

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2015

CORAM

THE HON'BLE MS. JUSTICE R. MALA

S.A.No.656 of 2004

Date of Reserving the Judgment 18.06.2015	Date of Pronouncing the Judgment 24.06.2015
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Dr. Mrs.Trilochini (Deceased)

2.Dr. Mrs.Chandrakanth
W/o. Dr.P.S.Vetriselvam

3.Dr. Sri.Indira Mohan
S/o. Late Sri C.M.Sambamurthi ...Lrs of deceased Appellant/LRs of
deceased Plaintiff

(Appellants 2 and 3 are brought on record as LR's of the
deceased sole appellant vide order of the Court dated
05.11.2009 made in C.M.P.Nos.741 & 742/2009 in S.A.No.656/ 2004)

-Vs-

Dr. Mrs.Chitralekha ... Respondent/Defendant

Prayer:

Second appeal filed under Section 100 of CPC against the judgment and decree of the learned VII Additional District Judge, City Civil Court, Chennai in A.S.No.253 of 1999, dated 25.07.2000 reversing the judgment and decree of the learned II Assistant Judge, City Civil Court, Chennai in O.S.No.790 of 1995, dated 22.12.1998.

For Appellants : Mr.M.Vaidyanathan

For Respondent : Mr.N.Jayabalan

J U D G M E N T

The second appeal arises out of the judgment and decree dated 25.07.2000 made in A.S.No.253 of 1999 on the file of the learned VII Additional District Judge, City Civil Court, Chennai, reversing the judgment and decree dated 22.12.1998 passed in O.S.No.790 of 1995 on the file of the learned II Assistant Judge, City Civil Court, Chennai.

2. The averments made in the plaint are as follows:-

The plaintiff is the absolute owner of the suit property having been allotted under Ex.A.1/Family arrangement. The defendant herein is the daughter of the plaintiff's elder sister Anusuya Bai. The plaintiff is employed as a Doctor in Malaysia and has been residing in Malaysia. During her absence, the plaintiff permitted her sister Anusuya Bai to reside in the suit premises. The said Anusuya Bai died and the defendant herein who had been residing with her mother was permitted by the plaintiff to continue to reside in the premises. In the year 1993, the plaintiff had requested the defendant to hand over vacant possession and the defendant had promised to vacate before December 1993. However, as the defendant failed to vacate the premises, the plaintiff issued a Ex.A.2/notice, dated 12.03.1994 revoking the permission granted to the defendant with effect from 30.04.1994. After the receipt of the Ex.A.2/notice, the defendant issued Ex.A.4/Reply, dated 23.03.1994 alleging that the plaintiff had promised to pay a sum of Rs.60,000/- as compensation. Thereafter, by a letter dated 29.03.1994, the plaintiff had refused the claim of the defendant for compensation and the defendant in her reply dated 29.03.1994 expressed her inability to vacate the premises on personal grounds and reiterated that the plaintiff had promised to pay a substantial amount as compensation. However the plaintiff refused the same and came forward with the present suit.

3. The gist and essence of the written statement filed by the defendant is as follows:

The appellant who is the defendant in the suit filed the written statement stating that the plaintiff is a citizen of Malaysia and therefore, in order to look after the property she had requested her sister Anusuya Bai to stay in the said property. The plaintiff also appointed the defendant's mother as the power agent to do all acts pertaining to the suit property. After the marriage of this defendant, she had settled in Avadi. As the defendant's mother grew older and she was not able to manage the house affairs, she requested the defendant to stay with her in the suit property and to assist her in the maintenance of the property. Thus the defendant was put in possession of the suit property by her mother and not by the plaintiff. While so, after the marriage of plaintiff's daughter, she informed the defendant that she wanted to settle the property in favour of her daughter and it may not be proper on her part to allow the defendant to reside in the suit property without any rent. So, the plaintiff fixed the monthly rent at Rs.100/- and directed her to deposit the monthly rent of Rs.100/- to the credit of Banu in her Account with Indian Overseas Branch, Nehru Park Branch and the defendant is remitting the rent to the credit of Banu from September 1985 till this date. In the year 1989, the rent was enhanced to Rs.200/-. While so, the plaintiff wanted the defendant to vacate the suit property and she offered to give a sum of Rs.60,000/- to buy a flat. When the defendant impressed upon the plaintiff that she cannot do any thing with the meagre amount, the plaintiff came forward to

