

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-11-2015

(Judgment Reserved on 31-08-2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Civil Suit No.465 of 1988

V.Gopalakrishna Chetty

... Plaintiff

Vs.

The Madras City Municipal Corporation,
by its Commissioner, Madras.

... Defendant

Plaint filed and numbered as Civil Suit under Order 4 Rule 1 of the Madras High Court Original Side Rules, praying for judgment and decree against the defendant:

(a) to direct the defendant to pay a sum of Rs.1,50,000/- on the value of the damage to the building;

(b) interest on the said amount at 6% per annum from the date of plaint till the date of realisation, and

(c) for costs of this suit.

For plaintiff : Mr.Shanmugam for
Ms.P.Balambal

For defendant : Dr.C.Ravichandran

JUDGMENT

The Civil Suit is filed by the plaintiff to

<https://hcservices.ecourts.gov.in/hcservices/> direct the defendant to pay a sum of Rs.1,50,000/- on

the value of the damage to the building, to pay interest on the said amount at 6% per annum from the date of plaint till the date of realisation and for costs of this suit.

2. It is the case of the plaintiff that he is the owner of the premises bearing Door No.Old.No.3, New No.13, Karuppannan Street, G.T. Madras, comprised in R.S.No.6630 of an extent of 1 ground and 1136 Sq.Ft. and the said building comprised of ground and first floors. The said property is over 70 years old. The defendant was a tenant of the said building and a school was run by the Education Department of the defendant, with a monthly rent at Rs.1,800/- including electricity charges. Under G.O.Ms.No.384, Municipal Administration and Water Supply Department, dated 21.03.1986, acquisition of the said building was notified. This G.O. has been challenged by the plaintiff in W.P.No.4849 of 1987 and interim stay obtained on 20.05.1987 was made absolute on 18.08.1987 by this Court. However, the plaintiff received a communication, dated 22.04.1987 from the Additional Educational Officer, Corporation of Madras, to the effect that the said premises occupied by the defendant for school purpose, was in a

dilapidated condition and as such, the Special Officer of the defendant, by Resolution No.466/87, dated 20.04.1987 accorded sanction to vacate and hand over the vacant possession of the building to the plaintiff, pursuant to which, the plaintiff took possession from the Headmaster of the School, after which, the plaintiff inspected the same and found the damages to the building and that the fixtures were missing. The plaintiff engaged the services of Chartered Engineer and valued to ascertain the damages and report the same. The plaintiff informed the defendant on 03.05.1987 that the damages were being assessed and the defendant would be liable to reimburse the same, and the defendant received the same on 05.05.1987. On inspection and assessment, the said Engineer estimated the damages at Rs.1,80,918/-. The plaintiff issued notice, dated 19.05.1987, through his counsel to the defendant as per the provisions of the City Municipal Corporation Act, claiming Rs.1,80,918/-. The defendant received the said notice on 29.05.1987. The provisions of the City Municipal Corporation Act stipulates issuance of notice before institution of a suit, which had been duly complied with by the plaintiff. Since the

defendant did not reply to the notice, the plaintiff filed the suit for the relief stated supra, by restricting the claim for damages for Rs.1,50,000/-.

3. The defendant filed written statement under Order 5 Rule 1 of the Madras High Court Original Side Rules read with Order 8 Rule 1 of CPC, stating that the building is not less than 100 years old, dilapidated and unfit for habitation due to usual wear and tear. The dilapidated condition of the building has been admitted by the plaintiff himself in his representation to the Government and to the defendant, while requesting to drop the acquisition proceedings. The enquiry under Section 5-A of the Land Acquisition Act was over in the acquisition proceedings. In May 1986, Rs.2,05,167.30 was deposited towards the cost of the acquisition with the Special Deputy Collector/Acquisition for city works. Since the school was running in the plaint premises, it was shifted to Corporation own building at Nattu Pilliyar Koil Street, after which, since the building was in dilapidated condition, the Special Officer Council passed resolution on 20.04.1987, pursuant to which, the Additional Educational Officer of Corporation of Chennai wrote a letter dated

