

Kasambu and ors. Vs. Sumathy.

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Court : Chennai

Decided On : Jun-06-2012

Judge : T.Raja, J.

Acts : [Code of Civil Procedure,\(CPC\) 1908](#) - Section 100; Indian Stamp Act - Section 35

Appeal No. : Second Appeal No.69 of 2006

Appellant : Kasambu and ors.

Respondent : Sumathy.

Advocate for Def. : Mr.R.Muralidharan, Adv.

Advocate for Pet/Ap. : Mr.R.N.Amarnath, Adv.

Judgement :

Second Appeal filed under Section 100 CPC against the judgment and decree made in A.S.No.No.87/2004 dated 25.8.2005 on the file of the 1st Additional Sub-Ordinate Judge, Cuddalore reversing the judgment and decree made in O.S.No.438/98 dated 28.9.2004 on the file of the Principal District Munsif, Cuddalore.

JUDGMENT

1. In the present Second Appeal preferred by the defendants/appellants the issue raised is whether the lower appellate Court, while reversing the judgment of the trial court, has correctly passed the impugned judgment.

2. The plaintiff/respondent herein filed a suit against the defendants/appellants herein seeking delivery of vacant possession of the suit schedule property along with damages on the ground that the defendants/appellants deliberately and willfully neglected to pay the monthly rent. The trial court dismissed the suit. As against the dismissal of the suit, when the first appeal was filed, the lower appellate Court reversed the judgment of the trial Court and decreed the suit. Questioning the validity of the conclusions given by the lower appellate Court, the present Second Appeal has been brought by the defendants/appellants herein.

3. Brief facts leading to the filing of the present Second Appeal are as follows:

(i) One Murugaiyan was the tenant of the site under the Padaleeswarar temple. He has also put up the superstructure. But, after his death, his wife Leelavathy, became the tenant of the temple with ownership on the superstructure along with the tenancy rights in respect of the site. It was also further averred that the plaintiff/respondent had purchased the superstructure from Leelavathy by means of sale deed dated 29.8.1988 for a valuable consideration of Rs.7,500/-. After such purchase, it was also averred that the temple also recognised her as tenant of the site. Thereafter, the suit property was divided into 3 portions. The northern portion is occupied by the first defendant, the middle portion is occupied by the 2nd defendant and the southern portion is occupied by the 3rd defendant. The tenancy being oral, all of them have paid Rs.100/- each as advance and initially, the monthly rental was fixed at Rs.20/- and later on, increased to Rs.25/- per month. After some time from 1.1.1993 all these defendants joined together and ceased to pay the rent. Since they have committed willful default in payment of rent, the plaintiff issued notice dated 11.7.1998 to the defendants terminating tenancy and calling upon them to surrender the vacant possession. The plaintiff filed a suit seeking delivery of possession of the suit property to the plaintiff with another direction to pay the plaintiff damages for use and occupation from the date of suit till the date of delivery with interest at 12% per annum.

(ii) A detailed written statement was filed by the defendants 1 and 2 denying the allegation that Leelavathi was the owner of the superstructure and the tenant in respect of the site. Leelavathy, the so-called vendor has no right to sell the above superstructure or site. But it was admitted by the defendants/respondents that the suit property belongs to Padaleeswarar temple, Thirupathiripuliyur. It was also further denied that the plaintiff never became the owner by purchase of the superstructure and the temple also not registered her name as the tenant of the site. Further, the defendants also denied the relationship of landlord and tenant between the plaintiff and the defendants by stating that the defendants are the absolute owners of the superstructure since they have put up the same before 1980 in the abovesaid site and from the date of raising the superstructure, they are tenants under the Padaleeswarar temple only for the site.

