

K.R.Pannerselvam. Vs. VasanthA.

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Court : Chennai

Decided On : Jul-20-2010

Judge : M.Jaichandren, J.

Appeal No. : S.A.No.635 of 2007

Appellant : K.R.Pannerselvam.

Respondent : VasanthA.

Advocate for Def. : Mr.S.Sounthar, Adv.

Advocate for Pet/Ap. : Mr.A.Muthukumar, Adv.

Judgement :

1. This second appeal has been filed against the judgment and decree of the First Appellate Court, dated 25.9.2006, made in A.S.No.13 of 2006, on the file of the Principal Subordinate Court, Mayiladuthurai, confirming the judgment and decree of the trial Court, dated 15.9.2005, made in O.S.No.660 of 1998, on the file of the Additional District Munsif Court, Mayiladuthurai.

2. The defendant in the suit, in O.S.No.660 of 1998, is the appellant in the present second appeal. The plaintiff in the said suit is the respondent herein. The plaintiff had filed the suit, in O.S.No.660 of 1998, on the file of the Additional District Munsif Court, Mayiladuthurai, praying for a judgment and decree, for recovery of possession of the suit property from the defendant and for damages for its use and occupation by the defendant.

3. The plaintiff had stated that the suit property was, originally, owned by one Alamelu Ammal, Wife of Rajaram. The plaintiff had purchased the suit property from Alamelu Ammal, by way of a registered sale deed, dated 1.9.1984. The plaintiff had purchased the suit property with her own funds given by her deceased father, Rasu Pillai. Pursuant to the purchase of the property, the vendor, Alamelu Ammal, had given possession of the suit property to the plaintiff. Thereafter, extensive renovation works had been done by the plaintiff in the suit property.

4. It had been stated that the defendant is the elder brother of the plaintiffs husband. The defendant is employed in the Tamil nadu Electricity Board. After he had been transferred to a village close to the place where the plaintiffs property is situated, the defendant was permitted to occupy the suit property, for a short period of six months. However, the defendant continued to reside in the suit property, without handing over possession of the same to the plaintiff, in spite of several demands being made by the plaintiff. Therefore, the plaintiff had issued a notice to the defendant, on 17.3.1997, calling upon the defendant to hand over possession of the suit property and to pay her the damages for the use and occupation of the said property, at the rate of Rs.300/- per month. The defendant had sent a reply making false claims. He had also filed a suit, in O.S.No.335 of 1998, on the file of the Principal District Munsif Court, Mayiladuthurai, seeking for partition and for separate possession against the plaintiff and her husband. The claim of the defendant was that the suit property had been purchased in the name of the plaintiff, with his own funds and therefore, the plaintiff cannot claim exclusive possession of the suit property.

5. In the written statement filed on behalf of the defendant, it had been stated that the suit property had been purchased from the funds contributed by the defendant. The defendant was employed as a line man and thereafter, as an Inspector in the Tamil Nadu Electricity Board. Since, he was not in a position to purchase any property in his name, he had provided funds to the plaintiffs husband to purchase the property. From 1984 to 1987, the suit property was kept vacant. As the building in the suit property was in a dilapidated condition, the defendant had repaired the same, at regular intervals, to keep it in a good condition. He had also stated that all the properties purchased in a similar manner were treated as joint

family properties. There are no trees in the suit property yielding income, as claimed by the plaintiff. Further, the bamboo clusters had also been raised only by the defendant. Therefore, the claims made by the plaintiff, for exclusive possession and enjoyment of the suit property, is not sustainable in the eye of law.

6. In view of the averments made on behalf of the plaintiff, as well as the defendant, the trial Court had framed the following issues for consideration:

1. Whether the plaintiff is the owner of the suit property?
2. Whether the contention of the defendant that he has got right over the suit property is correct?
3. Whether the plaintiff is entitled for the relief of recovery of possession?
4. Whether the plaintiff is entitled for damages, as sought for?
5. To what other relief is the plaintiff entitled to?

7. The plaintiff had examined himself as P.W.1, and Exs.A-1 to A-17 had been marked on behalf of the plaintiff. D.W.1 and D.W.2 had been examined, and Exs.B-1 to B-11 had been marked on behalf of the defendant.

