

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.912 of 2015
and
M.P.No.1 of 2015

C.Rajaram

.. Appellant

- Vs -

N.Jesudas

.. Respondent

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Decree and Judgment dated 23.01.2015 made in A.S.No.89 of 2013 on the file of the learned Subordinate Judge, Poonamallee confirming the Decree and Judgment dated 29.04.2013, made in O.S.No.519 of 2003 on the file of the learned Additional District Munsif, Poonamallee.

For Appellant : Mr.V.R.Kamalanathan

For Respondent : Mr.V.G.Suresh Kumar

J U D G M E N T

The appellant is the tenant of the building in question. The respondent is the landlord. The respondent filed O.S.No.519 of 2003 on the file of the learned Additional District Munsif, Poonamallee for ejectment. The appellant filed O.S.No.422 of 2002 on the file of the learned Additional District Munsif, Poonamallee for injunction restraining the respondent herein from interfering with his peaceful possession and enjoyment of the suit property. The trial Court conducted joint trial and by a common judgment dated 29.04.2013 decreed the suit in O.S.No.519 of 2003 and dismissed the suit in O.S.No.422 of 2002. As against the same, the appellant filed two appeals in A.S.No.88 of 2013 against the decree and judgment in O.S.No.422 of 2002 and A.S.No.89 of 2013 against the decree and judgment in O.S.No.519 of 2003 before the learned Subordinate Judge, Poonamallee. By common judgment and decree dated 23.01.2015, the lower Appellant Court dismissed the appeal in A.S.No.89 of 2013 and allowed the appeal in A.S.No.88 of 2013. Challenging the dismissal of the appeal in A.S.No.89 of 2013, the appellant is before this Court with this second appeal.

2. The case of the plaintiff/respondent in brief is as follows:

The appellant is the tenant of the building in question. The building is situated in Thiruverkadu. According to the respondent, the appellant was a chronic defaulter in payment of rent and after following the statutory formalities, the respondent filed a suit in O.S.No.519 of 2003 for ejectment. The appellant disputed the said claim made by the respondent and according to him, he was not a chronic defaulter and he was regularly paying the rent. The appellant filed O.S.No.422 of 2002 for permanent injunction to restrain the respondent from interfering with his possession on the allegation that the respondent was trying to disturb his possession. The trial Court conducted joint trial in O.S.No.422 of 2002 and O.S.No.519 of 2003.

3. Before the trial Court, appropriate issues were framed. The trial Court conducted joint trial. In order to prove his case, the respondent herein examined two witnesses on his side and marked eight documents. On the side of the appellant, three witnesses were examined and two documents were marked. On considering the oral as well as the documentary evidence, the trial Court decreed the suit in O.S.No.519 of 2003 and as against the same, an appeal was filed in A.S.No.89 of 2013 and the same was dismissed by the lower appellate Court. Thus, the appellant is before this Court with this second appeal.

4. In this second appeal, the learned counsel appearing for the appellant would submit that during the pendency of the suit in O.S.No.519 of 2003, Thiruverkadu was declared as a Municipality and thus the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was made applicable to the suit property. Therefore, according to the learned counsel appearing for the appellant, the decree passed by the appellate Court in favour of the respondent is a nullity.

5. The learned counsel appearing for the respondent would vehemently oppose the same. According to him, Section 10 of the Act does not prohibit the Civil Court from proceeding further and to pass a decree.

6. Having heard the learned counsel on either side and on perusal of the records, the following substantial question of law is framed :

"Whether the Trial Court was within its jurisdiction to proceed with the trial of the suit notwithstanding the fact that the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 were

made applicable to the suit property during the pendency of the suit ?”

7. A perusal of the provisions of the Act would go to show that there is nothing said in the Act in respect of a proceedings or a suit which is pending on the date of coming into force of the Act or on the date when the Act is made applicable to a particular property. Section 8 of the General Clauses Act states that pending proceedings shall continue as though the Act has not come into force. Further, this question has already been answered by this Court in A.Krishnaswami Vs. S.Rasheeda reported in 1980 II M.L.J. 463 wherein, this Court has held in paragraphs 5 and 6 as follows:

“5. From the terms of the definition of 'tenant' contained in the Act, it goes without saying that the petitioner herein has to be recognised as a tenant of the respondent-landlord. Though the tenancy in favour of the petitioner had been terminated, yet inasmuch as he continues in possession of the property even after the determination of the tenancy, he will be deemed to be a tenant. Once this position is recognised, then automatically the embargo contained in Section 10(1) of the Act will be attracted. In this connection it is apposite to point out that Section 10(1) does not inhibit the filing of suits during the time the Act was in force. All that Section 10(1) says is, that during the period the Act is in force, a tenant shall not be evicted from the premises occupied by him in execution of a decree for ejectment passed against him. This position is now well-settled and I need refer only to a few cases on this aspect. One of the earliest case on the subject is Muhammadunni v. Unniri (1949) 1 M.L.J. 417 : A.I.R. 1949 Mad. 784, which arose under the Madras Non-Residential Buildings Rent Control Order, 1942. Clause 8 in the said order was more or less similar to Section 10(1) of the Act. A Bench of this Court held that the eviction of a tenant can only be in accordance with the provisions of clause 8, that there is nothing in the clause or in any of the other clauses of the Order, expressly prohibiting the institution of a suit for possession or prohibiting a civil Court from passing a decree for possession though a decree for possession that may be passed

by the civil Court, will not be capable of execution by the civil Court. The abovesaid view has been taken even with reference to Section 10(1) of the Act by a Division Bench of this Court, to which was a party in Haji Abdulla Salt v. Sanjivi Rao (1979) 2 M.L.J. 413 : 92 L.W. 611(D.B.). The Supreme Court too has laid down the same ratio in B.V. Patankar v. C.G. Sastri , though that case arose under the Mysore House Rent and Accommodation Control Order, 1948.

