

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.191 of 2015
and M.P. No. 1 of 2015

G.Jeyachandran Appellant/Defendasnt/Tenant
Vs.

Radha @ Radharukmani Respondent/Plaintiff/Landlady

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Principal District Judge, District Court, Tiruvallur, dated 28.08.2014 passed in A.S.No.48 of 2013 thereby confirming the judgment and decree of the Subordinate Judge, Poonamallee in O.S.No.352 of 2010 dated 15.07.2013.

For Appellant : Mr. K.A.Ramachandran
For Respondent : Mr. K.Ramanatha Reddy

J U D G M E N T

The defendant in O.S.352 of 2010 on the file of the learned Subordinate Judge, Poonamallee is the appellant herein. The Respondent is the plaintiff in the suit. The said suit was filed for recovery of possession and for damages to the tune of Rs.42,560/- for use and occupation of the building for the period between July 2010 and October 2010 and also for future damages at the rate of Rs.1000/- per day. The trial court, by decree and judgment dated 15.07.2013 decreed the suit for recovery of possession and also, decreed the suit for damages at the rate of Rs.500/- per day. The trial court, however, dismissed the claim of Rs.42,560/- towards arrears of rent for the period between July 2010 and October 2010. As against the same, the defendant filed an appeal in A.S.No.48 of 2013 on the file of the learned Principal District Judge, Tiruvallur. By decree and judgment dated 28.08.2014, the learned Principal District Judge, Tiruvallur dismissed the appeal, thereby confirming the decree and judgment of the trial court. As against the same, the defendant is before this Court with this second appeal.

2. The case of the plaintiff is as follows:

The plaintiff claims that she is the absolute owner of the suit property. There was a rental agreement registered between the plaintiff and the defendant on 01.09.2008 for a period of 11 months, by which the defendant entered into the possession of the suit property. The defendant did not pay the rent properly. The provisions of the Tamilnadu Buildings (Lease and Rent Control) Act are not applicable to the suit property in the year 2010. Therefore, a notice under Section 106 of the Transfer of Property Act was issued on 09.10.2010, terminating the lease by 31.10.2010. The said notice was not, however, received by the defendant and the same was returned by the postal authorities as "refused". Alleging that the defendant was aware of the contents of the notice and further contending that there was a constructive notice of termination, the plaintiff filed the suit for recovery of possession and for other reliefs as cited above.

3. In the written statement, the defendant contended that he was not aware of the notice issued under Section 106 of the Transfer of Property Act and thus, there was no valid termination of lease. He also denies the contention that there was arrears of rent. He also disputes the claim for damages at the rate of Rs.1,000/- per day.

4. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, she was examined as PW.1 and as many as 2 documents were exhibited, namely, a legal notice issued on 09.10.2010 and the returned cover with acknowledgment due, returned by the postal authorities. This notice, dated 09.10.2010 is a termination notice issued under Section 106 of the Transfer of Property Act. On the side of the defendant, the defendant himself was examined as DW1 and as many as 3 documents were exhibited. Ex.B1 is the letter sent by the plaintiff's husband to the defendant and Ex.B2 is the Advocate notice issued by the defendant's counsel to the plaintiff. Ex.B3 is the acknowledgment card. Considering all the above, the trial court partly decreed the suit and the same was confirmed by the lower appellate court. That is how, the appellant is before this Court with this Second Appeal.

5. I have heard the learned Counsel for the appellant and the learned counsel appearing for the respondent. I have also perused the records available.

6. This Second Appeal, originally, came up for admission before this Court on 30.03.2015. The learned counsel on either side argued the matter at length. At one point of time, they submitted

that the matter could be adjourned to 31.03.2015 since an attempt to be made to compromise the matter between the parties. Accordingly, it was adjourned to 31.03.2015. On that day, the appellant Mr.G.Jeyachandran was present before this Court. The respondent Mrs. Radha @ Radha Rukmani was not present. However, her husband Venkatarathnam was present along with his son Sekar. After some deliberation, it was reported to this Court by the learned Counsel on either side that they were able to effect a compromise. At request, the matter was adjourned today i.e. on 01.04.2015. Today, a joint memo of compromise has been filed. The same has been signed by the appellant and the husband of the respondent and the learned Counsel on either side.

7. The terms of the compromise are mentioned as follows :

"1. The appellant/tenant agrees to handover the lock and key on 01.04.2015 to the respondent/landlady for the shop in their occupation morefully described in the schedule hereunder.

