land, or that the oral agreement of sale will one fine day be implemented. The execution of work would therefore be in his capacity as a tenant or a prospective purchaser and not in his capacity as a licensee.'

19. In view of the said decision, the finding of the lower appellate Court will have to be only set aside.

20. Learned counsel for the appellant relied on the decision reported in Ram Saran Gupta v. Bishin Narain Inter College, AIR 1987 SC 1942. That was a case

where defendant pleaded a case of licence, though not specifically, and, on facts of the case, their Lordships said that permanent structure has been put up which dehors the plaintiff from getting possession. The defendant was conducting a school on the basis of licence granted. In view of the factual finding, their Lordships said that the plaintiff is not entitled to get recovery of the property. In fact, the decision reported in *Shankar Gopinath Apte v. Gangabai Hariharrao Patwardhan*, : [1977]1SCR411 was distinguished in that case. But the facts are different. No reliance can be placed on the decision cited by learned counsel for the respondent.

21. I hold that the plaintiff is entitled to recover the property on the basis of his title.

22. Plaintiff has sought for a relief of demolishing the structure. I do not think it will be proper to grant such a relief. It is proved in this case that it was the defendant who put up the structure at the instance of the plaintiff and the defendant is also residing there. By demolishing the structure, nobody is going to get any benefit, except that the defendant will be put to hardship.

23. In view of the above circumstances, I feel it proper to direct the plaintiff to pay the value of the building before he is allowed to take possession of the same.

24. I set aside the judgments of both the Courts below and merit the matter to the trial Court, with a direction to value the building situated in the plaint property and pass a decree allowing the plaintiff to recover possession of the property after paying the amount so fixed to the defendant. The remand is only for that purpose. All the other points, namely, title over the property and also the plaintiff's right to recover the property from the property are settled by this judgment.

25. In the result, the Second Appeal is allowed, and the suit is remanded to the trial Court for the purpose of arriving at the value of the superstructure in the plaint schedule property and also for granting a decree in favour of the plaintiff, as indicated above. No costs. Parties are directed to appear before trial Court on 17.1.1997.