6. The resultant position therefore, is that the filing of a suit for recovery of possession of a property from a tenant or the passing of a decree therein by the Court in favour of the landlord, is not prohibited under the Act. But, the decree cannot be executed so long as the Act remains in force."

8. In view of the said legal position, the decree passed by the Trial Court and confirmed by the lower Appellate Court cannot be stated to be without jurisdiction so as to interfere with the same.

9. The learned counsel for the appellant also relied on the judgment of the Hon'ble Supreme Court in East India Corporation Ltd. Vs. Shree Meenakshi Mills Ltd., reported in (1991) 3 SCC 230. That was a case where a civil suit was filed on the date when the Building was excluded from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act by means of a Notification under the provisions of Section 30(ii) of the Act. Subsequently, Section 30(ii) of the Act was struck down by the Hon'ble Supreme Court and in those circumstances, the Hon'ble Supreme Court held that it should be construed as on the date of filing of the suit, the building was governed by the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and therefore the proceedings resulting in a decree became a nullity.

10. In the instant case, as on the date of filing of the suit, the Act was not applicable to the suit property. In such view of the matter, I find that the decree passed by the Trial Court and confirmed by the lower Appellate Court cannot be stated to be without jurisdiction and this has been clearly dealt with by the Courts below. Thus, the substantial question of law is answered accordingly.

11. In the result, the second appeal fails and accordingly, the same is dismissed. The decree and judgment of

the lower appellate Court confirming the decree and judgment of the trial Court is confirmed. There shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/
ASSISTANT REGISTRAR (CS-III)

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SUB-ASSISTANT REGISTRAR

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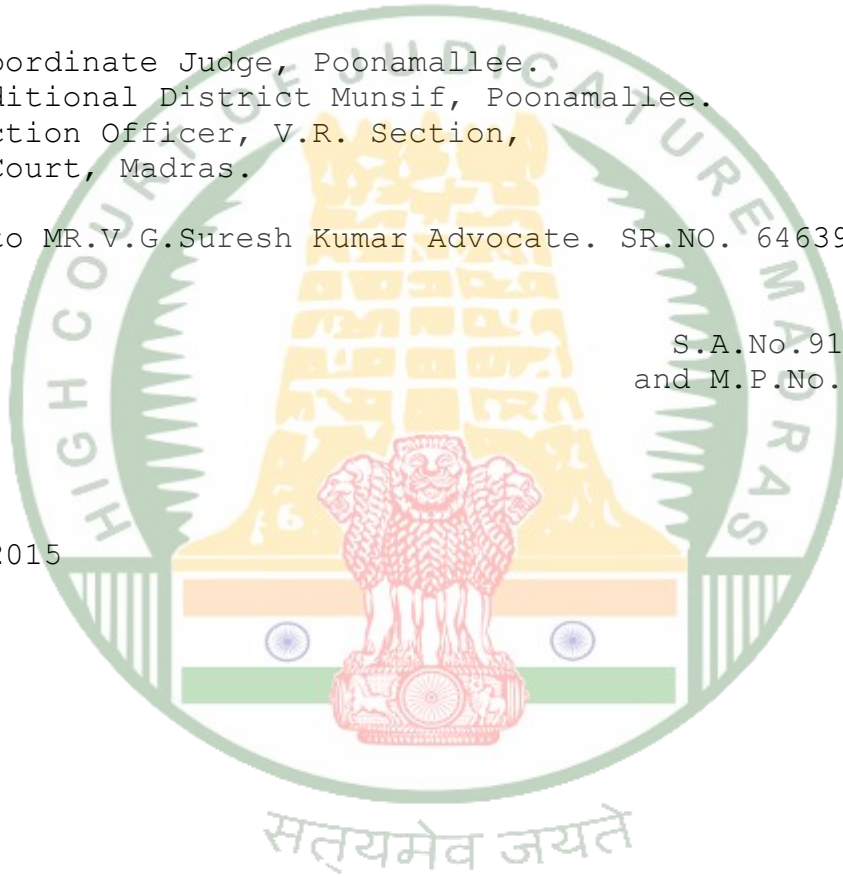
To

1. The Subordinate Judge, Poonamallee.
2. The Additional District Munsif, Poonamallee.
3. The Section Officer, V.R. Section,
High Court, Madras.

+1 CC to MR.V.G.Suresh Kumar Advocate. SR.NO. 64639

S.A.No.912 of 2015
and M.P.No.1 of 2015

CO-VSN
JD 29/12/2015



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