IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.01.2015.

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

S.A.No.1058 of 2006

Sudhakaran ...Appellant/ Plaintiff

vs.

Vedhavalli Ammal Trust
represented by its
President ...Respondent/ Defendant

Second Appeal is filed against the judgment and decree dated 31.1.2006 made in A.S.No.112 of 2004 on the file of the Additional Sub Judge, Tindivanam, confirming the judgment and decree dated 27.7.2004 made in O.S.No.351 of 2001 on the file of the Principal District Munsif, Tindivanam.

For appellant : Mrs.N. Mala

For respondent : Mr.S.Thirumavalavan

JUDGMENT RESERVED ON :25.11.2014

JUDGMENT

The judgment and decree, dated 31.01.2006 made in A.S.No.112 of 2004 on the file of the learned Additional Sub Judge, Tindivanam, confirming the judgment and decree, dated 27.7.2004 and made in O.S.No.351 of 2001 on the file of the learned Principal District Munsif, Tindivanam are under challenge in this memorandum of second appeal.

2. The appellant is the plaintiff in the suit in O.S.No.351 of 2001, whereas the respondent is the defendant.

3. For easy reference and for the sake of convenience, the appellant may hereinafter be referred to as the plaintiff and the respondent be referred to as the defendant wherever the context so require.

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4. The brief averments, in the plaint, leading to the filing of the suit before the trial Court are as under:-

a. The plaintiff is the tenant under the defendant in respect of 'A' Schedule vacant land. The plaintiff is having absolute right over the superstructure in 'B' Schedule property. One Mr. Ramanathan, who is the brother of the plaintiff's father, had taken the vacant land for rent at Rs.20/- per month, for running a small industry, from one Rajambal, who was the President of the defendant Trust. On 21.1.1957, the said Rajambal nominated the administrators and gave a letter to the said Ramanathan asking to pay the rent to the administrators. Thereafter, the said Ramanathan had transferred the right over the superstructure and the licence in favour of his brother, namely, Seetharaman, who is the father of the plaintiff, by way of a receipt, dated 11.10.1960. From that day onwards, the father of the plaintiff being the owner of the superstructure and the tenant of the vacant site had been paying the rent and at last, he had paid rent at Rs.250/-.

b. After his death, the plaintiff has become the tenant and converted the industry into a flour mill and also transferred the electricity connection in his name. He has also been paying the rent regularly. Since there was a dispute between another tenant Sivalingam and the Trust, the plaintiff was compelled and pressurised to execute a tenancy agreement, or otherwise, he will be evicted by demolishing the superstructure.

c. Only upon furnishing a copy of the agreement, he came to know that the superstructure belonged to the Trust and the rent was fixed at Rs.1,500/- per month and collected Rs.25,000/- towards rental advance. Hence, the present suit seeking the relief of declaration and permanent injunction.

5. The defendant resisted the suit by filing written statement stating that the suit itself is not maintainable. The plaintiff is the tenant as per the agreement, dated 1.6.2001. It is false to state that the superstructure in 'B' schedule property was constructed by the predecessors of the plaintiff. The defendant Trust never leased out the ground of the suit property for rent and the plaintiff has accepted for being the tenant of the building along with the land as found in the deed of agreement, dated 1.6.2001. Since the plaintiff has not paid the rent properly and in time and also denied the title of the defendant, the defendant issued a notice terminating the tenancy right on 10.1.2002.

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6. Based on the material proposition of facts arising from the pleadings of the parties to the suit, the trial Court has formulated as nearly as eight issues for the better adjudication of the suit.

7. In order to substantiate their respective cases, both the plaintiff and the defendant were directed to face the trial. Accordingly, the plaintiff was examined as P.W.1 and two other witnesses were examined on his part. During the course of their examination Exs.A1 to A34 were marked. On the other hand, one Ravindran was examined and no document was marked, on the side of the defendant.

8. On evaluating the evidences both oral and documentary, the trial court had proceeded to dismiss the suit.

9. Having been aggrieved by the impugned judgment and decree of the trial Court, dated 27.7.2004, the plaintiff had preferred an appeal in A.S.No.112 of 2004 on the file of the learned Subordinate Judge, Tindivandam.

10. That appeal was partly allowed confirming the judgment and decree of the trial Court in respect of declaration and granted permanent injunction.

11. Being not satisfied with the judgment and decree of the first appellate court, the present second appeal has been filed by the plaintiff.

12. The second appeal has been admitted on the following substantial question of law:-

> " Whether the Courts below have committed an error of law in dismissing the suit in respect of the declaration sought for by the appellant without properly considering Exs.A1 and A2 and the oral evidence on record."

13. Heard Mrs.N.Mala, learned Counsel appearing for the appellant and Mr.S.Thirumavalavan, learned counsel appearing for the respondent.

