

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1532 of 2011

and

M.P.No.1 of 2011

1.

1. Hindustan Petroleum Corporation Ltd.,
(A Government of India Enterprise),
No.17, Jameshedhi Tata Road,
Mumbai-400 020 represented
by its Managing Director.
 2. The Chief Regional Manager, Retail,
Chennai Region,
Hindustan Petroleum Corporation Ltd.,
(A Government of India Enterprise),
Thalamuthur Natarajan Building,
Third Floor, 8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
 3. The Senior Manager, Retail,
Chennai Region,
Hindustan Petroleum Corporation Ltd.,
(A Government of India Enterprise),
Thalamuthur Natarajan Building,
Third Floor, 8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- ...Appellants/Defendants

सत्यमेव जयते - Vs -

1. M.N.Vitto Bai,
 2. M.S.Bagya
 3. N.K.Pattammal
 4. M.N.Balasundaram
 5. M.N.Senthilvel (Deceased)
 6. M.N.Muthuswamy
 7. M.N.Murugesan
 8. M.S.Rani
 9. M.S.Chokalingam
 10. Divya Parthasarathy
- (RR8 to 10 brought on record as LR's of
deceased R5 vide order dated 11.08.14
in M.P.No.1/14 in A.S.No. 1532/2011) ...Respondents/Plaintiffs

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 30.06.2011, made in A.S.No.45 of 2010 on the file of the learned Principal District Judge, Chengalpattu confirming the Judgment and Decree dated 23.01.2009, made in O.S.No.75 of 2006 on the file of the learned Principal Sub-Judge, Chengalpattu.

For Appellants : Mr.M.Vijayan
for M/s.King and Partridge

For Respondents 1 to 7 : Mr.V.R.Venkataraman
SC for Mr.S.Baskaran

For Respondents 8 to 10: Mr.A.Dhiraviyanathan

J U D G M E N T

The defendants in O.S.No.75 of 2006 on the file of the learned Principal Subordinate Judge, Chengalpattu are the appellants before this Court. The respondents are the plaintiffs. The said suit was filed by the plaintiffs for recovery of possession and for damages for use and occupation of the suit property by the appellants. The Trial Court decreed the suit thereby directing the appellants herein, to deliver vacant possession of the property to the plaintiffs and also to pay Rs.6,480/- being the arrears of rent at the rate of Rs.360/- per month from 01.10.2000 to 31.03.2003 and also directed to pay a sum of Rs.1,17,500/- towards damages for unauthorized occupation of the suit property at the rate of Rs.2,500/- per month from 01.04.2000 to 28.08.2002 with 6% interest per annum from the date of plaint till the realization and further directed the defendants to pay a sum of Rs.2,500/- per month towards the damages for use and occupation of the property from the date of plaint till the date of delivery of vacant possession with 6% interest per annum. सत्यमेव जयते

2. Challenging the same, the appellants herein filed A.S.No.45 of 2010 before the learned Principal District Judge, Chengalpattu. By decree and judgment dated 30.06.2011, the learned Principal District Judge, Chengalpattu dismissed the appeal thereby confirming the decree and judgment of the trial Court. Two months time was given to the appellants/defendants to deliver vacant possession of the property. Challenging the same, the appellants are before this Court with this second appeal.

3. When this second appeal came up for hearing, at the request of the learned counsel for the appellants, notice of motion was ordered and accordingly on service of notice, the respondents have made appearance. Today, this appeal came up for admission and I have heard the learned counsel appearing for the appellants and the

learned senior counsel appearing for the respondents as well as perused the records carefully.

4. The case of the plaintiffs is that indisputably, the property belongs to the respondents/plaintiffs. It was leased out to the appellants for establishing petrol outlet. The defendants are a public limited company dealing with oil and natural gas. The monthly rent fixed was Rs.360/- per month. The lease expired on 28.02.2000. Even thereafter, the appellants have not vacated the property, despite demand made by the plaintiffs. In those circumstances, the plaintiffs filed a suit for recovery of possession and for arrears of rent and for damages as mentioned herein above.

