

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 31.03.2015

DELIVERED ON: 09.06.2015

CORAM

THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

S.A.No.782 of 2006

K.Selvaraj

...Appellant/Defendant

vs.

R.Gomathi

...Respondent/Plaintiff

Second Appeal against the judgment and decree dated 16.02.2005 made in A.S. No.42 of 2003 on the file of the Principal District Court, Coimbatore confirming the judgment and decree dated 27.11.2002 made in O.S.No.270 of 2000 on the file of the I Additional District Munsif Court, Coimbatore.

For appellant : Mr.N.Manokaran

For respondent : Mr.M.Venkateswaran

JUDGMENT

The defendant in the original suit O.S.No.270 of 2000 on the file of the First Additional District Munsif, Coimbatore is the appellant in the second appeal. The plaintiff in the said suit is the respondent in the second appeal.

2. The respondent filed the above said suit against the appellant herein praying for a decree of eviction directing the appellant/defendant to vacate and handover vacant possession of the suit property to the respondent/plaintiff, to pay a sum of Rs.8,400/- with interest at the rate of 12% per annum from the date of plaint towards arrears of rent from April 1998 to December 1999 and mesne

profits /damages for use and occupation at the rate of Rs.400/- per month and also for costs.

3. The suit came to be filed on the basis of the plaint averment that the appellant/defendant became a tenant in respect of the suit property, namely a residential portion of the house bearing Door No.7/44-A in S.F.No.743 of Kalapatti Village, Coimbatore Taluk, Coimbatore District for a monthly rent of Rs.400/- and that the appellant/defendant committed default in payment of rent from April 1998 to December 1999 aggregating to Rs.8400/-; that hence by a notice dated 01.12.1999 the tenancy came to be terminated by the end of March 1999 and that thereafter, the appellant/defendant was liable to pay mesne profits / damages for use and occupation at the same rate till handing over possession.

4. The suit was resisted by the appellant/defendant contending that there was no jural relationship of landlord and tenant between the respondent/plaintiff and the appellant/defendant. It was contended further that one Chinnakuppa Konar owned considerable agricultural lands comprised in S.Nos.741 & 743 in Kalapatti Village in Coimbatore Taluk; that on the death of Chinnakuppa Konar intestate, his son Ganesan and daughters Ramathal, Arukkaniammal and Lakshmiammal became entitled to the said property in equal shares and they were in joint possession and enjoyment of the entire property; that in the year 1990, when the creditors of Ganesan pressed for payment, the legal heirs of Late Chinnakuppa Konar decided to sell 4 acres and 41 ½ cents to Mallikarjuna Vahayara; that since the respondent/plaintiff was a minor and the purchaser was unwilling to get a sale deed from the minor, the legal representatives of Chinnakuppa Konar effected a partition under a partition deed allotting 4 acres 41 ½ cents to the other legal representatives of Chinnakuppa Konar and S.No.743 to the respondent/plaintiff, appellant/defendant and his brother Devaraj; that the said property measuring 3 acres 8 ½ cents allotted to respondent/plaintiff, appellant/defendant and his brother Devaraj was partitioned in the year 1991 into two equal shares and the southern part was allotted to the respondent/plaintiff whereas the northern part measuring 1 acre 54 1/4 cents was allotted to the appellant/defendant and his brother Devaraj and that ever since the said date, the appellant and his brother Devaraj were in possession and enjoyment of the northern share. It was also contended that the appellant/defendant and his brother Devaraj constructed a RCC Terrace building with a carpet area of 1000 sq.ft which is divided into two portions one facing the west and the other facing the east; that the appellant /defendant is residing on the western portion facing the west and his brother Devaraj is residing in the eastern portion facing east; that they

obtained electricity service connection bearing Nos. 495 and 496 for their respective portions in their names and that they are enjoying the same not as tenants as claimed by the respondent/plaintiff, but on the other hand, they are in possession and enjoyment of the same in their own right.

5. A similar suit was filed against Devaraj, the brother of the appellant herein in O.S.No.272 of 2000, whereas the appellant and his brother Devaraj filed O.S.No.1562 of 2001 against the respondent/plaintiff and her mother Sarojini for permanent injunction not to disturb their possession. All the three suits were tried together and the learned trial Judge decreed O.S.No.270 and 272 of 2000, the suits filed by the respondent herein/plaintiff and dismissed the suit O.S.No.1562 of 2001 filed by the appellant herein/defendant and his brother.

