

SUPREME COURT OF INDIA

P. Vijaya (Smt)

Vs.

M. Santharaj

(V.N. Khare and A.P. Misra JJ.)

14.03.2000

ORDER

V.N. KHARE, J.

1. The Appellants are the Defendants in a suit filed by Plaintiff-Respondent. Appellant No. 1 is the daughter of one B. Parathasarthi Naidu and Appellant No. 2 is the husband of Appellant No.1. In the year 1959, Appellants were married. On 30th July, 1968 the father of Appellant No. 1 purchased the land. In the year 1973, the Appellants made certain construction on the land purchased by father of Appellant No. 1 wherein they are residing. In the year 1979. B. Parathasarthi Naidu filed a petition for eviction under Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the Act) for eviction of the Appellants on the ground of willful default in payment of rent and also on the ground of denial of title. The said petition was dismissed on the ground that the petition involved decision On the question of title. It appears that, subsequently, the father of the Appellant No. 1 sold the property in dispute in favour of the Plaintiff-Respondent by means of a sale deed. The Plaintiff-Respondent thereafter filed a suit for declaration that he is the owner of the property in dispute as well as for possession. A written statement was filed by the Defendants-Appellants wherein the plea taken was that the father of Appellant No. 1 had gifted the property to her and, alternatively, it was pleaded that they have acquired title by virtue of adverse possession. The trial court decreed the suit. The Defendants-Appellants filed an appeal before the first appellate court. The first appellate court found that the structure on the land was constructed by the Defendants-Appellants and, therefore, they are entitled to compensation. The first appellate court directed that either the Defendants may be permitted to remove the structure standing on the land or alternatively the plaintiff may be required to pay compensation in respect thereof. To this extent the decree of the trial court was modified and the appeal was dismissed in the aforesaid terms. The Defendants-Appellants thereafter filed a Second Appeal before the High Court. However, the Plaintiff-Respondent did not prefer any appeal against that part of judgment and order of the High Court modifying the decree of the trial court. To that extent the judgment of the first appellate court became final against Plaintiff-Respondent. The High Court dismissed the Second Appeal affirming the decision of the first appellate court. It is against the said decision the Defendants-Appellants are in appeal before us.

2. Learned Counsel appearing for the Appellants urged that the father of Appellant No. 1 having permitted the Appellants to put up construction on the land in dispute for the purpose of their residence, in law, it amounted to a licence and the status of the Appellants became one of licensee. Therefore, the Appellants could not be dispossessed from the property in dispute.

3. The first appellate court no doubt has observed as under:

If we delve into the question as to how the first Defendant and her husband are living in the property some facts will be clear. It can be taken that Parathasarthy has permitted the first Defendant to put up a structure in the property as she is his daughter.

4. In fact, the argument is sought to be built up on the said observation of the first appellate court extracted above. We have gone through the pleadings of the parties and find that neither any plea in this regard was taken in the written statement nor any issue in respect thereof was struck. Not only that no evidence was led by the Defendants-Appellants to establish that they are licensee. It appears, it is because of the relationship of B. Parathasarthy Naidu with Appellant No. 1, the first appellate court drew inference of according permission to set up construction on the land in dispute. In the absence of any plea or issue on the question of Appellant's status being of a licensee, the Appellants are not entitled to raise this question for the first time in this Court. We are, therefore, not inclined to entertain the argument.

5. Learned Counsel relied upon two decisions Ram Sarup Gupta (dead) by LRs. v. Bishun Narain Inter College and Ors. and The Associated Cement Companies Ltd., by Manager J.P. Munsiff v. L.S. Ramakrishna Gowder AIR 1965 Madras 318. In the aforesaid cases, it was held that the question whether an occupant is a licensee has to be inferred from the conduct of the parties. Here, what we find that the conduct of parties is such that in the petition before the Rent Control Authority the Appellants denied the title of B. Parathasarthy Naidu who was father of Appellant No. 1. Similarly in the suit filed by the Plaintiff-Respondent, the Appellant's stand was that they have acquired title by virtue of the gift deed and alternatively by adverse possession. We, therefore, find that the aforesaid two decisions relied upon by the learned Counsel for the Appellant are not helpful to the Appellant's case.

6. Learned Counsel for the Appellant then urged that on the application of principle of promissory estoppel, the Plaintiff-Respondent is estopped from evicting the Appellants. In fact, the argument is that on the expressed representation of the father of the Appellant No. 1, the Defendants-Appellants raised the structure on the land in dispute and it was not now open to the Plaintiff to bring suit for eviction of the Appellants. This plea also, we do not find, having taken in the written statement. No issue in this regard was framed. The Appellant has not led any evidence in this regard. On the contrary, the Defendants-Appellants have pleaded in their written statement that they have acquired the title by virtue of gift deed and, alternatively by adverse possession. Under such circumstances the Appellants are not entitled to raise this argument.

7. So far as the question of grant of compensation to the Appellants or removal of structure by the Appellants as directed by the first appellate court is concerned, the Plaintiff-Respondent has not filed any appeal and therefore, that part of judgment has attained finality. Learned Counsel appearing for the Respondent urged that under Order 41 Rule 33 C.P.C. we can grant appropriate relief. On the facts and circumstances of the case, we do not find it a fit case to entertain that plea.

8. For the reasons aforesaid, the appeal fails and is dismissed. There shall be no order as to costs.

