

(2009) 12 MAD CK 0198

Madras High Court

Case No: Second Appeal No. 646 of 1999

M. Manickam and Another

APPELLANT

Vs

R. Rukmini and Another

RESPONDENT

Date of Decision: Dec. 11, 2009

Acts Referred:

- Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Section 10, 14, 16

Citation: (2010) 2 LW 37

Hon'ble Judges: M. Jeyapaul, J

Bench: Single Bench

Advocate: Suresh Viswanath, for the Appellant; V. Prakash for K. Sudalaikannu, for the Respondent

Final Decision: Dismissed

Judgement

M. Jeyapaul, J.

Defendants, who suffered a decree before both the courts below, have preferred the present second appeal.

2. The suit is one for declaration of title with respect to B schedule property and also for delivery of vacant possession. The Plaintiffs also sought for past arrears of rent and future rent.

3. It is the case of the Plaintiffs/Respondents that the Plaintiffs purchased A schedule property from one Vamannan by virtue of the sale deed dated 17.10.1978. The husband of the first Defendant and father of the second Defendant was let in possession of B schedule property by Vamannan as tenant on a monthly rent of Rs. 10/=. Claiming that Marumuthu, husband of the first Defendant, attorned the tenancy and subsequently paid rent for a few months after the purchase of the suit B schedule property by the Plaintiffs, the Plaintiffs have sought for the aforesaid reliefs having failed to obtain a relief of eviction before the Rent Controller, for there was a live dispute raised by the Defendants as to the title to B schedule property.

4. The Defendants resisted the suit on the ground that Marimuthu was given possession about 15 years ago by Vamannan, the vendor of the Plaintiffs. Having disputed the allegation found in the plaint that the Defendants are the tenants of the suit B schedule property, they have come out with a defence that they have been in possession and enjoyment of the suit property for over a statutory period and prescribed title to the suit property. Therefore, the Defendants sought for dismissal of the suit.

5. On the side of the Plaintiffs, the second Plaintiff was examined as PW1 and the vendor of the Plaintiffs was examined as PW2. As many as 12 documents were marked on their side. On the side of the Defendants, the first Defendant was examined as DW1 and the alleged sub-tenant of the Defendants was examined as DW2. Totally 4 documents were marked on the side of the Defendants.

6. The Trial Court as well as the first appellate court, having accepted the case of the Plaintiffs that they have become owners of the B schedule property by virtue of the sale deed, Ex.A2 dated 17.10.1978, held that the Defendants are bound to vacate the suit B schedule property as they failed to establish adverse possession pleaded by them and they have been found in permissive possession of the suit B schedule property. The courts below, having found that the Plaintiffs have not produced any document to establish that the first Defendant's husband and thereafter, the Defendants were let into possession of the suit properties in their capacity as tenants, negated the relief for past rent and future rent.

7. At the time of admission of the second appeal, the following substantial questions of law were formulated for determination by this Court:

1. Whether, in a suit instituted in pursuance of the 2nd proviso to Section 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, a decree for recovery of possession can be passed without any finding as to the existence of the grounds enumerated in Sections 10, 14 or 16 of the Act.

2. Whether the burden of proof does initially lie on the Plaintiff to prove his title in a suit for recovery of possession.

3. Whether the admission in the plaint that the possession of the Defendants was hostile from 1979 onwards is not sufficient to prove the Defendants' plea of adverse possession.

8. Learned Counsel appearing for the Appellants/Defendants would vehemently submit that the Plaintiffs, who came forward with a case that Marimuthu, the husband of the first Defendant was inducted into possession of the suit B schedule property as tenant and thereafter, the Defendants continued to be the tenant, failed to produce any document to show that they were so inducted in the suit property. Admittedly, the Defendants have been in possession and enjoyment of the suit property long prior to the purchase of the suit B schedule property by the Plaintiffs.

Inasmuch as the suit has been filed well after the prescribed period of 12 long years, the Defendants have prescribed title to the suit property. Referring to the eviction proceedings originally initiated by the Plaintiffs, the learned Counsel appearing for the Defendants would submit that the competent Rent Controller had already decided that there was no landlord-tenant relationship between the Plaintiffs and the Defendants. Though the Plaintiffs have produced title deeds to establish their title to the suit property, inasmuch as the Defendants have admittedly been in possession of the suit property for over 12 long years, the suit for declaration of title and recovery of possession will have to be dismissed.