5. The appellants/defendants contested the suit stating that the suit before the Civil Court is not maintainable in view of the Tamil Nadu Building (Lease & Rent Control) Act, 1960. In other words, according to the appellants, the provisions of the Tamil Nadu Building (Lease & Rent Control) Act, are applicable to the issues involved in the present suit and therefore there is a bar for the Civil Court to entertain the suit. It was also contended that the appellants/defendants are entitled to continue to be in possession as they are lessee by holding over. The appellants/defendants further contended that they are not liable to pay any amount as damages except the agreed rent of Rs.360/- per month.

6. Based on the above pleadings, the trial Court framed appropriate issues and called upon the parties to let in evidence both oral and documentary. Accordingly, on the side of the plaintiffs as many as 23 documents were exhibited and one witness was examined as P.W.1. On the side of the defendants one Mr.Umashankar was examined as D.W.1 and no document was exhibited on the side of the defendants.

7. Having considered all the above, the trial Court partly decreed the suit as indicated in the first paragraph of this judgment. The same was confirmed by the lower appellate Court.

8. In this second appeal, the learned counsel for the appellants would fairly concede that the provisions of the Tamil Nadu Building (Lease and Rent Control) Act has not been extended to the suit village and therefore the plea taken by the appellants before the lower Court is not sustainable. The learned senior counsel appearing for the respondents would also say the same. The Courts below have categorically held that the provisions of the said Act are not all applicable to the suit property. In view of the above, I do not have any option to take a different view. Thus, I hold that the Courts below are right in holding that the suit as framed is maintainable.

9. The learned counsel for the appellants would further submit that so far as the order decreeing delivery of possession is concerned, he has got no point to argue. As a matter of fact, when he was invited to inform the Court as to whether he assails the decree of delivery of possession of the property, the learned counsel submitted that the Court may record that the decree for recovery of possession is not assailed. The above said submission made in the open Court by the learned counsel for the appellants is recorded. The learned senior counsel appearing for the respondents would submit that since the said point has not been argued, there is no need for him to elaborate anything on that issue. In view of the same, I do not want to deal with that part of the decree wherein the Courts below have ordered for delivery of vacant possession.

10. The learned counsel appearing for the appellants would further submit that for execution of the decree already Execution Petition has been filed by the respondents and the same is pending before the trial Court. He would further submit that the respondents can execute the decree and possession may be taken from the appellants. When it was pointed out as to why he wants the plaintiffs to take recourse for recovery of possession by executing the decree instead being a Government of India Enterprise with Navratana status, the appellants could have delivered possession of the suit property to the respondents in obedience to the decree, the learned counsel for the appellants submitted that it is a cumbersome process for the appellants to take a decision because decision has to be taken at the higher level viz., the Board level. The said statement is also recorded.

11. The learned counsel for the appellants would submit that he confines his argument only to assail the order directing the appellants to pay the quantum of amount towards arrears of rent and towards damages for use and occupation. The learned counsel would submit that the Courts below have ordered for payment of arrears of rent from 01.10.2000 from the date of filing of the suit viz., 17.03.2006. Thus, according to the learned counsel for the appellant, the arrears of rent for the said period is barred by limitation as it was filed far beyond the period of three years prescribed in the Limitation Act. So far as the decree for damages for the period from 01.04.2000 onwards, the learned counsel would submit that the same is also barred by limitation. Thus, according to the learned counsel, the entire claim for damages which is barred by limitation should have been denied to the plaintiffs. He would further submit that so far as the damages for use and occupation is concerned, the Courts below have recorded that there was no evidence let in to quantify the loss caused to the plaintiffs and in the absence of any such evidence, according to the learned counsel, the Courts below have merely assumed that the loss could have been at the rate of Rs.2,500/- per month. The Civil Court should not have passed such an order based on such surmises, the learned counsel contended.