pay another sum of Rs.40,000/-. In such circumstances, the defendant was shocked to receive a lawyer's notice dated 12.03.1994 calling upon the defendant to vacate the premises, for which this defendant sent a personal letter dated 23.03.1994 reminding the plaintiff about her offer inter alia reserving her right to protect her statutory right. So, the defendant is not the permissive occupier in the suit property as claimed in the plaint. After the establishment of landlord tenant relationship between the parties, the plaintiff has no locus standi to file the present suit and hence, the defendant prayed for dismissal of the suit.

4. The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel, has framed necessary issues and on perusing the oral and documentary evidence viz., P.W.1, D.W.1 and Exs.A.1 and A.8 and Exs.B.1 to B.50, decreed the suit. Aggrieved against the judgment and decree passed by the trial court, the defendant preferred an appeal in A.S.No.213 of 2001 on the file of the First Additional District Judge, Erode.

5. The learned First Appellate Court has considered the arguments advanced on either side and framed necessary point for consideration and reversed the Judgment and Decree passed by the Trial Court and allowed the appeal. Against the Decree and Judgment passed by the first Appellate Court, the present second appeal has been preferred by the defendant/appellant.

6. At the time of the admission, the following question of law has been framed.

"1. Whether the Appellate Court is right in giving a finding regarding the relationship between the parties - relating to permissive occupier and the tenant?

2. Whether the Appellate Court is right in giving a finding without written instructions in coming to the finding relating to the nature of occupation?

3. Whether the Appellate Court is right in coming to its conclusion, especially in the absence of pleadings?"

7. Challenging the same, the learned counsel for the appellant would submit that the deceased first appellant got the property under Ex.A.1/Family arrangement, dated 14.06.1951. Since she is residing in Malaysia, the plaintiff permitted her sister Anusuya Bai to reside in the said property. After the death of her sister, the defendant who is none other than the daughter of her sister was permitted to continue to reside in the premises. While so, when the plaintiff requested the defendant to hand over the vacant possession, she failed to do so. Hence, the plaintiff issued Ex.A.2/Notice, dated 12.03.1994. On receipt of the same, the defendant issued Ex.A.4/Reply notice, dated 23.03.1994. Thereafter, the present suit came to be filed.

8. The learned counsel for the appellant would submit that the only point that has to be decided is whether there was a landlord tenant relationship between the plaintiff and the defendant. The Trial Court had considered this aspect in detail and came to the conclusion that there is no such landlord tenant relationship and decreed the suit for recovery of possession. However, the first appellate Court had failed to consider the same and held that there is landlord tenant relationship between the parties and so, only the rent control authority is having jurisdiction to entertain the matter. But the evidence of D.W.1/Chitralkha itself would show that there is no landlord tenant relationship between the parties and that factum was not considered by the first appellate Court. Hence, the learned counsel for the appellant prayed for allowing the appeal.

9. Resisting the same, the learned counsel for the respondent would submit that the respondent's mother is none other than the sister of this plaintiff. Even though there is no documentary evidence such as rental agreement, from the year 1981 the respondent had been depositing Rs.100/- in the bank account of the daughter of the plaintiff/1st appellant and from the year 1987 she had been depositing Rs.200/- in the said account. So, the first appellate Court has correctly held that there is landlord tenant relationship. The learned counsel would further submit that there is no permissive possession. However, in paragraph 7 of the judgment of the first appellate Court, it was rightly held that the rent means service rendered by her in paying water tax, land tax and property tax. Hence, the learned counsel for the respondent prayed for the dismissal of the appeal.

10. Considered the rival submissions made by both sides and perused the material papers, oral and documentary evidences.

11. The admitted facts are that the deceased plaintiff/Trilochini is the owner of the property having derived the same under Ex.A.1/Deed of Family Arrangement, dated 14.06.1951. Since the plaintiff is settled at Malaysia, she permitted her sister Anusuya Bai, who is the mother of the respondent herein to reside in the said property. The respondent was residing along with her mother in the said property and after the demise of her mother, the respondent alone was residing there. While so, when the 1st appellant/plaintiff sought for vacating the premises, after revoking the permission granted under Ex.A.2/Notice, dated 12.03.1994, the respondent sent Ex.A.4/Reply dated 23.03.1994 alleging that the plaintiff had promised to pay a sum of Rs.60,000/- as compensation. It is appropriate to incorporate the relevant portion of the said communication.

