

SUPREME COURT OF INDIA

Masjid Farkunda Mosque

Vs.

Hamed Basha

C.A.No.15608 of 1996

(K. Ramaswamy and G. T. Nanavati JJ.)

02.12.1996

ORDER

1. Leave granted.

2. Though respondents have been served, they are not appearing either in person or through counsel. We have taken the assistance of Shri A. T. M. Sampath, learned counsel appearing for the appellant, and have gone through the judgment and records placed before the Court.

3. This appeal by special leave arises from the judgment of the Madras High Court, made on April 12, 1996, in Second Appeal No. 372/83. The appellant had filed a suit for ejection of Nos. 1 to 3 from the suit property and for recovery of possession thereof on the pleading that the house bearing Door No. 12-A and 12-B (old No. 12-A) in Mosque Street, Royapuram, Madras-13 was his property; the super-structure thereof was purchased by the appellant by sale deed dated September 13, 1975, from Mohd. Hussain under whom the third respondent came into possession as his sub-lessee. Therefore, the possession may be directed to be given to him. Though the trial Court and the appellate Court had held that the appellant is the owner of the property and the 3rd respondent is a

sub-lessee of respondents Nos. 1 and 2, the High Court has gone into the documentary evidence. It would appear that this property is situated in a triangular passage leading to Mosque Street, Adem Saheb Street and Thoppa Modali Street in Madras City. It is also an admitted position that the 3rd defendant-3rd respondent had purchased the same land under a registered sale deed in the year 1969, much earlier to the appellant's purchasing the alleged super-structure on the said property. The High Court also found that the 3rd defendant had purchased the super-structure. It is sought to be contended by the appellant that the lands, the subject-matter of the purchase of the super-structure by the appellant and the respondents, are different and distinct and, therefore, the finding recorded by the High Court is not correct in law. We need not go into the question in this behalf for the reason that the appellant has proceeded on the premise that the 3rd respondent is a sub-lessee of respondent-defendant Nos. 1 and 2 alleged to have been let in by Mohd. Hussain, who said to be the owner of the super-structure from whom the appellant had claimed title. In effect the decree sought for is against the real owner of the land, namely the third defendant. Under these circumstances, the suit as framed by the appellant was not correctly decreable. The High Court, therefore, was right on this ground in rejecting the claim of the appellant and dismissing the suit.

4. The appeal is accordingly dismissed. No costs.

Appeal dismissed.