6. The appellant herein/defendant preferred an appeal in A.S.No.42 of 2003 against the decree passed against him in O.S.No.270 of 2000 and filed another appeal in A.S.No.185 of 2003 against the decree of the trial Court dismissing O.S.No.1562 of 2001. It seems Devaraj, the brother of the appellant did not file any appeal. By a common judgment, the learned lower appellate Judge (Principal District Judge, Coimbatore) dismissed both the appeals preferred by the appellant herein without costs.

7. We are not concerned with the decree passed in A.S.No.185 of 2003 confirming the decree of the trial Court made in O.S.No.1562 of 2001 and no second appeal seems to have been filed in respect of the said case. The appellant/defendant in O.S.No.270 of 2000 has chosen to present the second appeal as against the decree of the lower appellate Court dated 16.02.2005 in A.S.No.42 of 2003 confirming the decree of the trial Court dated 27.11.2002 made in O.S.No.270 of 2000.

8. A second appeal challenging the appellate decree of a Court subordinate to the High Court shall lie to the High Court under Section 100 CPC, if such appeal involves a substantial question of law. In accordance with the mandate provided in Section 100 CPC, the second appeal came to be admitted on 25.07.2006 identifying the following to be the substantial question of law involved in the second appeal:-

a) In the face of the voluminous documentary evidence produced by the defendant, which show that not only service connection for the suit property is given in the name of the defendant but also evidence that the defendant has right over the property, have not the Courts below committed an error of law in holding that there exists a

landlord-tenant relationship?

b) In other words, is not the finding of the Courts below that there exists a landlord-tenant relationship between the parties perverse, since it is opposed to the documentary evidence made available to the court by the defendant?

9. The arguments advanced by Mr.N.Manokaran, learned counsel for the appellant and by Mr.M.Venkateswaran, learned counsel for the respondent were heard. The materials available on record were also perused.

10. Though two questions have been formulated as substantial questions of law at the time of admission of the second appeal, both the questions are not different and they are one and the same expressed in different language. The crux of the questions formulated as substantial questions is whether the finding of the Courts below that there existed a relationship of landlord and tenant between the parties to the suit is perverse?

11. As rightly contended by the learned counsel for the appellant, the suit came to be filed not on the basis of the title or alleged encroachment and on the other hand, the suit came to be filed by the respondent/plaintiff on the premise that the appellant / defendant became a tenant in respect of the suit property under the respondent /plaintiff for a monthly rent of Rs.400/- and that the tenancy came to be terminated by issuing a notice dated 01.12.1999, a copy of which has been marked as Ex.A5. It is pertinent to note that even prior to the issuance of the said notice, the appellant/defendant and his brother Devaraj through their lawyer issued a notice on 14.10.1999 claiming title to the properties and asking the respondent/plaintiff and her mother not to make an attempt to get either patta by misrepresenting the facts or to sell the property to anybody. Only thereafter, the respondent/plaintiff and her mother Sarojini chose to issue a reply contending that the appellant herein/defendant and his brother were allowed to occupy two portions of the building as tenants on monthly rent of Rs.400/- each. Till then there was not even a murmur about the alleged tenancy and arrears of rent. In fact, even in the said reply notice, a copy of which has been marked as Ex.A3, there is no averment as to the date of inception of the tenancy and the alleged arrears of rent. The last paragraph of the reply notice reads as follows:

"Therefore, we hereby call upon your client to restrain themselves from doing illegal acts against our clients and also we further call upon your client to vacate the premises on the end of the tenancy month and we also call upon your client to pay the arrears of rent within 15 days from the

date of receipt of this notice, failing which we have definite instructions to proceed against your clients legally at your clients costs and consequence."

Though in the said paragraph it was purported to terminate the alleged tenancy, it did not state by the end of which month the tenancy was sought to be terminated. Even though it refers to the arrears of rent and a demand was made to pay the arrears of rent within 15 days from the date of receipt of the reply notice, there is no communication as to how much was the arrears and in respect of what period. The said contentions were stoutly refuted by the appellant and his brother by a rejoinder dated 11.11.1999, a copy of which has been marked as Ex.A4. Only thereafter the respondent/plaintiff chose to file the suit.

