

In the High Court of Judicature at Madras

Date : 08.10.2015

Coram :

The Hon'ble Mr.Justice P.R. Shivakumar

Second Appeal No: 119 of 2004

1. Garudazhwar Temple Construction
Committee,
Santhaipettai
Gudiyatham.
 2. R.G.Krishnamurthy
S/o. R. Pandasi Chetty
183 Santhaipettai
Gudiyatham.
 3. T.N. Aghilan
(3rd Appellant Substituted vide
Order of this court dated 30.06.2015
in C.M.P.NO.352 of 2010 in
S.A.No.119 of 2004)
 4. Dakshinamurthy
Kamatchiamman Pettai
Gudiyatham. ... Appellants/Defendants
1, 2, 3 & 5
- vs-
- C.V. Ranganathan
S/o. C. Venkatarama Chettiar
2 Abdul Subedar Street
Santhaipettai
Gudiyatham. .. Respondent/Plaintiff

Second appeal under Section 100 of C.P.C. against the judgment and decree in A.S. No: 1 of 2002 dated 24.02.2003 on the file of the Sub Court, Gudiyatham, Vellore District, confirming the judgment and decree dated 22.01.2002 made in O.S. No: 643 of 1989 on the file of the District Munsif Court, Gudiyatham.

For appellants : Mr. R. Siddharth for
M/s. T.R. Rajaraman

For respondent : Mr. R. Venkatesh for
M/s. Usha Raman

J U D G M E N T

Four out of the six defendants in the original suit are the appellants in the second appeal. The remaining two died after the passing of the decree by the trial Court. All the defendants 2 to 6 were made parties to the suit as members of the building committee of Arulmigu Garudazhwar Temple, Santhipettai, Kudiyatham. The building committee itself was shown as the first defendant. The respondent herein filed the suit in O.S. No: 643 of 1989 on the file of the District Munsif Court, Kudiyatham, for the following reliefs :-

" 1) For declaring the right of occupancy of the respondent herein/plaintiff in respect of the suit property as a tenant under the suit temple building committee, and

2) For a mandatory injunction directing the defendants to deliver possession of the suit property to the plaintiff (respondent herein)."

2. The said prayers were made based on the plaint averments which are, in brief, as follows :

i) On 15.03.1987, the members of the building committee of the temple entered into an agreement with the respondent / plaintiff to lease out the suit property to the respondent/ plaintiff for a monthly rent of Rs.200/- and received a sum of Rs. 15,000/- as advance. It was mutually agreed that the rental agreement between the respondent/plaintiff and the defendants would be executed and registered and that thereafter possession of the property would be taken by the respondent/plaintiff. Though the plaintiff was to take delivery of possession of the suit property and pay the rent thereafter, the defendants were postponing the execution of the lease deed under one pretext or the other. However, by a notice dated 20.02.1989, the building committee demanded execution of the lease deed. The respondent/plaintiff sent a reply expressing his readiness to get the lease executed and registered and take possession of the suit property. Though he was not liable to pay the rent for the said period, he also expressed his readiness to make payment of the said amount claimed by the committee as rent for the above said period.

ii) After the exchange of the said notices and after making the plaintiff come on a particular day to the office of the Sub Registrar, the members of the committee evaded the execution of the registration of the lease deed and failed to hand over possession of the suit property. Under the said circumstances, the respondent/plaintiff was forced to approach the trial Court with the suit for the above said reliefs.

3. The suit was resisted by the defendants in the suit contending that the suit, as framed, was not maintainable. It was also contended that no agreement was entered into as alleged in the plaint

either on 15.03.1987 or on any other date. The further contention made in the written statement is that the respondent/plaintiff ought to have filed a suit for specific performance rather than claiming a right as a tenant, even if it is assumed that such an agreement as claimed by the plaintiff was entered into. On the basis of the said contention, the defendants in the suit had prayed for dismissal of the suit.

4. The trial Judge, after framing necessary issues on the basis of the prayers made in the plaint, conducted a trial. The respondent/plaintiff appeared as the sole witness (P.W.1) on his side and ten documents were produced and marked as Exs. A.1 to A.10 on his side. No witness was examined and no document was marked on the side of the defendants.

5. The learned trial Judge, at the conclusion of the trial, holding that the plaintiff was entitled to the reliefs sought for and decreed the suit as prayed for in respect of both the reliefs by a judgment and decree dated 22.01.2002. As against the said decree of the trial Court, the Building Committee of the temple and three of its members, preferred an appeal in A.S. No: 1 of 2002 on the file of the Sub Court, Kudiyaatham. The learned lower Appellate Judge also concurred with the findings of the trial Court, dismissed the appeal and confirmed the decree of the trial Court by a judgment and decree dated 24.02.2003. The said decree of the lower appellate Court dated 24.02.2003 has been made the subject matter of challenge in the second appeal.