22.04.1987 to the plaintiff for handing over and taking over of the premises, which was accordingly taken over by the plaintiff on 28.04.1987 without protest. In letter dated 03.03.1990 addressed by the plaintiff to the Special Officer, Corporation of Chennai, he requested for cancellation of the acquisition proceedings and also categorically admitted the dilapidated condition of the building in question. Even in that letter, the plaintiff did not mention the damages caused to the building by the defendant. The allegation of damages is bereft of material particulars and it is false to state that there were damages to the building and as alleged by the plaintiff, the fixtures were not missing. The engagement of Chartered Engineer is behind the back of the defendant and the report of the Chartered Engineer is not furnished to the defendant. The plaintiff did not send letter dated 03.05.1987 to the defendant stating the damages. The claim of the plaintiff in the suit estimating the damages at Rs.1,80,918/- is exorbitant and without any basis and he is not entitled to claim interest. The suit is liable to be dismissed.

<https://hcservices.ecourts.gov.in/hcservices/>

4. By order dated 30.10.2006, this Court framed

the following issues for consideration in this suit:

(i) Whether the plaintiff is entitled to claim the suit amount as such made in the plaint from the defendant for all or any of the reasons stated in the plaint?

(ii) Whether the amount of damages claimed is exorbitant?

(iii) Whether the defendant is liable to pay a subsisting interest to defend the suit, since the building itself has been demolished? and

(iv) to what relief the plaintiff is entitled to?

5. Issue No.(iii) is re-cast as follows:

"(iii) Whether the defendant is liable to pay the damages as per the estimate made in Ex.P-3 by the plaintiff's Chartered Engineer ?"

Issue Nos.(i) to (iii):

6. During the course of trial, the plaintiff examined himself as P.W.1 and marked Exs.P-1 to P-6. On the side of the defendant, one G.Chockalingam, Assistant Executive Engineer of the defendant-Corporation of Chennai, was examined as D.W.1 and Ex.D-1 was marked.

7. It is admitted by both sides that the plaintiff is the owner of the premises in question

and the same is more than 70 years old. The defendant was a tenant paying rent monthly for the building in question by running a school.

8. Learned counsel for the plaintiff contended that at the time the defendant vacated the building and the plaintiff took over its possession, he engaged the services of Chartered Engineer to ascertain the damages caused to the building. The plaintiff issued letter (Ex.P-6) through his Advocate on 01.05.1987, intimating that he has engaged a technical personnel to apprise the extent of damages caused to the building and the details of damages will be intimated as soon as the Engineer's report estimating the quantum of damages, is received,. The said Chartered Engineer has given his estimate/report, dated 04.05.1987, which is marked as Ex.P-3, quantifying the damages to the tune of Rs.1,80,918/-. The plaintiff restricted his claim in the suit only to the extent of Rs.1,50,000/-. After the said estimation of damages by the Engineer, the plaintiff issued notice (Ex.P-4), dated 19.05.1987 to the defendant-Corporation claiming damages, and the said notice was received by the defendant on 25.05.1987, which is evident from the Acknowledgement

Card marked as Ex.P-5. As there was no reply from the defendant, the plaintiff filed the suit. The learned counsel for the plaintiff prayed that the suit may be decreed as prayed for.