4. Under these circumstances the matter was taken up by the trial court. The trial court, after considering the evidence of P.Ws.1 and 2 and the documentary evidence marked as Exs.A1 to A107 and the defendants' witness through D.W.1 and their documentary evidence Exs.B1 to B28, accepting the evidence of Tmt.Leelavathi-P.W.2, the vendor of the plaintiff in support of Ex.A.107, sale deed dated 29.8.1988 in and by which M.Leelvathy has sold the same to the plaintiff-G.Sumathy, wife of G.R.Kantharuban for a sum of Rs.7,500/- by registered sale deed dated 29.8.1988, categorically held that the superstructure put up in Door No.60, in Mariamman Koil Street belongs to the plaintiff. However, as there is no evidence to show that the plaintiff has let out the superstructure to the defendants, refused to accept the relationship of landlord and tenant between the plaintiff and defendants to order delivery of possession, and dismissed the suit.

5. Aggrieved by the judgment of the trial Court, the plaintiff preferred the first appeal before the learned first appellate Court. The learned first appellate Court, agreeing with the case of the plaintiff that the plaintiff/respondent herein has rightly established her case that one Leelavathi was the owner of the superstructure but tenant in respect of the site and who by means of sale deed dated 29.8.1988 sold the same in favour of the plaintiff for a valuable consideration of Rs.7,500/- and the evidence produced before the trial court to prove that P.W.2-Tmt.Leelavathi as owner of the superstructure and also as a tenant in respect of the site has only

sold the same under sale deed dated 29.8.1988, by further holding that the defendants/tenant have miserably failed to establish their case that they were tenants of the Padaleeswarar temple, reversing the findings given by the trial court, allowed the first appeal.

6. Challenging the judgment of the learned first appellate Court, the present Second Appeal is filed by the defendants/tenants. This Court at the time of entertaining the present Second Appeal, framed the following substantial questions of law:

"1.When Ex.A.107 is not a registered document whether the Lower Appellate Court is right in relying on Ex.A107 to hold that the respondent got title to the property under Ex.A107 ?

2.When the Tamil Nadu Building (Lease and Rent Control) Act 1961 is applicable to the suit property, whether the Lower Appellate Court is right in decreeing the suit when the respondents filed the suit seeking eviction of the appellants on the basis that the appellants are tenant under the respondent with respect to the superstructure ?

3.Whether the Lower Appellate Court is right in relying on Ex.A107 when Ex.A107 is proved in accordance of law, especially when the said document was not filed along with the plaint, not properly stamped and when the scribe, witness to the document and the purchaser were not examined?"

7. (i) The learned counsel appearing for the defendants/appellants would submit that the learned first appellate Court while reversing the findings of the trial Court has erroneously given weightage to an unregistered sale deed which was marked as Ex.A107 to show that P.W.2-Leelawathi claiming to be the vendor of the plaintiff has sold the leasehold right in the superstructure under Ex.A107. When the document was an unregistered one, the learned first appellate Court has wrongly accepted the unregistered document and erroneously decreed the suit. The approach of the learned first appellate Court is completely running contrary to the ratio laid down by this Court in R.DEIVANAI AMMAL (DIED) AND ANOTHER v. G.MEENAKSHI AMMAL AND OTHERS (2004 (4) CTC 208) wherein this Court

has held that any document which is not stamped and not registered cannot be looked into for any purpose in view of the specific bar under Section 35 of the Indian Stamp Act. In the present case, the document-Ex.A107 comes within the legal position. It purports to create, declare, assign, interest of superstructure. Therefore, it must be properly stamped and duly registered as per the Stamp Act and Indian Registration Act. In such circumstances, the holding of the lower appellate Court that it is an acceptable document, should be set aside as it is totally contrary to the settled legal principle.

(ii) The learned counsel for the defendants/appellants further argued that when Ex.A107 being an unregistered document and also not filed along with the plaint, without even properly examining the scribe and witnesses to the document, the learned first appellate Court wrongly came to the conclusion that the plaintiff/respondent has got title to the suit property under Ex.A107.

(iii) The learned counsel further contended that when there was no landlord and tenant relationship between the plaintiff and the defendants, the question of granting delivery of possession by the impugned judgment in favour of the plaintiff/respondent is totally unjustified and uncalled for, for the simple reason that Ex.A107-alleged sale deed dated 29.8.1988 executed by P.W.2 in favour of plaintiff has not conveyed any right in her favour.

