

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27 - 11 - 2015

Coram

The Hon'ble SMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No. 463 of 2009

and

M.P. Nos. 1 and 2 of 2015

S. Selvaraj ... Appellant/1st Defendant.

vs.

1. Ramjanally Ebrahimcurrim
Chatriwala Trust
Rep. By its Trustee
Mr. Hasim Sulaiman Sait
No. 40 Anna Salai
Chennai - 2 ... 1st Respondent/Plaintiff
2. Tamilnadu State Board of Wakf
Rep. by its Secretary
Chennai ... 2nd Respondents/2nd Defendant
(R2 given up in this Appeal)

Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 16.12.2008 in A.S. No.574 of 2007 on the file of the Court of IV Additional Judge, City Civil Court, Chennai, reversing the judgment and decree dated 23.03.2007 made in O.S. No.5449 of 1997 on the file of the I Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. A.S. Narasimhan

For R 1 : Mr. S.D.S. Philip

R 2 : Given up

JUDGMENT

The first defendant in O.S. No. 5449 of 1997, a suit for delivery of possession, arrears of rent and for damages, has filed the instant Second Appeal under Section 100 of the Code of Civil Procedure challenging the judgment and decree dated

16.12.2008 passed by the IV Additional Judge, City Civil Court, Chennai, in A.S. No. 574 of 2007 wherein and by which the judgment and decree dated 23.03.2007 recorded in O.S. No. 5449 of 1997 on the file of the I Assistant Judge, City Civil Court, Chennai, with regard to reliefs of possession and arrears of rent, were confirmed.

2. According to Hashim Sulaiman Sait, a Trustee representing the Ramjanally Ebrahim Currim Chatriwala Trust, which was created in the year 1925, a portion of the suit property was leased out to one Ahmed Ali, who, subsequently, let out the same to the first defendant and various persons. It is stated that though the first defendant was a tenant under the said Ahmed Ali, the tenancy was subsequently attorned in favour of the plaintiff trust with effect from 01.8.1975. The further allegation of the plaintiff is that the first defendant, who was paying the monthly rents upto February, 1986, committed default in payment of rent inspite of requests and demands which resulted in issuance of pre-suit notice in January 1997 and termination of tenancy with effect from 31.01.1997. It is also the case of the plaintiff that the total amount payable by the first defendant towards arrears of rent was Rs.4585/- for the period from March 1986 to January 1997. According to the plaintiff, since the first defendant did not pay the amount even after receipt of notice, he was constrained to file the suit for eviction, for arrears of rent of Rs.1,050/- for the period from August 1994 to January 1997 and a sum of Rs.3000/- towards damages for unlawful use and occupation for the period from February 1997 to July 1997. The plaintiff also claimed a sum of Rs.500/- towards future damages.

3. Denying the averments made by the plaintiff, the first defendant filed written statement stating that he has been in possession of the suit property by putting up a superstructure and carrying on business for a monthly rent of Rs.35/-. He also denied the attornment of tenancy in favour of the plaintiff. The further case of the first defendant is that since there were rival claims, the rent was not paid from February 1986. According to him, Ahmed Ali, to whom the property was leased out, has not been impleaded as a party and hence, the suit is bad for non-joinder of proper and necessary party and he sought for dismissal of the suit.

4. The trial Court, before which the parties adduced evidence and marked documents, on consideration of the materials available thereon, decreed the suit for recovery of possession, arrears of rent and for damages. Insofar as the relief of

future damages is concerned, the trial Court directed the plaintiff to proceed in accordance with Order XX Rule 12 CPC. Challenging the finding of the trial Court, the first defendant preferred appeal in A.S. No. 574 of 2007 and the Lower Appellate Court, on appreciation of the facts, confirmed the judgment of the trial Court with regard to recovery of possession, arrears of rent and for future damages. As far as the relief of damages to the tune of Rs.3000/- is concerned, the Lower Appellate Court, set aside the finding of the trial Court and granted liberty to the plaintiff to proceed in accordance with Order XX Rule 12 CPC and partly allowed the appeal. Feeling aggrieved by the finding of the Lower Appellate Court with regard to recovery of possession, arrears of rent and for future damages, the first defendant has come up with the instant Second Appeal.

5. At the time of admission of this Second Appeal, the following substantial questions of law were formulated for consideration:-

- (i) In the absence of any resolution by the Trust authorising a Trustee or the Trustees to institute a suit in respect of 4/16 Thandavaraya Gramani Street, whether such a suit is maintainable?
- (ii) When a Door No. 4/L, No. 4/16, Thandavaraya Gramani Street, two different properties, the resolution authorising two trustees to institute suit in respect of another piece of land can be taken as an authorisation to institute the suit in respect of 4/16, Thandavaraya Gramani Street?
- (iii) When the present Trust Mr. Hasim Sulaiman Sait has not established by records, by producing the minutes book from when he has been adopted as a Trustee and Ex. A.12 did not establish the adoptions of Mr. Hasim Sulaiman Sait as a Trustee whether such a suit is maintainable?