9. Learned counsel for the defendant-Corporation contended that it is admitted that the property in question is more than 70 years old. Earlier, the building in question was in the possession of the Administrator General and Official Trustee (A.G. & O.T) and subsequently, the defendant was in possession of the same as tenant. The building was not properly maintained and the damages, if at all, is only due to wear and tear of the building. The defendant had been duly paying the rent and hence, the defendant is not liable to pay any damages. He further contended that before inspection of the building by the Chartered Engineer, the plaintiff did not issue any notice to the defendant. The report of the said Engineer is not annexed with the copy of the suit notice issued by the plaintiff to the defendant. It is not known as to under what heads the damages are claimed by the plaintiff. The plaintiff failed to aver the same in the plaint. Furthermore, the said Chartered Engineer has not examined before this Court

and hence, his report in Ex.P-3 is not a valid document and hence, no reliance can be placed on the same. On a reading of Ex.P-3 report/estimate, it could be inferred that the works mentioned therein are all only for maintenance and renovation works like white-washing, painting, etc., and nothing is there to speak about the damages caused by the defendant. Hence, the defendant is not liable to pay any amount to the plaintiff as alleged in the plaint and the suit has to be dismissed.

10. Heard both sides and perused the materials available on record.

11. It is admitted fact that after the defendant vacated the property in question, the plaintiff engaged the services of Chartered Engineer to visit the property and assess the damages in the same. Since the plaintiff's intention is to claim damages from the defendant, he must have given notice to the defendant to accompany the Chartered Engineer and for preparation of the said report Ex.P-3. Admittedly, no notice was issued by the plaintiff or by the Chartered Engineer who inspected the property and assessed the damages caused to the building in question.

12. The Chartered Engineer who issued Ex.P-3 report/estimate has not been examined on the side of the plaintiff. There is no reason or explanation put forth on the side of the plaintiff for non-examination of the Chartered Engineer who assessed the damages for the building in question. Non-examination of the Chartered Engineer who is the author of Ex.P-3, is fatal to the case of the plaintiff and the damages assessed by the Chartered Engineer is not proved by the plaintiff before this Court.

13. According to the plaintiff, the Chartered Engineer assessed the damages at Rs.1,80,918/-. At the time of issuing notice by the plaintiff to the defendant, claiming damages, the plaintiff did not mention the details of the damages caused by the defendant during the period of tenancy and did not specifically aver the damages and not annexed the copy of the said report (Ex.P-3). Hence, it has to be held that the plaintiff has not issued proper notice for claiming damages from the defendant.

14. In the plaint, the plaintiff has restricted his claim to Rs.1,50,000/-, though in the report (Ex.P-3), the Chartered Engineer assessed the alleged

damages to the tune of Rs.1,80,918/-. In the plaint, the plaintiff has not averred regarding the damages caused by the defendant to the property and he only stated in the plaint that on inspection and assessment by the Chartered Engineer, the damages were estimated at Rs.1,80,918/-. There is no description or particulars in the plaint about the nature and value of the damages caused by the defendant to the property in question. The plaintiff simply stated the total damages at Rs.1,80,918/- and the plaint did not contain any specific averment regarding the particulars of the damages caused by the defendant and the plaintiff simply stated the total amount calculated as damages.

15. On a reading of the contents of Ex.P-3 report/estimate, it is seen that the Engineer has assessed only for renovation/modification of the building, which cannot be said to be the repairs/damages caused by the defendant during the period of tenancy. Hence, on a perusal of Ex.P-3 report/estimate, it is inferred that the Engineer has only estimated for renovation of the building.

16. The plaintiff in his cross-examination admitted that the property in question was originally

owned by his grandmother and subsequently, it devolved on his father and from his father, to the plaintiff, as his father died in 2003. He further admitted that his father has not put up any additional construction in the property, but used to do maintenance work once in three to five years. He further stated that the property was originally under the custody of Official Trustee and subsequently, in 1952, the defendant-Corporation became the tenant under the plaintiff, since the property was given to the plaintiff by the AG & OT. He further stated in his cross-examination that he has not filed any document before this Court to show that they had done maintenance work every three to five years.