(iv) The learned counsel also argued that when admittedly the suit property belongs to the Padaleeswarar temple, the temple itself is not impleaded in the suit and without impleading the said temple as one of the contesting respondents the suit is not maintainable. Further, in the notice sent through the counsel under Ex.A.1, the Door Number is given as No.60 whereas the defendants are residing at Door No.61. Further, Exs.A5 to A50 do not carry the Door Number. But the first appellate Court erroneously held that Exs.A5 to 50 are relating to the suit property, hence, such findings suffered from non-application of mind and therefore, they are liable to be interfered with by this Court.

8. On the other hand, the learned counsel appearing for the plaintiff/respondent submitted that the suit property is a site with superstructure made with brickwalls plastered with mud and thatched roof. Though the site belongs to Padaleeswarar

temple, Cuddalore, originally one of the tenants of the site under Padaleeswarar temple, namely, Murugaiyan put up the superstructure, and after his death, his wife Leelavathi-P.W.2 became entitled to the superstructure. Therefore, as the owner of the superstructure and also tenant in respect of the site belonging to the temple, she had sold the superstructure for valuable consideration of Rs.7,500/- to the plaintiff/respondent and the temple also has recognised the plaintiff as the tenant of the site. Therefore, the plaintiff immediately after the purchase of the superstructure with leasehold right in the site, divided the same into three equal portions, northern portion was let out to D1 while the middle portion and southern portion were given to D2 and D3 respectively. Since there was an oral arrangement between the plaintiff and the defendants for payment of rent as tenants under the plaintiff, in the beginning all the 3 defendants paid the monthly rent of Rs.20/- along with Rs.100/- each as advance and later on, it was increased to Rs.25/- per month. For the reason best known to them, after 01/01/1993, they stopped paying the rent colluding with each other, by committing default in payment of rent and also wanted to purchase their portions in their possession. As the plaintiff was not willing to sell the leasehold right along with superstructure in favour of the defendants, by terminating the tenancy, the plaintiff under notice dated 11/7/1998 called upon them to surrender vacant possession, and finding no results from them, she filed the suit.

9. The trial court after accepting the evidence of P.W.2-Leelavathi, wife of late Murugaiyan who was the original tenant under the Padaleeswarar Temple and owner of the superstructure thereon by holding that Ex.A107 is a genuine sale deed dated 29.8.1988 selling the lease hold rights in the superstructure to the plaintiff and further finding that her husband late Murugaiyan was in occupation of the suit property as a tenant under the temple, ironically for an insignificant reason that the plaintiff has failed to prove that the defendants are not tenants in the suit property when dismissed the suit, the learned first appellate Court considering the same as self-contradictory, for the reason that when P.W.2-Leelavathi, wife of late Murugaian, has executed the sale deed Ex.A107 in favour of the plaintiff by selling leasehold rights in the site and also the construction put up by Murugaian, the trial court cannot refuse to order delivery of possession for the reason that the plaintiff failed to prove the defendants as tenants. When the learned first appellate Court

has found that the defendants/appellants herein have denied the title and ownership of the superstructure of the plaintiff and also asserted that they are the occupiers of the said land and hence they are entitled to have the rent paid to the temple authority as a direct tenant, in my considered opinion, the learned first appellate Court was right in decreeing the suit as prayed for directing the defendant/appellant to hand over the vacant possession of the suit property to the plaintiff/respondent. In view of the above reasons, the substantial questions of law Nos.1 and 2 are answered against the appellants. This conclusion is inevitable for one another reason that the defendants/appellants have also in their written statement took a solid statement that they have put up the structure before 1980 and since then they are staying as tenants under Padaleeswarar temple. On the other hand, the evidence on record clearly shows that their applications filed before the temple to accept them as tenants under Padaleeswarar temple for the site, have not been till date disposed of. Therefore, they are neither the tenants under the temple nor tenants under the plaintiff/respondent. In view of these facts and circumstances, the suit filed by the plaintiff/respondent seeking a decree against the defendants to hand over vacant possession of the respective portions of the suit property is well maintainable.