6. The Second Appeal was admitted on 07.02.2004 noticing the following questions to be the substantial questions of law involved in the second appeal :

1. When the agreement under which the suit is based is not specific regarding the terms for which the lease agreement is to be executed and the plaintiff having not filed the suit for specific performance, is the Subordinate Judge right in holding that the suit as framed is maintainable ?
2. When there is no relationship of landlord and tenant exists, is the court fee paid under Section 43 (1) (c) is proper ?
3. When the suit is filed on the basis of specific performance and the time originally agreed is already over, still is it open to the Court to grant a decree which cannot be enforced ?

7. Upon hearing the preliminary arguments, this Court noticed certain mistakes in the substantial questions of law framed at the time of admission. Hence, they are re-framed and re-cast as follows :-

1. Whether the Courts below are right in holding that the suit as framed is maintainable when the suit is based on an agreement for lease, which contemplates execution and registration of a proper lease deed, whereas the suit has not been filed as a suit for specific performance of the agreement preceding the lease deed ?

2. When there is no existing relationship of landlord and tenant, whether the Court fee paid under Sec. 43 (1) (c) of the Tamil Nadu Court Fees and Suit Valuation Act is proper ?

3. Whether the suit prayer for mandatory injunction, when the period originally agreed to be the lease period has already expired, can be sustained ?

8. The arguments advanced by Mr.R.Siddharth learned counsel for the appellants and Mr.R.Venkatesh learned counsel for the respondent are heard. The judgment of the Courts below and other materials available on record are also perused.

9. Before going to the merits of the case, this Court wants to point out the much deprecated practice of the lower Appellate Courts in formulating the points for determination in the Civil Appeals coming before the said Courts. Time and again this Court has come heavily upon the lower appellate Courts for framing only the following the questions as the point for determination in the Civil Appeals :

1) Whether the judgment / decree of the lower appellate Court can be sustained ? And

2) Whether the judgment / decree of the lower Court is liable to be set aside / interfered with ?

In the case on hand, the lower appellate Judge, committed the very same mistake in formulating two questions, first one to the effect whether the appeal can be allowed and the second one to the effect as to what relief ? The said mistake committed by the lower appellate Court is pointed out in this judgment so that it shall be a guidance and rather a warning to the lower appellate Courts formulating such crippled questions as points for determination in the Civil Appeals, much against the spirit of Order XLI Rule 31 of C.P.C.

10. Coming to the merits of the case on hand, though the lower appellate Court might have chosen to frame points for determination not in a judicious manner, the same alone shall not be the ground on which the case can be remanded to the lower appellate Court. On the

other hand, if necessary discussions regarding the essential points for determination have been made by the lower appellate Court, it can be taken as an irregularity, which will not vitiate the judgment. Even otherwise, when the High Court is seized of the Second Appeal, the above said mistake committed by the lower appellate Court can be ignored and this Court can decide the matter on the necessary points for determination, which ought to have been formulated and considered by the lower appellate Court. Ofcourse, this Court is not unaware of the limitation provided under Section 100 of C.P.C. which says that a further appeal from the appellate decree of a Court subordinate to the High Court shall lie to the High Court only on a substantial question of law. The very fact that the judgment was not in accordance with Order XLI Rule 31 C.P.C. can also constitute the basis of a substantial question of law with a rider that such substantial question of law will lose its importance if the other substantial questions of law going to the root of the matter are also involved in the second appeal.

11. In the case on hand, the suit came to be filed by the respondent herein/ plaintiff for declaration of his right as a tenant in respect of the suit property. Admittedly, there was only an agreement for entering into a proper lease deed. The position of the respondent herein / plaintiff can be equalled to a purchaser under an agreement for sale. The agreement holder shall have a right, may be in respect of a particular property, against the other party to the agreement and in case the other party to the agreement fails to come forward to fulfill his obligation, the course open to the purchaser under the agreement for sale or the lessee under the agreement for lease is to apply to the Courts for specific performance of the contract. Without doing it and before ever the agreement crystallized into a title or right in respect of immovable property, the agreement holder cannot claim to be the owner or lessee in respect of the said immovable property.