17. The plaintiff further admitted in his cross-examination that he had not written any letter to the defendant stating the name of the Chartered Engineer and the plaintiff also admitted that he has not mentioned the proposed date of visit of the Engineer to assess the damages occurred to the building. He further stated that in Ex.P-3, there is no mention about the particulars of damages caused to the school building. The plaintiff further admitted in cross-examination that in Ex.P-6 (Advocate notice of the

plaintiff to the defendant), he did not mention the nature of negligence on the part of the defendant and also the particulars of damages. He admitted that in Ex.P-6, the name of the technical person employed for assessing the damages to the building, was not mentioned. He further admitted in his cross-examination that he had not filed any document before this Court to show that they had done maintenance works for every three to five years.

18. On going through the admissions of the plaintiff in his evidence during cross-examination as P.W.1, it is clear that the plaintiff has not produced any document to prove that they have done periodical maintenance works during the period of tenancy of the defendant. He also admitted in his cross-examination that the building was constructed approximately in 1910 or 1911 (which means that the building is 70 years old) and he further admitted that the building was under the custody of AG & OT. In the absence of any document filed by the plaintiff to show that he has done the maintenance works in usual intervals, it is common knowledge that there will be usual wear and tear to any building. In Ex.P-

cracks in some places and the estimate was prepared to repair the cracks in the walls, etc. The said cracks in some places are only due to usual wear and tear, which usually happens to age-old buildings. In Ex.P-3 report/estimate, the Chartered Engineer estimated the damages, which are in the form of renovation of the old building into new one, and in Ex.P-3 report/estimate, the Engineer estimated the alleged proposed repair works, some of which are detailed below:

Sl. No.	Item No. in Ex.P-3 Report of the Chartered Engineer	Description of the work	Amount in Rs.
		Ground floor:	
1	1	Removing old plastering and replastering the wall and curing	15,000
2	2	-do- flooring with CM.1:3 and thread lining	12,000
3	3	Providing and fixing wooden pillar made of teak wood as per the existing design	7,200
4	4	Providing window bars of 3/4" (20mm) thick for front verandah as per design front verandah	1,648

Sl. No.	Item No. in Ex.P-3 Report of the Chartered Engineer	Description of the work	Amount in Rs.
5	5	Providing a wooden beam in the open yard in ground floor with ornamental designs	6,000
6	6	Rectifying the main wall cracks alround the building in ground floor by steel reinforcement and growing with RCC mortar with graniting machine and curing etc.	8,000
7	7	Providing and fixing in position brass 12 guage ornamental cups for the support pillar alround the koodam and open terrace... labour and fixing	7,200
8	8	Providing and fixing in position teak wood window using scantling and shutters frames and thick planks as per design	1,800
9	9	Cost of door frame using teak wood and door made of.... scantlings and thick planks as per design with iron fittings	1,500
10	10	Providing window bars	2,520

Sl. No.	Item No. in Ex.P-3 Report of the Chartered Engineer	Description of the work	Amount in Rs.
11	14	Providing a window with teak wood window frames using planks, iron fittings and fixtures and locks	2,100
12	16	Providing and fixing 1 W of approved quality with trap and necessary connections and foot rests etc. and repairs to floor	1,000
13	17	Providing M.S. flats and replacing teak wood reapers in ground floor open terrace for theft proof grill	10,000
14	18	Providing and fixing IWC for lavatory and repairs	2,400
15	22	Painting work in ground floor wood works and also windows and doors grills etc. 3 coats	5,000
		First floor	
16	25	Providing and fixing in position M.S. flats for open terrace wooden and yard portion of the backyard pooja room in teak wood frames	10,000
17	29	Removing old plastering and replastering the walls and fixing	15,000

Sl. No.	Item No. in Ex.P-3 Report of the Chartered Engineer	Description of the work	Amount in Rs.
18	31	Flooring ... and thread lining after removing old floor and put jelly concrete as necessary during execution	18,000
19	32	Front elevation AC pipes to refixed for rain mortar with necessary clamps, etc.	600
20	33	Front elevation repairs	5,000
21	34	White washing, colour washing the entire building with supercem	10,000
22	35	Painting all the wood work in first floor and front elevation doors and windows iron bars and window bars flats, grills, etc. . 3 coats	8,000
23		Sundry items	2,000
		Total	1,51,968