12. The husband of the respondent / plaintiff figured as PW1. According to his evidence, he married the respondent/plaintiff only in 1998. However, he would venture to depose that the suit property was rented out to the appellant/defendant for a period of 11 months from 15.01.1993. The said part of the evidence of PW1 is one without necessary pleading. Even otherwise, there is not even a scrap of paper to show that the appellant/defendant was a tenant in respect of the suit property. Not even a single counterfoil of the receipt or copy of the receipt evidencing payment of rent came to be produced by the respondent/plaintiff. What was the mode in which the rent was paid has not been stated either in the plaint or in the evidence of PW1. On the other hand, the evidence of PW2, the mother of the respondent/plaintiff, does have an effect of demolishing the case of the respondent/plaintiff itself. It is her testimony that it was she who constructed the houses with the help of Rajagopal and Narayasamy. It is also admitted by her that there are two portions, one facing east and the other facing west and the appellant / defendant is in possession of west facing house, whereas his brother Devaraj is in possession of the east facing house. Though she would claim that the properties were let out to the appellant/defendant and his brother on 15.01.1993 for 11 months, there is no evidence as to on what basis the tenancy was continued after the lapse of 11 months. The evidence of PW2 will show that she was not aware of the necessary particulars regarding the devolution of interest in respect of the properties held by the ancestors of the parties. At one point of time, PW2 would say that it was not correct to state that the suit houses were put up prior to 1998. The said answer made by PW2 will make it clear that the alleged tenancy arrangement in the year 1993 could not be true. In the absence of any document, this Court wonders how a rustic lady like PW2 was able to furnish the exact date of inception of tenancy.

13. In addition, Ex.A10 is the patta passbook issued in the name of Sarojini, the mother of the respondent/plaintiff. Exs.A11 to A13 are receipts for the kist paid in patta No.2106 for faslis 1405, 1406 and 1407. Exs.A16 has been produced as the note book containing the particulars of payments made for purchase of materials for the construction of the suit house. It is quite obvious that the entries were made in the year 1992. The notebook allegedly containing the particulars of payment made for the purchase of water for constructing the suit house has been produced as Ex.A17. It also contains entries only from 1992. Ex.A19 is a receipt for the purchase of fan to be fixed in the suit house. It is of the year 1992. Ex.A8 is the receipt for payment of the price of iron doors for being used in the suit house. It is dated 17.11.1993. Ex.A19 is in the name of one Suresh, whereas Ex.A18 has been prepared on a plain paper. It is also obvious from Ex.A18 that the amount paid therein was only an advance and it was not a payment made for the doors supplied earlier. It will be quite obvious from Ex.A18 that even if the building could have been constructed by the plaintiff, the same could not have been completed before 15.01.1993 so as to enable the respondent/plaintiff to have the same leased out to the appellant/defendant on 15.01.1993.

14. On the other hand, the evidence of Dws 1 to 3, coupled with the documents produced by the appellant/defendant, will make it clear that there was no relationship of landlord and tenant between the respondent and the appellant and the appellant was residing in the suit property in his own right. In a suit for recovery of possession based on alleged termination of tenancy, the question of title need not be gone into. When the relationship itself is disputed, it shall be the duty of the plaintiff to prove the existence of the relationship of landlord and tenant to be terminated either by issuance of notice in case the tenant is not statutorily protected or by obtaining the necessary order of eviction from the competent authority in case of protected tenant. Ex.B4 is the patta issued in the name of the appellant / defendant. Ex.B5 is the Chitta for fasli 1396 and Ex.B6 is the Kist receipt for payment of kist in the name of Devaraj for the fasli 1411. Ex.B7 is the xerox copy of the family card. Ex.B8 is the notice issued to the appellant/defendant communicating the response of the requisitioning Department to the objection raised by the appellant/defendant for the proposed acquisition of the property under the Land Acquisition Act for the use of the Tamil Nadu Housing Board. Ex.B12 is the copy of the Electric Meter Reading Card for the electricity service connection provided to the suit house. It is in the name of the

appellant/defendant. Ex.B13 is the demand notice dated 11.03.1999 issued to the plaintiff to the address of the suit house. Exs.B14 to Ex.B22 are the receipts for payment of electricity charges to the suit house in the name of the appellant/defendant. Exs.B23 and B26 are the notice demanding additional deposit for the service connection issued to the appellant/defendant. Exs.B33 to B37 will show that the appellant/defendant had got telephone connection and he was making payment of telephone charges. Out of the above said documents, the documents evidencing service connection provided in the name of the appellant/defendant to the suit property and payment of electricity charges will make it clear that he was residing there not as a tenant and on the other hand he was residing in the suit property claiming title.