12. From the above submissions, I find that the following substantial question of law arises for consideration, viz.,

"(i) Whether claim for arrears of rent and the damages is barred by limitation ?"

13. The learned senior counsel appearing for the respondents would submit that earlier the plaintiffs filed a writ petition before this Court in W.P.No.4475 of 2002 for a direction to the appellants herein to handover vacant possession of the property since the lease period has expired long before. The learned senior counsel would further submit that the said writ petition was dismissed on 21.07.2005, with liberty to the respondents/plaintiffs to approach the Civil Court. Though the learned senior counsel submitted that this period which was spent in the writ petition has to be excluded while condoning the period of limitation as provided under Section 14 of the Limitation Act, later on, the learned senior counsel fairly conceded that since in the writ petition, there was no prayer for damages, this period cannot be excluded. The learned senior counsel, therefore submitted that the amount ordered towards arrears of rent as well as the amount ordered towards damages upto 16.03.2003 may be set aside as barred by limitation. He would further submit that the suit was filed on 17.03.2006 and therefore, from 17.03.2003 onwards the amount ordered for damages may be confirmed. I find every justification in the said fair submission made by the learned senior counsel. As rightly contended on either side, the claim made for the period before 17.03.2003, is clearly barred by limitation and therefore the amount of arrears of rent as well as the damages ordered for the period prior to 17.03.2003, is hereby set aside. Accordingly the first question of law is answered.

14. Now turning to the quantum of damages, the learned counsel for the appellants submitted that there was no evidence let in by the plaintiffs in respect of the loss caused to them on account of the possession continued by the appellants. Of course, it is true that there was no evidence to that effect but that will not bar the trial Court to take cognizance of the prevailing escalation in prices, rents prevailing in the market and then to arrive at a proper conclusion. The Courts below have given cogent reasons as to how they have come to the conclusion that Rs.2,500/- per month would be appropriate damages. This, in my considered opinion, is essentially a question of fact and there is no substantial question of law in this. Therefore, I do not find any reason to take a different view from the view taken by the Courts below. Accordingly, I do confirm that part of the decree directing the appellant to pay damages at the rate of Rs.2,500/- per month from 17.03.2003 onwards with interest at the rate of 6% per annum until the possession is delivered to the plaintiffs.

15. Now, I have to consider the amount of cost to be imposed against the appellants. Admittedly, the appellants are a public

limited company owned by the Government. This should be a model company for other tenants. But instead of obeying the decree and deliver vacant possession even after execution petition was filed, the appellants had been adopting one method or the other to retain the property without delivering vacant possession to the respondents. The learned counsel for the appellants, as I have already pointed out had submitted that it is a cumbersome process as they have to get permission up to the level of Board of Directors of the appellants company to take a decision to hand over vacant possession to the respondents. The suit in this case was filed in the year 2006 and even after nine years, the plaintiffs are not in a position to take back their own property. In my considered opinion, this appeal has been filed only with a view to drag on the proceedings so as to avoid handing over possession of the property in pursuance of the decree passed by the trial Court in the year 2009. Therefore, I am of the view that this Court while dismissing this appeal has to impose appropriate exemplary cost of Rs.10,000/- (Rupees ten thousand only) on the appellants.

16. In the result, this second appeal is dismissed on the above terms. It is further ordered that the time for vacating and handing over vacant possession to the respondents by the appellants is eight weeks from today. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Chengalpattu.
2. The Principal Sub-Judge,
Chengalpattu.
3. The Head Clerk,
V.R. Section, High Court, Madras.

1 CC to M/s.King and Partridge, Advocate SR.No. 4342

2 CCs to Mr.A.Dhiraviyanathan, Advocate SR.No. 4384

S.A.No.1532 of 2011
and M.P.No.1 of 2011

RSI (CO)

PSI (10/02/2015)