10. Further, though the testimonies Exs.A.89 to A94 showing the payment of Corporation Tax for the suit property in the name of late Murugaiyan were accepted as documents relating to the suit property, yet the oral evidence produced by the wife of late Murugaiyan, Leelavathi-P.W.2, vendor of the suit property in favour of the plaintiff, deposing that she had sold the leasehold right along with the superstructure in favour of the plaintiff ought not to have been disbelieved for no reason by the trial Court. Therefore, as rightly submitted by the learned counsel appearing for the plaintiff/respondent, the inconsistent conclusion reached by the trial Court, was rightly set aside by the learned first appellate court.

11. Further, Ex.A107-sale deed executed by P.W.2-Leelavathi dated 29.8.1988 has transferred the leasehold right in the suit property in favour of the plaintiff from 1980. But, the trial Court has wrongly lost sight of Exs.B1 to B5 receipts issued by the Padaleeswarar temple in the name of Murugaiyan which showed that property taxes have been paid to Door Nos.60 and 61 from 9.7.1986. The other documents

Exs.B.6 to B14 for payment of rent to the temple also have carried the name of original tenant late Murugaiyan which clearly show that the defendants who were tenants in the suit have refused to pay the rent to the subsequent purchaser of the suit property, namely, in favour of the plaintiff. These material aspects having been completely overlooked by the trial Court, the first appellate Court accepting the late Murugaiyan as the owner of the superstructure and tenant under the temple further finding that his wife Leelavathi-P.W.2 having sold the same to the plaintiff, the defendants being tenants under the plaintiff cannot have any right to continue in the suit property while denying the title of the plaintiff, and consequently ordering delivery of possession is well founded.

12. Another argument advanced by the learned counsel for the appellants that the sale deed Ex.A107 dated 29.08.1988 being unregistered and unstamped document, the courts below should not have given legal weightage to it since unregistered and unstamped documents cannot be received in evidence, is also liable to be rejected for the simple reason that Ex.A107 dated 29.08.1988 is duly stamped. A perusal of Ex.A107 shows that the document is duly stamped and in view of that the learned District Munsif's Court, Cuddalore has admitted as Ex.A107. The communication issued by the Revenue Divisional Officer, Cuddalore to the Principal District Munsif, Cuddalore dated 17.3.2004 states as follows:

"A4/4665/01 dt.17.3.04

Certified that the deficit stamp duty of Rs.2,000/- (Rupees two thousand only) is collected from Tmt.Leelavathi of Thirupapuliyur and remitted in chalan no.56 dt.7.11.03 and now the instrument is duly stamped.

Sd/-

17.3.04

Revenue Divisional Officer

CUDDALORE"

In view of the certificate issued by the Revenue Divisional Officer, Cuddalore to the learned District Munsif's Court, Cuddalore that the said Leelavathy had remitted a sum of Rs.2,000/- as deficit stamp duty, the learned District Munsif, Cuddalore has taken on record the sale deed as admissible document. Therefore, the argument of the learned counsel for the appellant not to give weightage to the same also fails. In view of the principle laid down by a Division Bench of this Court in 2001 (1) CTC 112 in the case of A.C.LAKSHMIPATHY AND ANOTHER V. A.M.CHAKRAPANI REDDIAR AND FIVE OTHERS holding that for collateral purposes a document stamped but not registered could be looked into. Further, once a stamped instrument is admitted in evidence by the trial court, the same cannot be called in question at any stage of the suit proceeding on the ground that the instrument was not duly registered. Ex.A107-sale deed dated 29.8.1988 in and by which the plaintiff had purchased the leasehold right of the site along with the superstructure from P.W.2-Leelavathi, wife of Murugaiyan, clearly comes within the legal position. It is therefore purported to create, declare, assign, limit or extinguish any right, title or interest of any immovable property.

13. Accordingly, answering the substantial questions of law against the appellants, this Second Appeal fails and the same is dismissed with costs throughout. Resultantly, the judgment and decree of the trial court is set aside. The impugned judgment and decree of the learned first appellate Court is confirmed.

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