12. The respondent herein / plaintiff has come forward with such a plea and has based his claim on an alleged agreement dated 15.02.1987. But, unfortunately, the respondent / plaintiff was not able to produce the said agreement in writing. However, it is the case of the respondent / plaintiff that the agreement was not with him but it was with the opposite party. When the agreement was held by or was in the custody or control of the opposite party, the plaintiff could have very well taken effective efforts for letting in secondary evidence by serving a notice on the members of the Committee to produce the same and on their failure, could have urged the Court to draw an adverse inference. No such notice came to be issued. Even the evidence of the plaintiff was not direct and on the other hand it stands one way or the other uncorroborated by the document produced by the respondent/ plaintiff regarding the agreement that was allegedly entered into on 15.03.1987. The corroborative piece of evidence are that exchange of notices between the parties marked as exhibits A.1 and A.2, whereunder the temple building

committee admitted the receipt of Rs.15,000/- as advance for the grant of lease and also admitted the deduction of a portion of the said amount towards the rent. It is true that the temple building committee admitted the receipt of Rs.15,000/- as advance for the grant of lease. It is also obvious that property was not handed over to the respondent plaintiff pursuant to the agreement and the temple building committee issued a notice calling upon the respondent herein to execute a registered lease deed and then get possession of the property. The same is obvious from Ex.A.1 notice. However, the temple building committee attempted to claim rent from the date of agreement as if the respondent / plaintiff was liable to pay the rent even though he was not actually inducted as a tenant. Only the said act on the part of the temple building committee in claiming the rent for the period during which the respondent plaintiff was not inducted as a tenant and the subsequent deduction of a portion of the advance amount towards the rent for the said period may be projected as a piece of evidence to show that the transaction of lease had become accomplished and he had acquired the status of a tenant. Only on that basis the respondent / plaintiff tried to get a declaration of his supposed right as a tenant in respect of the suit property.

13. Both the Courts below, without properly considering the nature of the plea made by the plaintiff and the manner in which the lease can be created, have chosen to hold the respondent / plaintiff to be entitled to the relief of declaration as prayed for. The fact remains that possession of the property was not delivered to the respondent / plaintiff even in part performance of agreement for lease. In such an event, there is a possibility of holding that in the absence of a written lease deed, the oral tenancy had come into picture and such tenancy would be a month to month tenancy. Unfortunately, for the respondent / plaintiff, he has not been inducted as a tenant either by handing over possession to him or by creating a lease by a valid document of lease. That is the reason why the respondent / plaintiff has made the second prayer of mandatory injunction directing the defendants to hand over possession of the suit property to him.

14. If, all these aspects are taken into consideration and considered in proper perspective one can realize the fact that the tenancy had not been created either by the agreement dated 15.03.1987 or subsequently either by execution of a lease deed or by handing over possession. On the other hand, the position of the respondent / plaintiff remains only an agreement holder entitled to seek specific performance directing the temple building committee to execute a lease deed and hand over possession of the property on execution of the lease deed.

15. In this regard Mr.R.Venkatesh, learned counsel for the respondent / plaintiff made an attempt to contend that the agreement for lease itself can be taken as the creation of lease and in such an

event the lease shall be construed to be oral and month to month tenancy. In support of his contention, the learned counsel for the respondent / plaintiff relied on the judgment of the Supreme Court in the case of "Food Corporation of India and others vs. M/s. Babulal Agrawal" reported in 2004 (3) Law Weekly 12. Upon perusing the said judgment, this Court is not in a position to persuade itself to agree with the contention of the learned counsel for the respondent / plaintiff since the facts of the case which went before the Supreme Court were entirely different from the facts of the case on hand. There, Food Corporation of India, after entering into an agreement, got possession of the property and the non- execution of the lease deed was cited as the ground for termination of the lease. In the said circumstances, though a pucca registered lease deed was not executed, the agreement coupled with the delivery of possession was construed to be a creation of a lease which was a month to month lease and only on that basis, the Supreme Court decided the said matter in favour of the land owner. In the said case, an agreement was entered into fixing the montly rent, terms of lease, etc.. and pursuant to such agreement certain constructions were made and possession was also handed over. After a lapse of 30 months from taking possession, the Food Corporation of India chose to issue a termination notice terminating the tenancy. The very fact that the Food Corporation of India chose to terminate the tenancy itself weighed with the Supreme Court to hold that there was a completed lease arrangement which was a month to month lease. As it was admitted by the parties that there was a tenancy which came into existence, the Supreme Court relied on the covenants in the agreement regarding the period during which the Food Corporation of India undertook to be a lessee and pay the lease amount and came to the conclusion that there was a breach of a covenant in the agreement which lead to the findings that the Food Corporation of India was liable to pay damages for breach of such a covenant. Suppose the respondent / plaintiff herein filed the suit for damages for breach of a covenant in the alleged agreement dated 15.03.1987, the said judgment may have some relevance to the case on hand. Quite contrary to the facts of the case which went before the Supreme Court, the possession of the property regarding which the lease was sought to be created was not at all handed over to the respondent / plaintiff. Hence, there is no scope for holding that a tenancy came to be brought into existence and that such tenancy was a month to month tenancy based on which the respondent / plaintiff can seek a declaration of his status as a tenant. As no such tenancy has been created, the remedy open to the respondent / plaintiff was to seek specific performance of the agreement or for damages for breach of a covenant in the agreement. The respondent / plaintiff has chosen to seek none of such reliefs.