2. The appellant also seeks 15 days time to remove their own things/materials lying in the shop from the date of handing over the lock and key to the respondent/landlady i.e. 01.04.2015. During that time the appellant wants to take back his things/materials, the respondent should open the shop and permit the appellant to take back his things and materials. Until then the respondent/landlady should not open the shop without the permission of the appellant/tenant.

3. The respondent agrees to withdraw all the cases i.e., E.P.No.150 of 2014, E.P.No.14 of 2015 before the Sub Court Poonamallee, RCOP No.48 of 2013 before the PDMC, Poonamallee.

4. The appellant/tenant also agrees not to claim advance amount of Rs.1,40,000/- paid at the time of inception of tenancy to the respondent/landlady.

5. The respondent/landlady undertakes and agrees that she will not claim damage, granted as per judgment and decree dated 15.07.2013 passed in O.S.No.352 of 2010 by Sub Court, Poonamallee.

6. The appellant should clear all the pending EB metre charges to the shop in his occupation and also surrender the Original Security Deposit bill paid to EB

Department for the said shop at the time of inception of tenancy to the respondent/landlady.

7. The respondent/landlady does not aware what are the things/materials lying in the schedule mentioned shop. Hence the respondent/landlady is not liable for any loss/damage of things/materials lying in said shop from the date of handing over the key of the shop i.e.01.04.2015.

8. The appellant/tenant undertakes that he will not claim any loss or damage to the things/materials lying in the shop from the date of handing over the key i.e., 01.04.2015.

9. Both the parties mutually consent that there is no other rival claim as against each other.

10. It is therefore prayed that this Hon'ble Court may be pleased to record this memo of compromise entered between the appellant/tenant and the respondent/landlady in the above S.A.No.191 of 2015 and pass suitable order or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

8. The respondent's husband Mr.Venkatarathnam has also produced a letter of authorisation issued by Mrs. Radha @ Radha Rukmani dated 30.03.2015 authorising him to sign the joint memo of compromise. He has also produced xerox copies of the Aadhar card of the respondent and himself. Mr.Venkatarathnam would submit that Mrs. Radha @ Radha Rukmani is at Hyderabad today and she is unwell and therefore, she could not travel and come to this Court.

9. The learned Counsel for the respondent would submit that he has got instruction to report to this Court that Mrs. Radha @ Radha Rukmani has got no objection for the above terms of settlement and the terms of compromise. The learned Counsel for the respondent would further submit that the respondent has got no objection to dispose of the appeal in terms of the compromise. Further, in terms of the compromise, today, the appellant has handed over the possession of the suit property to the respondent, by handing over the key in open court to the respondent. Mr.Jeyachandran is not present today. But, his counsel has handed over the key to the respondent's Counsel. The same is also recorded.

10. In respect of the very same suit property, the respondent has filed R.C.O.P.No.48 of 2014 before the Rent Controller-cum-Principal District Munsif, Poonamallee for fixation of fair rent. As agreed upon, the respondent shall withdraw the said RCOP unconditionally. Similarly, the respondent has filed E.P.No.150 of 2014 to execute the decree in the present suit which is now pending on the file of the learned Subordinate Judge, Poonamallee for delivery of possession. She has filed another Execution Petition in E.P.No.14 of 2015 for recovery of the decree amount. As per the terms of the compromise, the respondent shall not press, both the Execution Petitions since as agreed upon between the parties, both the Execution Petitions shall stand dismissed by this Order. The Execution Court shall only record that both the Execution Petitions stand dismissed. As per the compromise reached between the parties, there shall be no more claim by the respondent from the appellant and similarly the appellant shall have no more claim from the respondent. The entire issue has been settled.

11. In view of the above, the Second Appeal shall stand disposed of in terms of the compromise reached between the parties and there shall be a decree in terms of the compromise memo and the compromise memo shall form part of the decree. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsi/mrp

To

1. The Principal District Judge,
Principal District and Sessions Court,
Tiruvallur.

2. The Subordinate Judge, Poonamallee.

1 cc to Mr.K.A.Ramachandran ,Advocate, SR.No.19161

1 cc to Mr. K.Ramanatha Reddy ,Advocate, SR.No.18717/15

S.A.No.191 of 2015

SV(CO)

PMK.8.6.2015