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14. The learned counsel appearing for the plaintiff/appellant has submitted that when there is absolutely no evidence on the part of the defendant to show that 'B' Schedule property belongs to the defendant, the lower appellate court ought to have declared that the 'B' Schedule property belongs to the plaintiff.

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15. Further, the learned counsel for the appellant has submitted that though there is specific admission to the effect that only the vacant site was leased out and the plaintiff had produced the documents to prove that the superstructure belongs to him, both the courts below have not considered this vital aspect.

16. The learned counsel for the appellant has contended that the lower appellate court erred in making a presumption in favour of the defendant on the basis of the alleged rental agreement, dated 1.6.2001 overlooking the fact that the very same document was disputed on the ground that it was obtained under threat. She also submitted that the courts below failed to consider the separate tax demand for both schedule of properties and further erred in relying a document which was not marked.

17. On the other hand, the learned counsel appearing for the respondent has contended that when the plaintiff himself admits that 'A' schedule property belongs to the Trust and he was a tenant, the question of declaring the same does not arise. Unless a person is having a right over the particular property and proves the same by oral and documentary evidence, he cannot seek for the relief of declaration.

18. The learned counsel for the respondent has also contended that when the plaintiff miserably failed to prove that the superstructure was built either by him or by his father, he cannot claim any right over that superstructure.

19. A perusal of the judgments of the Courts below reveals that though the trial court after analysing the evidences both oral and documentary has dismissed the suit without granting any relief sought for by the plaintiff, the lower appellate court as far as the relief of declaration is concerned, while confirming the judgment and decree of the trial court, has granted the relief of permanent injunction setting aside the judgment and decree of the trial court in respect of the relief of permanent injunction.

20. It is the case of the plaintiff that he is the tenant in respect of 'A' schedule property and he should not be evicted except under due process of law and till such eviction by due process of law, he sought for permanent injunction. For proving his case, he has filed Exs.A1 to A34. To prove that he has paid the rent to the defendant, he has filed Exs.A11 to A34. Considering the oral

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and documentary evidence, the lower appellate court has granted the relief of permanent injunction not to disturb the plaintiff until he is evicted by due process of law, though the trial court declines to grant permanent injunction.

21. Since the plaintiff himself admits that he is the tenant in respect of 'A' schedule property and the same has been proved by oral and documentary evidence and in the absence of any evidence to the contrary on the side of the defendant, this court is of the view that the lower appellate court has rightly granted the relief of permanent injunction and the plaintiff shall not be evicted except under due process of law. This court does not find any infirmity with the judgment and decree of the lower appellate court as far as the granting the relief of permanent injunction is concerned and therefore, the judgment and decree of the lower appellate court is to be confirmed. Accordingly, the same is confirmed.

22. As far as the relief of declaration is concerned, both the courts below have not considered the case of the plaintiff as he is not entitled to the same.

23. It is not the case of the plaintiff that he is having the title, right and interest over the 'A' Schedule property, whereas his case is that he is the tenant in respect of 'A' Schedule property and he sought for the relief of declaration.

24. When a person is having the title, right and interest over the property and the same is denied by somebody, the person, who is having title, right and interest over such property, could seek the relief of declaration, otherwise, such relief cannot be sought for.

25. Here, the plaintiff himself admits that he does not have any right, title and interest over the 'A' Schedule property, but he is only the tenant in respect of 'A' Schedule property. It is also the case of the defendant that the plaintiff is the tenant and executed a lease deed, dated 1.6.2001. During the cross examination of P.W.1, he has deposed that on the basis of the lease deed, dated 1.6.2001, he has paid the rent of Rs.1,500/- per month, for the months of June 2001 and July 2001.

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26. It is clear from the oral evidence of both sides that the plaintiff is the tenant in respect of 'A' Schedule property. When the plaintiff himself admits that he is the tenant in respect of the 'A' Schedule property and the case of the defendant is also the same, the question of declaration does not arise.

27. As already stated, since the plaintiff does not have any right, title and interest over the 'A' schedule property and being a tenant in respect of that property, he is not entitled to seek for declaration and therefore, it cannot be granted.

28. In view of the above discussion, this Court does not find any infirmity with the judgment and decree of the lower appellate court declining to grant the relief of declaration and granting the relief of permanent injunction.

29. Accordingly, the second appeal fails and the same is dismissed confirming the judgment and decree of the lower appellate court. However, there will be no order as to costs.

Sd/-
Asst.Registrar (Lok adalat)

/true copy/

Sub Asst. Registrar

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To

1. The Additional Sub Judge, Tindivanam.

2. The Principal District Munsif, Tindivanam.

3. The Section Officer, V.R. Section, High Court, Madras.

1 cc to Ms.N. Mala, Advocate, Sr. 1384
1 cc to Mr.S. Thirumavalavan, Advocate, Sr. 1293

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