16. In view of the forgoing discussions, this Court has to come to the necessary conclusion that the respondent / plaintiff cannot claim the status of a tenant and he has not succeeded in putting forward his case that he is entitled to a declaration of his supposed

tenancy right in respect of the suit property. The first substantial question of law is answered accordingly in favour of the appellants and against the respondent.

17. As the landlord and tenant relationship has not been created before the filing of the suit, the relief valued and Court Fee paid under Section 43 (1) (C) of the Tamil Nadu Court Fees and Suit Valuation Act is not proper. Since it is held that the plaintiff is not entitled to the relief of declaration of his alleged right as a tenant in respect of the suit property, he shall not be entitled to the relief of mandatory injunction for the recovery of possession directing the appellants/defendants to deliver possession of the suit property to the respondent / plaintiff. The second substantial question of law is answered accordingly.

18. In view of the foregoing discussions and especially the finding that the suit as framed is not maintainable, since the plaintiff has not filed the suit for specific performance or for damages, the third substantial question of law lose importance and no answer need to be given to it. In view of the answers given to the first and second substantial questions of law, the appeal is bound to succeed, with the result that the decree passed by the trial Court which was confirmed by the lower appellate Court is liable to be set aside and the suit filed by the respondent / plaintiff is bound to be dismissed. However, considering the facts and circumstances of the case, there shall be no orders as to the costs.

19. In the result, the second appeal is allowed. The decree of the trial Court as confirmed by the lower appellate Court is set aside. O.S. No: 643 of 1989 on the file of the District Munsif Court, Gudiyatham, shall stand dismissed. There shall be no orders as to the costs.

gp

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-VII)

/True Copy/

WEB COPY
Sub-Assistant Registrar

To

1. The Subordinate Judge,
Gudiyatham, Vellore District

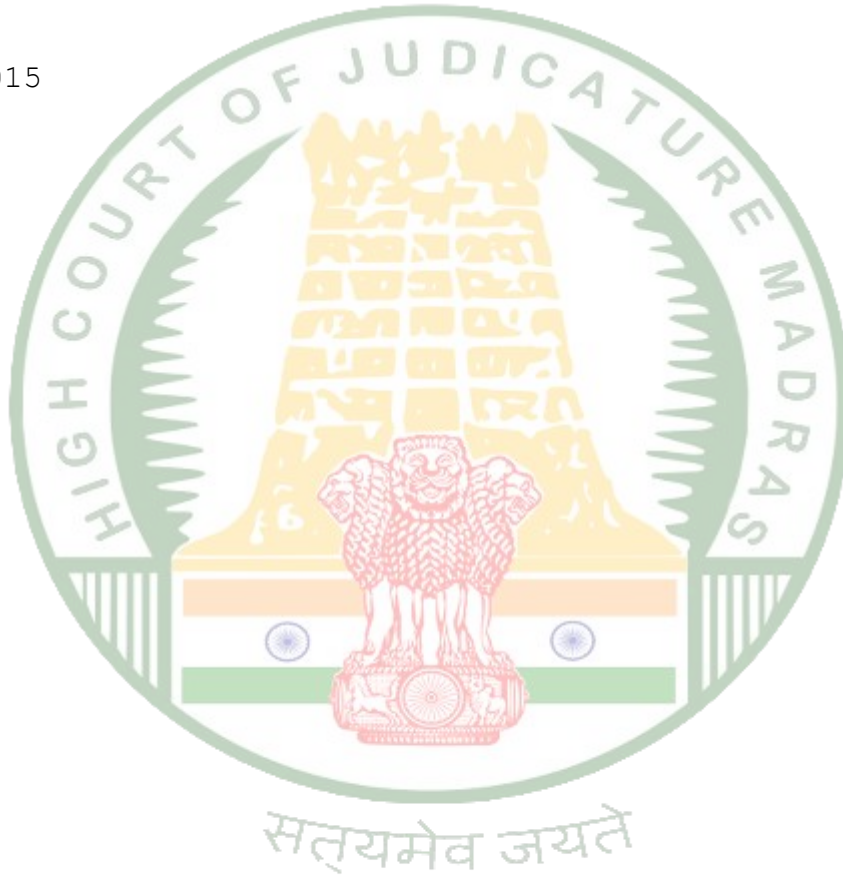
2. The District Munsif,
Gudiyatham
3. The Section Officer,
V.R.Section, High Court,
Madras

+1 C.C. To MR.T.R.Rajaraman, Advocate in SR.NO.55654

+1 C.C. To M/S.Usha Raman, Advocate in SR.NO.55005

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