6. Heard the learned counsel appearing for the parties and perused the records.

7. Learned counsel appearing for the appellant contended that the plaintiff being a Trust under the Wakf Act, 1995, the suit filed by a single trustee, that too, who is not duly elected or nominated trustee of the plaintiff trust, is not

maintainable. He also submitted that while there are number of trustees representing the trust, no suit can be filed by one trustee against tenants without necessary resolution. It is also the contention of the learned counsel that all the trustees should have been made as parties in terms of Order XXXI Rule 1 CPC. It is his further submission that when two trustees have been authorized in respect of Door No. 4/L, they should have jointly instituted the suit. Therefore, according to the learned counsel, the suit filed by Hasim Sulaiman Sait, for ejecting the first defendant / appellant from the suit premises is not maintainable in law and the judgment and decree of the courts below are against law, weight of evidence and the probabilities of the case. The Courts below ought to have held that the suit is not maintainable, since the suit cannot be laid by single trustee.

8. Reiterating the very same contentions raised before the Courts below, the learned counsel appearing for the first respondent / plaintiff submitted that the suit property belongs to the plaintiff trust and since the appellant / first defendant, who was a tenant under the plaintiff, was irregular in payment of rent, the tenancy was terminated and therefore, according to the learned counsel, the plaintiff is entitled for recovery of possession, for damages and for arrears of rent as claimed.

9. From the materials available on record, it is seen that the dispute is in respect of demised property of 384 sq.ft. in Door No. 4/16, Thandavaraya Gramani Street, Tondiarpet, Chennai. Indisputably, a larger extent was owned by the Trust of which one portion was let out to one Ahmed Ali, who sublet the premises to the first defendant / appellant. Though the first defendant / appellant initially denied the attornment of tenancy to the plaintiff by the said Ahmed Ali, no further denial was made in the subsequent instances and in fact, it is seen that he has paid rent to the plaintiff upto February 1986 and has defaulted only subsequently. Therefore, it is clear that the said Ahmed Ali has attorned the tenancy to the plaintiff.

10. It is also seen from the records that the Trust has already filed Execution Petition in E.P. No. 797 of 2008. Admittedly, the appellant / first defendant is not the owner of the land upon which the superstructure was constructed. Before the Executing Court, the wife of the appellant / first defendant / Judgment Debtor had examined herself as R.W.1 and marked the Settlement Deed executed by her husband in the year

1991, as Ex. R.1. Even in the Settlement Deed, it was stated that the Settlor, viz., the first defendant is only a tenant of the land. The Hon'ble Supreme Court as well as this Court, in a catena of decisions, have held that when a person has taken lease of vacant land and put up construction over it, there is implied undertaking to remove the superstructure and hand over the vacant possession as and when required by the landlord.

11. Though it was the contention of the appellant / first defendant that the suit filed by one trustee is not maintainable, it is pertinent to note that the existence of the trust is not disputed. As per Order XXXI Rule 1 CPC, only if third party files a suit against Trust, he must implead all the trustees as parties to the suit.

12. In the instant case, it is evident from the records that the plaintiff trust consists of seven trustees from 1972 onwards and the present representative of the suit viz., Hasim Sulaiman Sait is also one among the trustees. In this regard, the plaintiff Trust has marked its Minute Book as Ex. A. 12 as per which, on 11.12.1993, five members of the Board of trustees passed a resolution authorising Hasim Sulaiman Sait to institute legal proceedings in respect of the suit property. The relevant passage of the Minutes as found in Ex. A.12 is reproduced hereunder:-

"It is resolved to hereby authorise M/s Hashim Sait and / or Anwar Jamal to take all steps deemed necessary to protect the property of the Trust viz., New No. 193, Old No. 4/L, Thandavaraya Gramani Street, Madras - 81 and engage the services of Advocates and obtain legal advice as deemed necessary at the earliest and incur expenditure as required. The said Mr. Hashim Sait and Mr. Anwar Jamal as Trustees, are authorised to institute any legal proceedings or defend the same either individually or jointly for and on behalf of the Trust to protect the interest of the Trust concerning the Trust property at New No. 93, Old No. 4-L, Thadavaraya Gramani Street, Tondiarpet, Madras - 81 as required."

13. In the light of the above extracted portion, this Court has no hesitation to hold that the appellant is estopped from raising any plea in this regard and that the plea raised by the appellant that Hasim Sait has got no legal right to institute the suit, is not maintainable in law. Therefore, it

is to be assumed that the Trust has got decree in its favour for delivery of vacant possession of the schedule property and as such, the well considered judgment of the First Appellate Court need not be interfered with and the same is to be confirmed. The substantial questions raised are answered accordingly against the appellant.

14. At this juncture, taking judicial notice of the case, this Court wants to pinpoint that nowhere in the suit proceedings, the appellant has stated with regard to the transfer of the superstructure along with the leasehold, in favour of his wife and it is for the first time, it was mentioned by his wife in the execution proceedings. Therefore, it is clear that the appellant / first defendant has not approached this Court with clean hands and his attitude is only to stall the eviction proceedings. In such view of the matter, the case of the appellant / first defendant has no merits and deserves to be negated.

15. However, it was brought to the knowledge of this Court that pursuant to the E.P. Proceedings, possession was taken on 11.12.2014.

In view of the foregoing discussion, the Second Appeal fails and stands dismissed confirming the findings of the lower Appellate Court in this regard. But in the circumstances of the case, the parties are directed to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.

gri

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

1. IV Additional Judge
City Civil Court, Chennai
2. I Assistant Judge
City Civil Court, Chennai

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

+ 2 ccs to M/s.S.D.S.Philip Advocate SR 64608

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