15. Without properly considering the voluminous oral and documentary evidence adduced on the side of the appellant / defendant to show that he was residing in the suit property on his own right and not as a tenant and disregarding the fact that there is absence of any piece of paper to show the relationship of landlord and tenant between the respondent and the appellant at any point of time the trial Court rendered a finding that the appellant/defendant was a tenant. While dealing with the evidence of PW2 regarding the construction of the suit property the improbability pointed out supra was not taken note of and the Courts below chose to render a perverse finding that the appellant/defendant was a tenant in respect of the suit property under the respondent/plaintiff and that the respondent/plaintiff was entitled to recover possession and arrears of rent and damages for use and occupation after the alleged date of termination of tenancy. Since the said finding of the Courts below is held to be perverse, this Court comes to the further conclusion that the suit filed on the basis of the alleged tenancy arrangement and its termination is not maintainable and that the respondent/plaintiff ought to have filed a suit for recovery of possession on the basis of title, whereupon she should prove her title and get the relief.

16. For all the reasons stated above, this Court comes to the conclusion that both the substantial questions of law on which the appeal came to be admitted deserve to be answered in favour of the appellant / plaintiff holding that the finding regarding the existence of jural relationship of landlord and tenant between the respondent and the appellant made by the Courts below is a perverse finding and that the same is liable to be interfered with and set aside.

17. In the result, the second appeal is allowed, the decree of the lower appellate Court dated 16.02.2005 made in A.S. No.42 of 2003 confirming the decree of the trial Court dated 27.11.2002 made in

O.S.No.270 of 2000 is set aside and the suit shall stand dismissed.
However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gpa

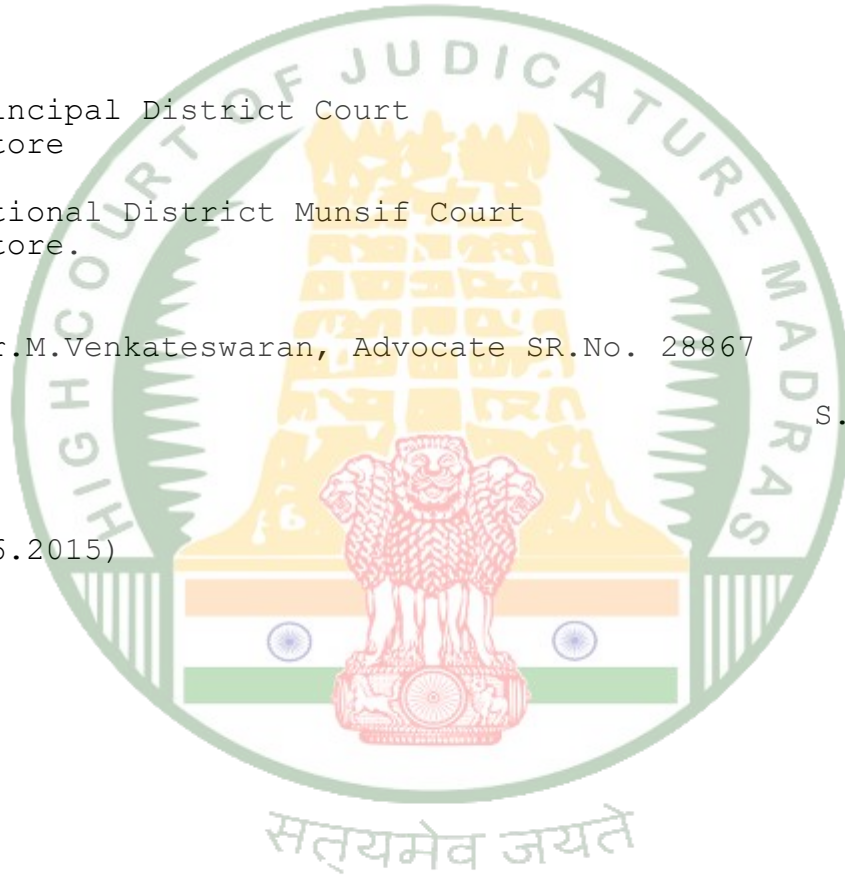
To

1. The Principal District Court
Coimbatore
2. I Additional District Munsif Court
Coimbatore.

1 CC to Mr.M.Venkateswaran, Advocate SR.No. 28867

S.A.No.782 of 2006

BVR (CO)
PSI (12.06.2015)



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