8. In view of the submissions made on behalf of the parties concerned and in view of the evidence available on record, the trial Court had found that even though the defendant had claimed that the suit property had been purchased with the funds provided by him, he had also stated that the suit property is a joint family property. The trial Court had also found that D.W.1 had stated in his evidence that his father was a daily wage earner and that he did not have any ancestral property. If the suit property is to be considered as a joint family property it should have been purchased, either out of the income of the members of the joint family, or out of the income derived from the nucleus of the joint family properties. However, in the present case such a situation was not existing.

9. The trial Court had also found, that D.W.1 had stated, during the cross examination, that the suit property is not a self acquired property and that it had been purchased along with his brother. In fact, in his pleadings, the defendant had

stated that he had contributed the entire funds for the purchase of the suit property out of his earnings. It had also been noted that D.W.1 had claimed, in his pleadings, that he had given his money to his brother to purchase the property in his brothers name. However, the property had been purchased in the name of his brothers wife, the plaintiff in the suit. However, during his cross examination, D.W.1 had stated that he had given his money to his mother and his mother had asked the plaintiffs husband to purchase the suit property in his name.

10. It had also been admitted that there was no dispute, with regard to the property purchased after the year, 1983. However the suit property had been purchased only in the year, 1984. Further, the defendant had admitted that subsequent to the dispute, in the year, 1983, no other property had been purchased in the name of the family members. The defendant had also accepted the fact that the plaintiffs husband was a wealthy man and therefore, there cannot be a presumption that he could not have purchased the suit property from his own funds, in the name of his wife. The defendant had also admitted that his salary was Rs.100/- and that he was maintaining his family, including his four children, out of his own income. Exs.B-6 to B-8, the pass books in the name of the defendant, relate to the years,1986 and the subsequent years. However, the suit property is said to have been purchased in the year,1984, itself.

11. It had also been found that the defendant was not aware of the fact as to the identity of the person, from whom the property had been purchased and the consideration that had passed to the vendor of the property. The defendant had not been in a position to show the source of funds for the purchase of the property and that he has not been in a position to show that he was in possession of the original documents relating to the suit property. Further, no steps had been taken by the defendant to recover possession of the property, even though it is said to have been purchased in the year, 1984, using the funds provided by the defendant. In fact, the defendant had given a letter of undertaking, marked as Ex.A-16, stating that he would vacate the suit property, as requested by the plaintiff. As such, the trial Court came to the conclusion that the claims made by the plaintiff were true and valid and therefore, the suit had been decreed in favour of the plaintiff.

12. Aggrieved by the judgment and decree of the trial Court, dated 15.9.2005, made in O.S.No.660 of 1998, the defendant in the suit had filed an appeal before the Principal Subordinate Court, Mayilduthurai, in A.S.No.13 of 2006.

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

- 1) Whether the plaintiff is having any right in the suit property?
- 2) Whether the plaintiff is entitled to a decree of recovery of possession as prayed for by her?
- 3) Whether the appeal is to be allowed?

14. The First Appellate court had confirmed the findings of the trial Court by finding that the defendant in the suit, who was the appellant in the first appeal, ought to have substantiated his claim that he had provided the funds for the purchase of the suit property, as claimed by him. However, he had failed to do so. He has made contradictory claims, both in his pleadings, as well as in his evidence. It had also been found that there was no evidence adduced on behalf of the appellant to show the source of his income, for the purchase of the suit property. Further, from Ex.A-16, it had been found that he had undertaken to vacate the suit premises. In such circumstances, the first appeal filed by the defendant had been dismissed.

15. Aggrieved by the judgment and decree of the First Appellate Court, dated 25.9.2007, made in A.S.No.13 of 2006, the second appeal had been filed by the defendant in the suit, who was the appellant in the first appeal, raising the following questions, as substantial questions of law.

1. Whether the Lower Appellate Court erred in law in holding that the defendant had not contributed any amount for the purchase of the suit property when the defendant and the plaintiffs husband are the members of joint family and the defendant is employed in Government service.?
2. Whether the Lower Appellate Court erred in law holding that the defendant had not established his case when the family is joint and contrary to the legal presumption that any acquisition made by the joint family belongs to all the

members of joint family?

