

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 13.3.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

S.A.No.1621 of 2011

and

M.P.No.1 of 2011

Balu

...Appellant/Defendant

vs.

Radhakrishnan(died)
Rep.by his Legal Representatives

1.Lakshmi Bai (died)

2.Vimalakumari

3.Sathya

4.Sarala

... Respondents/Plaintiffs

(R2 to R4 are bring on record as
LRs of the deed R1 by the order
of this Court dt.18.3.15)

Second Appeal preferred against the judgement and decree dated 12.10.2011 passed by the Principal sub Judge, Pondicherry, in A.S.No.1 of 2005, confirming the judgement and decree dated 08.09.2005 passed by the III Additional District Munsif, Pondicherry, in O.S.No.660 of 2000.

For appellant :: Ms.G.Ashokpaty

For Respondents :: Mr.T.P.Manoharan for R3 and R4

R2-No appearance

R1-Died

JUDGEMENT

The defendant in O.S.No.660 of 2000 on the file of the III Additional District Munsif, Pondicherry is the appellant herein. The suit was originally filed by one Mr.Radhakrishnan. The suit is for recovery of possession; for recovery of a sum of Rs.5000/- towards rental arrears and for a direction to pay damages at the rate of Rs.4000/- per month for use and occupation of the suit property from the month of September 2000.

2. The trial Court, by decree and judgment dated 8.9.2005 decreed the suit in part, thereby granting decree for recovery of possession and also for payment of damages at the rate of Rs.400/- per month for use and occupation from the month of September 2000 and dismissed the suit in respect of the claim for arrears of rent of Rs.5000/-. As against the same, the appellant/defendant filed an appeal in A.S.No.1 of 2005. During the pendency of the appeal, the sole plaintiff Mr.Radhakrishnan died, in whose place, the respondents herein were impleaded as his legal representatives.

3. The lower Appellate Court, by decree and judgment, dated 12.10.2011, dismissed the appeal. However, strangely, directed the defendant to pay Rs.5000/- towards arrears of rent, which was denied by the trial Court.

4. Challenging the said decree and judgment of the lower appellate Court, the appellant/defendant is before this Court, by way of second appeal.

5. The case of the plaintiff is as follows:

(a) The suit property belonged to Radhakrishnan, the sole plaintiff. The appellant is a tenant. The monthly rent was Rs.400/- per month. The rent was thereafter enhanced at the rate of Rs.450/- per month from the month of October 1999. Earlier, a notice was issued on 23.08.1999 terminating the lease, since the appellant had failed to pay the rent promptly. Subsequently, the rent was enhanced to Rs.450/- and therefore, according to the plaintiff a new lease came into effect. Even thereafter, according to the plaintiff, the defendant did not pay the rent properly. Therefore, a fresh notice dated 9.2.2000 issued terminating the lease. This notice was issued under Section 106 of the Transfer of Property Act, terminating the lease by 15 days period. A reply notice was issued by the appellant under Ex.A3, on 22.03.2000. Even thereafter, the appellant did not handover vacant possession and therefore, the plaintiff filed a suit for the above reliefs.

(b) In the written statement filed, it is admitted that the appellant is a tenant. But it is stated that there was no arrears of rent. It is further stated that the rent was paid in lumpsum, though not on the due date, in every month. For the period between April 1993 to February 2000, a sum of Rs.4000/- was paid. There was no arrears.

6. Based on the above pleadings, the trial Court framed appropriate issues.

7. On the side of the plaintiff, he was examined as P.W.1 and as many as three documents were exhibited, namely, termination notice dated 9.2.2000 (Ex.A1), Postal Acknowledgment dated 22.2.2000 (Ex.A2) and reply notice issued by the defendant dated 22.03.2000 (Ex.A3).

On the side of the appellant/defendant, he was examined as D.W.1 and two documents were exhibited, namely, the notice issued by the plaintiff on the earlier occasion on 23.08.1999 under Ex.B1 and reply notice issued on 27.9.1999 under Ex.B2.

8. Having considered all the above, the trial Court decreed the suit in part, thereby granting decree for recovery of possession and for damages at the rate of Rs.400/- per month from the date of plaint. The trial Court, however, declined to decree the suit for arrears of rent of Rs.5000/-, as claimed in the plaint.

9. The defendant filed appeal and the lower appellate Court, while confirming the decree, strangely granted decree for Rs.5000/- towards rental arrears, though there was no cross-appeal filed by the respondents.

10. When this second appeal was admitted by this Court on 22.12.2011, this Court framed the following substantial questions of law.

"(1) Whether the lower appellate Court is justified in decreeing the relief of recovery of arrears of rent without any independent or cross objections preferred by the plaintiff when the Trial Court dismissed the sit for recovery of arrears of rent?

(2) whether the Courts below have committed error in decreeing the suit for eviction when the notice of termination of lease itself was defective and not issued in accordance with Section 106 of the Transfer of Property Act, 1882?

(3) Whether the Courts below committed grave error in not finding that lease in the absence of a written contract for manufacturing purpose shall be deemed to be lease from year to year terminable by six months' notice?

(4) Whether the Courts below are right in law in holding that the lease shall be compulsorily registrable when it was admittedly a lease which was not in writing?

(5) Whether the Courts below committed error in decreeing the suit for eviction when the plaintiff himself failed to file any agreement of lease in writing for the application of Section 107 of the Transfer of Property Act, 1882?

(6) Whether the Courts below have committed error in not finding that the notice of termination of lease shall be issued granting 6 months time for terminating the lease in the case of Industrial purpose carrying on manufacturing activities under the deemed provision under Section 106 of the Transfer of Property Act, 1882?