9. Learned Counsel appearing for the Respondents/Plaintiffs would submit that the title deeds produced by the Plaintiffs would go to establish that Vamannan, who was the undisputed owner of the suit A schedule property, sold away the said property in favour of the Plaintiffs under the sale deed, Ex.A2 dated 17.10.1978. Even as per the own showing of the Defendants, Marimuthu, the husband of the first Defendant was put into permissive occupation of the suit property by Vamannan. The Tax Receipt, Ex.B1 would also show that Marimuthu had paid tax only on behalf of Vamannan. It is his submission that once the title of the suit property is established by the Plaintiffs, the Defendants, who have set up a plea that they have prescribed title by adverse possession, will have to establish that they have prescribed title by adverse possession. A permissive occupier cannot claim adverse possession as against the real owner of the suit property, he would further submit. Therefore, he would defend the verdicts pronounced by the courts below.

10. It is true that in the Rent Control proceedings initiated by the Plaintiffs herein as against the Defendants, it was held by the competent Rent Controller under Exs.A3 to A5 that the Plaintiffs failed to establish that there was any attornment of tenancy by Vamannan in favour of the Plaintiffs and that there was a live dispute between the Plaintiffs and the Defendants with respect to the title of the suit property. Such a finding recorded by the Rent Controller would not disentitle the Plaintiffs to seek for declaration of title and also for recovery of possession if they establish title to the suit property and the Defendants fail to establish that they had prescribed title to the suit property.

11. Ex.A1 dated 2.12.1975 would go to establish that Vamannan got the suit property in the partition that took place in his family. Under Ex.A2 dated 17.10.1978, the said Vamannan sold the suit A schedule property in favour of the Plaintiffs herein. The Plaintiffs, having purchased the suit property under Ex.A2, have been paying property tax as evidenced by Exs.A6 to A11. Ex.A12 dated 27.4.1954 also would go to show that the suit property was dealt by Vamannan when the property was not divided. The aforesaid documents would go to establish that the Plaintiffs have proved their title to the suit property.

12. As rightly pointed out by the learned Senior Counsel appearing for the Respondents/Plaintiffs, the Defendants have come out with an unambiguous

defence that Marimuthu, husband of the first Defendant was permitted to occupy the suit property about 15 years prior to the litigation. Ex.B1 would also establish that Marimuthu, husband of the first Defendant paid property tax not in his individual name but, in the name of the original owner Vamannan and his brother Sivaramakrishnan. Ex.B1 does not go to show that the Defendants or the husband of the first Defendant paid property tax in their names asserting title to the suit property. It appears that Marimuthu had paid property tax only in his capacity as a permissive occupier. The application submitted by the second Defendant for admission into a school under Ex.B2 dated 3.6.1970 would show that the Defendants have been in possession of the suit B schedule property, but, there is no evidence on the side of the Defendants to establish that the Defendants openly and continuously enjoyed the suit properties asserting their right to the suit property.

13. Once the Plaintiff establish his title to the suit property, the burden shifts on the Defendant to establish that he perfected title by adverse possession. In the instant case, it is found that the Plaintiffs have established their title to the suit properties. The Defendants miserably failed to establish that they perfected title by adverse possession. Though the Plaintiffs have not established that the Defendants are only the tenants of the suit property, they are still entitled to declaration of title and also for recovery of possession as it has been established that the husband of the first Defendant was only put in possession of the suit property on permission.

14. In a suit for declaration of title and recovery of possession from the person who has been in occupation of the subject property, the Plaintiffs are not bound to establish the existence of any of the grounds enumerated u/s 10 or 14 or 16 of the Tamil Nadu Buildings (Lease and Rent Control) Act. True it is that the initial burden of proof of title lies on the Plaintiffs. The Plaintiffs, in the instant case, have established their title to the suit property. It is held that they have discharged their initial burden of establishing title to the suit property. On facts, it is found that there was no admission by the Plaintiffs that the Defendants have been in hostile possession of the suit properties right from the year 1979. In fact, the Defendants have set up a plea that the first Defendant's husband Marimuthu was a permissive occupier of the suit property under Vamannan. Therefore, it is held that there is no admission on the part of the Plaintiffs that the Defendants have been in possession hostile to the interest and title of the Plaintiffs right from the year 1979. It is found that the courts below, having thoroughly adverted to the evidence on record, has rightly returned findings that the Plaintiffs, who have established their title to the suit property, are entitled to declaration of title and also for recovery of possession from the permissive occupier of the suit property. There is no warrant for interference with the concurrent verdict of the courts below.

15. In view of the above, confirming the judgments of the courts below, the second appeal stands dismissed. There is no order as to costs. The Defendants shall vacate the suit premises within three months from the date of this judgment.