3. Whether the plaintiff had prove her case viz that the defendant is only a permissive occupant of the suit property?

4. Whether the Courts below erred in law in granting the relief of past mesne profits without relegating the same to a separate proceeding under Order 20 Rule 12 of C.P.C.?

5. Whether the Courts below misconstrued and misappreciated the evidence on record?

16. The learned counsel appearing on behalf of the appellant had submitted that the Courts below had failed to see that the plaintiff is the wife of the defendants elder brother and that all of them were living as a joint family. Therefore, the suit for recovery of possession against a co-owner is not maintainable in law. The Courts below had failed to see that the defendant was employed under the Tamil Nadu Electricity Board and that he was earning an income, whereas, the plaintiff and her husband have no known source of income from which she could have purchased the suit property. The Courts below ought to have held that the suit property had been purchased, with the funds provided by the defendant and that he had spent a substantial amount of money to renovate the property.

17. The Courts below had erred in ignoring Exs.B-6 to B-9, marked in favour of the defendant, by assigning erroneous reasons. The Courts below had erred in relying upon Exs.A-16 and A-17 to decide the issues arising for their consideration in favour of the plaintiff. The Courts below had also committed an error in granting the decree for past mesne profits, without any evidence on record.

18. The learned counsel had also submitted that the Courts below ought to have considered the facts and circumstances of the case in view of the evidence available on record, in totality, instead of considering specific aspects of evidence, separately. Further, though the plaintiff had claimed that the defendant was a permissive occupant in the suit property, there was no proof shown to sustain such a claim. The Courts below had had also erred in considering Ex.A-17 in favour of

the respondent stating that the defendant had, voluntarily, undertaken to vacate the premises in question. The decision of the Courts below is based more on presumptions and assumptions, instead of being based on the evidence available on record.

19. Per contra the learned counsel appearing on behalf of the respondent had submitted that the Courts below had arrived at the right conclusions, based on the evidence available on record. The defendant had examined himself, as D.W.1. There was no other independent evidence in favour of the claims made by the defendant. From the sale deed, dated 1.9.1984, marked as Ex.A-1, nothing could be shown by the defendant to support his contention that the suit property had been purchased, with the funds provided by him.

20. In fact, the defendant in the suit, who is the appellant in the present second appeal, had made contradictory statements, both in his written statement and in his evidence. When he had claimed that he had given the money to his mother to purchase the suit property, he had also stated that the money was given to his brother for the purchase of the suit property. He had also stated that the suit property was to have been purchased in the joint names of himself and his brother. He had also stated that the property forms a part of the joint family properties. He had also admitted that none of the properties had been purchased after the year, 1983. However, the suit property had been purchased only in the year, 1984. As such, the Courts below were right in coming to their conclusions that the plaintiff has substantiated her claims, by sufficient evidence and that the defendant had not been in a position to prove that the suit property had been purchased by the funds provided by him. Therefore, the Courts below had rightly decreed the suit, as prayed for by the plaintiff in the suit, who is the respondent in the present second appeal.

21. In view of the submissions made by the learned counsels appearing on behalf of the plaintiff, as well as the defendant and in view of the evidence available on record, this Court is of the considered view that the appellant has not shown sufficient cause or reason to set aside the concurrent findings of the Courts below. Both the trial Court, as well as the First Appellate Court, had rightly arrived at their

conclusions, based on the evidence available on record. It is clear that the suit property had been purchased in the name of the plaintiff from the sale deed, dated 1.9.1984, marked as Ex.A-1. There is nothing shown by the appellant herein to substantiate his claim that the suit property had been purchased with the funds provided by him. Further, he has not been in a position to show the source from which he had provided the funds. Nor has he been in a position to clearly state the particulars of the vendor of the suit property.

22. Further, he has been making contradictory statements, both in his written statement, as well as in his evidence, as found by the Courts below. The contentions raised on behalf of the appellant cannot be countenanced. As such, it is clear that the claims made by the appellant are not sustainable in the eye of law. Further, there is no substantial question of law raised in the present second appeal, for the consideration of this Court. Since, the second appeal is devoid of merits, it is liable to be dismissed. Hence, it is dismissed. No costs.

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