In the absence of any proof for the maintenance of the building in question and since most of the works stated in Ex.P-3 report/estimate, which are alleged to be the damages caused, are only for renovation of

repairs, painting, replacement of teak-wood reapers, etc., the plaintiff is not entitled for the amount claimed in the plaint as damages from the defendant. Further, the Chartered Engineer who issued Ex.P-3 report/estimate, has not been examined to prove the contents of Ex.P-3 or the basis for estimation of the damages in his report Ex.P-3 report/estimate, which contains only estimation for renovation of the building into a new one.

19. Hence, the evidence of the plaintiff is not reliable and the evidence of the official witness (D.W.1), i.e. Assistant Executive Engineer of the defendant-Corporation is reliable.

20. Learned counsel for the plaintiff relied on a decision of the Supreme Court reported in 2010 (10) SCC 512 (Man Kaur Vs. Hartar Singh Sangha) in support of his contention as to who should give evidence in regard to matters involving personal knowledge. In the said case before the Supreme Court, the suit was filed for specific performance of an agreement of sale and the Supreme Court dealt with the issue relating to the Power of Attorney Holder and his validity of evidence in the suit. The suit in the case on hand is filed for damages and there is no

Power of Attorney Holder in this case. Hence, the said decision is not applicable to the case on hand.

21. Learned counsel for the defendant-Corporation relied on a decision of the Supreme Court reported in AIR 1968 SC 1413 (Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and others), wherein the Supreme Court observed that even if the burden of proof does not lie on a party, the Court may draw an adverse inference, if he with-holds important documents in his possession, which can throw light on the facts at issue. In the case on hand, the onus of proof is on the plaintiff to prove the contents of Ex.P-3 report/estimate and the Chartered Engineer has not been examined to prove the contents of Ex.P-3. The adverse inference is drawn against the plaintiff, as the author of Ex.P-3 has not been examined. Hence, the claim of the plaintiff for damages based on Ex.P-3, is not sustainable.

22. On analysing the entire oral and documentary evidence adduced by both parties, this Court is of the considered view that the plaintiff is not entitled to claim the damages from the defendant as prayed for in the suit. Issue Nos.(i) to (iii) are answered accordingly.

23. Issue No.(iv): The plaintiff is not entitled to any relief prayed for in the suit.

24. Conclusion: In the result, the suit is dismissed with costs.

Witnesses examined on the side of plaintiff:--

PW.1 Mr.V.Gopalakrishnan (plaintiff)

List of documents marked on the side of plaintiff:--

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
P-1	22.04.1987	Copy of the letter from the Additional Educational Officer of Corporation of Madras, to the plaintiff
P-2	05.05.1987	Original Acknowledgement Card in respect of the notice issued by the plaintiff's Advocate to the defendant
P-3	04.05.1987	Original report/estimate of the Chartered Engineer in respect of the building in question
P-4	19.05.1987	Office copy of the notice issued by the plaintiff's Advocate to the defendant
P-5	25.05.1987	Original Acknowledgement Card in respect of the notice issued by the plaintiff's Advocate to the defendant
P-6	01.05.1987	Copy of the notice issued by the plaintiff's Advocate to the defendant

Witnesses examined on the side of defendant:--

D.W.1 - Mr.G.Chockalingam, Assistant Executive Engineer of the defendant-Corporation of Chennai.

Documents marked on the side of defendant:--

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
D-1	26.06.2014	Xerox copy of the plaint papers (plaint, written statement, issues framed in the suit, etc.), along with the Advocate and Standing Counsel's letter addressed to Law Officer, Corporation of Chennai.

Court witness and Court documents : Nil

sd/.G.C.J
05.11.2015

//Certified to be a true copy//

Dated this the day of 2016

S.s/13.05.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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