"You may remember that during your last visit from Malaysia you had offered a sum of Rs.60,000/- as compensation and for that you insisted upon me to execute a pronote in your son-in-law's favour. I declined to give any such pronote since the amount offered by you was not a loan

to me. Of course you got irritated over my refusal. Perhaps you are still lingering over that and now caused the notice."

12. It is pertinent to note that in the Ex.A.4/Reply, the respondent/defendant had never stated that she is a tenant under the 1st appellant/plaintiff. However, in the written statement filed by the defendant in the suit, she has averred in paragraph 4 that the plaintiff had fixed the monthly rent at Rs.100/- and directed her to deposit the monthly rent of Rs.100/- to the credit of Banu (Plaintiff's daughter) in her S.B. Account 04954 with Indian Overseas Bank Nehru Park Branch and that the defendant is remitting the rent to the credit of Banu from September 1985 till this date. The respondent/defendant had further averred that in the year 1989, the rent was enhanced to Rs.200/-. She has further stated that she has paid the water tax, property tax. It is also admitted by both the parties that there was no written agreement between them. However, if there was really a landlord tenant relationship, it could have been mentioned by the defendant in her earlier communication to the plaintiff viz., Ex.A.4 claiming compensation of Rs.60,000/-. Furthermore, before the filing of the suit, there was exchange of letters between the parties. In the Ex.A.6/letter, dated 29.03.1994, addressed to the respondent/defendant by the plaintiff, it was specifically stated "what is the compensation you have written about? Why should I give you any compensation."

13. After the receipt of letter dated 29.03.1994, the respondent/defendant had addressed Ex.A.7/letter dated nil, wherein it was stated as follows:

"Well, Received your reply dated 29/3/94. I never thought that you are so short of memory. You have been asking me to vacate the property without any just reason. I expressed my difficulty to shift my residence since , I have established my clinic in the near by area. Further I told you about my other commitments. After elaborate consideration you agreed to pay substantial amount as compensation so that without much pinch I will be in a position to shift the house. I believed your words, now you pretence said offer is deliberate. Dignity restraining me from commenting upon the allegations regarding the kindness alleged to have been shown on me and gratitude you are expecting from me. I am unable to comply with the demand made by."

14. On a careful perusal of the above communication, it can be found that nowhere in the said communication, the respondent/defendant had averred that she is a tenant under the 1st appellant/plaintiff. Furthermore, even in the Ex.A.8/letter, dated nil, addressed by the plaintiff to the defendant, the now deceased plaintiff, who is the mother of the appellants herein had

categorically stated as to why she should pay compensation to the defendant for vacating her house.

15. In the Ex.B.1/letter, dated 08.07.1993 addressed by the plaintiff to the defendant much before the issuance of the Ex.A.2/Notice, dated 12.03.1994, the plaintiff had specifically averred that as follows:

"Please keep all the receipts of (1) House tax, (2) quit rent (3) Electricity and other relevant papers which you have been gathering through the years. Please do not leave any furniture etc to be collected later. I want to give the vacant house for him to start work on it very soon."

Thus, a careful consideration of Ex.B.1/letter would reveal that the plaintiff had refunded the amount paid towards house tax and electricity charges. Ex.B.2/letter, dated 04.09.1993 was addressed by one Prabhu Mohan to the respondent/defendant. Thus, in the previous correspondence between the parties, there was no whisper about the landlord tenant relationship between the parties. Even in the Ex.A.4/Reply issued by the defendant to the plaintiff, she had only sought for compensation of Rs.60,000/- on the ground that she had established her practice there. In such circumstances, the Trial Court has considered the evidence and came to the correct conclusion, whereas the first appellate Court had misconstrued the same on the ground that money has been deposited in the account of Banu, daughter of the plaintiff as rent.

