

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2015

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No.278 of 2015
and
M.P.No.1 of 2015

S.Syed Mohammed ...Appellant/Appellant/Plaintiff

Versus

1.K.Samsudeen

2.K.Moideen Haq

3.Karim

...Respondents/Respondents/Defendants

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 30.11.2012 made in A.S.No.89 of 2012 on the file of the I Additional Subordinate Judge, Coimbatore, confirming the judgment and decree dated 12.07.2012 made in O.S.No.1569 of 2008 on the file of the Principal District Munsif, Coimbatore.

For Appellant : Mr.Pravin Rathinam

For Respondents : Mr.R.Bharath kumar

JUDGMENT

The plaintiff, who is the tenant in the suit property, had filed the suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by forcibly evicting him unless by due process of law.

2. Originally the plaintiff was inducted as tenant under one Arumugam and his wife. The defendants were also tenants under the same person of a different portion of the property. Both the plaintiff and the defendants competed to purchase the suit property and the defendants succeed in the same. Even after the purchase by the defendants, the plaintiff continued to be in occupation of the demised property as a tenant. It is alleged by the plaintiff that the defendants threatened to evict him from the premises on 26.07.2008. Hence, the suit came to be filed.

3. Before the trial Court, on the side of the plaintiff, one Jabar Ali was examined as PW.1 and seven documents were marked as Exs.A1 to A7 and on the side of the defendants, one Samsudeen was examined as DW.1 and Exs.B1 to B5 were marked.

4. Considering both oral and documentary evidence adduced on both sides, the trial Court dismissed the suit. On appeal also, the suit was dismissed. Aggrieved, the plaintiff filed the Second Appeal before this Court.

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

6. Admittedly, both the plaintiff and the defendants are running bakery shop in the suit property, which is situated in a busy commercial place. The plaintiff has filed the suit alleging that the defendants attempted to trespass into the suit property on 26.07.2008. However, both the courts below have found that there was no such complaint given by the plaintiff either to the police or filed in evidence to substantiate his allegation of threat of eviction by the defendants. The suit is filed by the plaintiff based on a cause of action, which is not proved. It is rudimentary principle that a suit can be laid only on a cause of action. But in this case, the plaintiff, though alleged in the plaint about the attempted trespass by the defendants, had not produced any evidence to substantiate the same. Hence, the Courts below had held that the plaintiff is not entitled for the relief of permanent injunction as prayed for in the absence of any cause of action besides, the proof of the alleged trespass by the defendants.

7. The counsel appeared for the respondents contended that already proceedings under the Rent Control Act have been initiated against the plaintiff one for fixation of fair rent and another for eviction on the ground of owner's occupation and the same are pending. When the defendants have already initiated action as

per law, the plaintiff cannot have any grievance or apprehension that he will be forcibly evicted.

8. In support of his contention, the learned counsel for the appellant cited a judgment of the Hon'ble Supreme Court in Civil Appeal No.2968 of 2012 between Maria Margarida Sequeria Fernandes and others and Erasmo Jack de Sequeria (Dead) through L.Rs. The relevant paragraphs are extracted hereunder:-

Due process of law

81. Due process of law means nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity for the defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated by a competent Court.

82. The High Court of Delhi in a case Thomas Cook (India) Limited v. Hotel Imperial 2006 (88) DRJ 545 held as under:

"28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing---ejectment from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this 'due process' or 'due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction.

It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

9. As already the respondents have taken action by due process of law, the plaintiff's possession is only subject to the result of the said proceedings under the Rent Control Act. In such circumstances, the dismissal of the suit by the courts below are correct and does not warrant any interference.

10. In the result, the Second Appeal is dismissed confirming the judgment and decree of both the courts below. Consequently, connected Miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mra

To

1.The I Additional Subordinate Judge,
Coimbatore.

2.The Principal District Munsif,
Coimbatore.

Copy to

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

1 CC to Mr.Pravin Rathinam, Advocate SR.No. 36614

1 CC to Mr.R.Bharath kumar, Advocate SR.No. 36826

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RSI (CO)

PSI (21.08.2015)