(7) Whether the Courts below are right in decreeing the suit for eviction when the suit notice itself is defective granting only 15 days time, treating the tenancy as month-to-month basis?

(8) Whether the lower appellate Court is right in modifying the decree over the dismissal of suit concerning the recovery of arrears of rent when the case set up by the plaintiff himself is self-destructive and a bundle of self contradictions?"

11. I have heard the learned counsel on either side and I have also perused the records carefully.

12. Though it is contended before this Court that the lease is for manufacturing purposes and therefore termination should have been made on issuing six months notice, I find no pleading at all to this aspect anywhere in the written statement. As a matter of fact in the reply notice under Ex.A3, the appellant has admitted that the monthly rent was Rs.450/- and the same was also promptly paid and thus, there is no arrears of rent. Thus, it has been clearly stated that the lease is only monthly lease and not year to year lease. Sub-Section (1) of Section 106 of the Transfer of Property Act speaks of deemed period of lease in case of absence of any written contract or local usage. The said deeming provision can be invoked if only there is a dispute as to whether the lease is of year to year lease or month to month lease.

13. In this case, in Ex.A3, the appellant/defendant has tacitly admitted that it is only month to month lease and therefore, in my considered opinion Ex.A1 terminating the lease by 15 days' notice is valid. Apart from that, in the written statement, the defendant had not at all pleaded that the said notice terminating lease by 15 days is defective, inasmuch as according to the appellant, the lease should have been terminated by issuing six months' notice. There was no corresponding issue on such aspect by the trial Court. In the absence of such pleading in the written statement, it is not open for the appellant to raise such a plea for the first time before this Court.

14. So far as the arrears of rent of Rs.5000/- is concerned, as I already pointed out, the trial Court declined to grant decree in respect of the same. Admittedly there was no cross-appeal by the respondents. But quite strangely and shockingly the lower appellate Court has granted decree directing the appellant to pay Rs.5000/- towards arrears of rent. To this extent alone the decree and judgment of the lower appellate Court deserves interference. In all other respects, there is no merit in this appeal.

15. The substantial questions of law raised related to the notice as to whether the lease is year to year lease terminable by

six months notice or month to month notice terminable by 15 days are concerned, as I have already concluded that in the instant case, even according to Ex.A3, the lease is only month to month lease and therefore, the termination is valid.

16. Thus, all the substantial questions law are to be answered only against the appellant.

17. At the end, the learned counsel for the appellant made yet another argument that in the instance case it is in evidence that the appellant has established a lathe and thus, the suit property is used for manufacturing purpose.

18. This argument does not persuade me, because it may be true that the appellant may be using the property for manufacturing purpose, but that is not material. What is material is the purpose for which the property was leased out. It is nowhere stated in the written statement that the suit property was leased out for manufacturing purpose. In such view of the matter, this argument also deserves to be rejected.

19. In the result, this second appeal is partly allowed. The decree granted by the lower appellate Court directing the appellant to pay Rs.5000/- towards arrears of rent alone is set aside and in all other respects, the decree and judgment of the lower appellate Court is confirmed. Thus, the decree and judgment of the trial Court stands confirmed. No costs. Connected miscellaneous petition is closed.

This second appeal was disposed of in the morning session of today. In the afternoon, by about 4 'O' clock, the learned counsel for the respondent, in open Court filed a memo stating that the first respondent in this second appeal, Mrs. Lakshmi Bai is no more. He wants the proposed respondents 2 to 4 to be recorded as legal representatives of the first respondent. To get it clarified, Registry is directed to list the matter on 16.03.2015 for clarification.

This second appeal was finally heard on 13.03.2015 and this Court on the same day partly allowed the second appeal thereby setting aside the decree granted by the First Appellate Court directing the appellant to pay Rs.5,000/- towards arrears of rent alone and this Court confirmed the decree of the First Appellate Court in all other aspects.

2. At that time, it was not reported by either party that the first respondent Mrs. Lakshmi Bai, is no more. In the afternoon session on the same day (13.03.2015), the learned counsel for the respondents made a mention to this Court that the first respondent

Mrs.Lakshmi Bai is no more and by inadvertence, the same has not been brought to the notice of this Court. After having recorded the said submission made by the learned counsel for the respondents, this Court directed the Registry to list this matter again "for clarification".

3.Today, the matter has been listed under the caption "for clarification". The learned counsel for the respondents has filed a memo dated 16.03.2015 reporting that the first respondent Mrs.Lakshmi Bai is no more and also making a request of this Court to declare the respondents 2 to 4 (Vimalakumari, Sathya and Sarala) as the legal representatives of the deceased first respondent. The said memo is recorded. Accordingly, in this Second Appeal, it is recorded that the first respondent Mrs.Lakshmi Bai is dead and it is also recorded that the respondents 2 to 4 are the legal representatives of the deceased first respondent.

4.Since, the matter was fully heard and disposed of by this Court on 13.03.2015, the learned counsel on either side submitted that they do not want to make any more submissions in this matter and they request the Court to record the above facts in the judgement. Accordingly, it is recorded that the first respondent Mrs.Lakshmi Bai is declared dead and the respondents 2 to 4 are impleaded as legal representatives of the deceased first respondent. The oral judgement passed by this Court on 13.03.2015 shall hold good.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Principal sub Judge, Pondicherry

2.The III Additional District Munsif, Pondicherry.

Copy to:
The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.T.P.Manoharan, Advocate,SR.15262

+1 cc to M/s.Pass Associates,SR.14412.
ksj (co)
krd 15/4

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