16. It is pertinent to note that in the cross-examination, the defendant/respondent herein has fairly conceded that then and there she had requested the plaintiff/1st appellant to purchase jewels from Singapore and the plaintiff had also purchased the same. She had further stated that she got married in the year 1967 and after her marriage she was residing at Avadi in aunt's house and that she had not given any rent to that house. It is appropriate to incorporate the relevant portion of the deposition of D.W.1/Chitralekha.

"In the year 1981 I started to remit Rs.100/- rent. It is correct that it is mentioned in written statement that I started to remit Rs.100/- as rent from the year 1985. it is correct to say that I asked to get jewels in Singapore. From 1981, I asked the plaintiff to buy jewels. It is not correct that I wanted the jewels as gift. It is correct that the plaintiff has gifted so many things to me, when I started my clinic. The income from clinic is approximately is Rs.2000/- per month. The plaintiff gave the account number of the daughter in the year 1981. It is not correct to say that I have paid money for the purchase of jewellery."

Further, in the cross-examination, the defendant had fairly conceded that in Ex.A.4, she did not mention that she had remitted the rent into the bank. From the year 1985, she have got bank account in

Canara Bank, Choolai. However, there is no challan to show the deposit in her account.

17. The first appellate Court in paragraph 7 of its judgment has incorporated Section 105 of the Transfer of Property Act and held that the amount paid as water tax, land tax and property tax shall be construed as a rent. However, the above finding does not hold good because if there exists a rental agreement and the tenant pays those taxes, the same shall be construed as a rent. However, in the given case, there is no evidence to show that there was a landlord tenant relationship between the parties. If really there was such a relationship, it should have been reflected in the Ex.A.4/Reply notice and in the other communications between the plaintiff and the defendant. Only in the written statement, for the first time, it was stated that the defendant is a tenant under the plaintiff and the defendant had been depositing a sum of Rs.100/- towards rent in the account of one Banu, the daughter of the plaintiff. It is admitted by the respondent/defendant that after the year 1985 she had not deposited the amount in the account of the first appellant's daughter. However, she has stated that she had deposited the money in her account. If really there is a landlord tenant relationship, she could have sent the money through Money Order or she could have very well invoked Section 8 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and deposited the money before the Court. But without invoking the said provisions, the respondent/defendant kept quiet all along which shows that there is no landlord tenant relationship between the parties. However, the mere deposit of Rs.100/- cannot be construed as a rent because in the cross-examination, the defendant had fairly conceded that she had asked the plaintiff to purchase jewels for her from Singapore, even though she had denied the suggestion that the amount for buying the jewels was deposited at Rs.100/- per month. The said aspect was also not properly considered by the first appellate Court.

18. It is pertinent to note that the intention of the respondent/defendant is to grab money from the 1st appellant/plaintiff. When the 1st appellant/plaintiff refused to pay the compensation and filed the suit for recovery of possession, after revoking permissive possession, the defendant had taken the plea that there is a landlord tenant relationship between the parties. But the first appellate Court has not considered the same in proper perspective. Whereas the Trial Court has considered each and every aspect in proper perspective and came to the correct conclusion. Hence, the finding of the first appellate Court that there is a landlord tenant relationship between the parties is unsustainable. The first appellant/plaintiff is the owner of the property and she permitted the respondent/defendant to reside in the same. As per Ex.A.2, the first appellant/plaintiff revoked the permission and sought for recovery of possession. Hence, the appellants are entitled to recovery of possession. Thus the substantial question of law 1 to 3 are answered accordingly.

19. In view of the answer given to the substantial question of law 1 to 3, I am of the view that the judgment and decree passed by the first appellate Court is erroneous and unsustainable and the same is hereby set aside. Consequently, the judgment and decree of the Trial Court is hereby restored.

20. In fine,

- (a) The Second Appeal is allowed. No costs.
- (b) The judgment and decree passed by the first appellate Court is hereby set aside.
- (c) The judgment and decree passed by the Trial Court is hereby restored.
- (d) The time granted for delivery is two months.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The VII Additional District Judge, City Civil Court, Chennai.

2.The II Assistant Judge, City Civil Court, Chennai.

Copy To:

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

+1 cc to Mr.M.Vaidyanathan, Advocate, SR.30903

+1 cc to Mr.N.Jeyabalan, Advocate, Sr.31242.

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Pre-delivery Judgment made in
S.A.No.656 of 2004

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