

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.667 of 2004

&

C.M.P.Nos.924 of 2012 & C.M.P.No.435 of 2015

Santha .. Appellant

(Represented by Power of Attorney
Mr.Jegadeesan, husband of the sole appellant)

-Vs-

Smt.Anjali Devi .. Respondent

Second Appeal filed under section 100 of C.P.C against the judgment and decree dated 17.02.1997 of the learned Additional District Judge, Pondicherry at Karaikal in A.S.No.34 of 1996 confirming the judgment and decree dated 29.03.1996 of the learned Principal District Munsif, Karaikal made in O.S.No.234 of 1994.

For appellant : Mr.G.Jegadeesan
(Party-in-person)

For Respondent : Mr.R.Vasudevan

JUDGMENT

The plaintiff in the original suit is the appellant in the second appeal. She is represented by her husband Jegadeesan, who holds a Power of Attorney and he appears as a party-in-person.

2. The suit was filed for ejectment on the premise that the respondent /defendant was a lessee in respect of a vacant site over which he had put up a hut and that the appellant/plaintiff, having purchased the property, became entitled to attornment of tenancy. It was also contended by the appellant/plaintiff before the trial Court that the respondent, who initially agreed to pay rent to the appellant/plaintiff, failed to keep the promise and hence, the appellant/plaintiff was constrained to file the suit after issuing a notice terminating the tenancy.

3. The suit was resisted by the defendant contending that there was no relationship of landlord and tenant between the

plaintiff and the defendant at any point of time; that even between the persons from whom the appellant/plaintiff is said to have purchased the property and the respondent/defendant, there was no relationship of landlord and tenant and that at no point of time, either the plaintiff or the vendor of the plaintiff was in receipt of the ground rent for the suit property.

4. The learned trial Judge, after framing necessary issues, which included an issue as to whether there was a jural relationship of landlord and tenant between the appellant herein/plaintiff and the respondent/defendant, conducted a trial in which one witness was examined as PW1 and 9 documents were marked as Exs.A1 to A9 on the side of the plaintiff and two witnesses were examined as Dws 1 and DW2 and no document was marked on the side of the defendant. Exs.X1 and X2 were marked as Court documents.

5. At the conclusion of trial, the learned trial Judge, on an appreciation of evidence, rendered a finding that the appellant herein/plaintiff was not able to substantiate her case that there was a jural relationship of landlord and tenant either between herself and the respondent/defendant or between her vendor and the respondent/defendant at any point of time.

6. The appellant herein/plaintiff preferred an appeal on the file of the Additional District Judge, Karaikal in A.S.No.34 of 1996. The learned lower appellate Judge, on re-appreciation of evidence, concurred with the findings of the trial Court in entirety, dismissed the appeal and thereby confirmed the decree passed by the trial Court. The judgment of the lower appellate Court came to be pronounced on 17.02.1997. As against the decree drawn based on the judgment of the lower appellate Court dated 17.02.1997, the present second appeal has been filed.

7. The second appeal was admitted identifying the following questions to be the substantial questions of law involved in the second appeal:

"1. Whether the trial Court is correct in holding in a suit for recovery of possession, the question of title need not be gone into?

2. Whether the Courts below are correct in holding that there is no jural relationship of landlord and tenant between the appellant and the respondent on the consideration of rental receipts and termination notice?

3. Whether the Courts below are justified in rejecting the termination notice issued by the appellant under the Transfer of Property Act?"

8. Pending disposal of the second appeal, the appellant

has filed C.M.P.No.924 of 2012 under Order XLI Rule 27 CPC for reception of additional evidence. Lastly C.M.P.No.435 of 2015 came to be filed under Section 151 CPC praying for the withdrawal of the second appeal with liberty to initiate appropriate proceedings in the appropriate forum/Court. Both the petitions are taken up together along with the second appeal for disposal.

9. The submissions made by Mr.G.Jegadeesan, party-in-person and by Mr.R.Vasudevan, learned counsel for the respondent are heard. The materials available on record are also perused and taken into consideration.

10. The plaintiff, who proved to be unsuccessful in both the courts below, in her attempt to get a decree for ejectment, has knocked at the doors of this Court with the present second appeal. It is an admitted case that the appellant herein/plaintiff was not the person from whom the suit property, as a vacant site, was taken on lease by the respondent/defendant. On the other hand, it is the contention of the appellant/plaintiff that her predecessor-in-title, namely Thambusayabu Maricar, S/o.Munna Ahamedu Maricar had purchased the property under a sale deed dated 22.06.1908; that after the demise of the said Thambusayabu Maricar, his son Mohamed Ibrahim Maricar and his daughters Vanjoor Packirichi Umma and Habsa Ummal got the property and thereafter the suit property came to the hands of the vendors of the appellant/plaintiff from their respective ancestors; that the appellant herein/plaintiff purchased the suit property under a sale deed dated 10.10.1988 along with other properties from 1) M.T.E.Ameerudeen 2) M.K.Jamila Ummal, 3) Abdul Majeed Maricar, 4) Mohamed Ibrahim Maricar, 5) Mohamed Sulthan Areef Maricar for himself and his Power of attorney agent for S.K.Idrese Maricar @ Mohamed Idress Maricar 7) Sara Ummal 8) Sayed Sultan Gani 9) Fathima Gani, 10) S.K.Fathima Sultan, 11) Mohamadu Mohideen Nachial, 12) Mohamada Ummal and 13) Fathima Ummal; that her predecessors-in-title were receiving the rent for the site at the rate of Rs.10/- per month; that after her purchase, though she demanded payment of rent from the respondent/defendant, he did not pay the same, but agreed to pay the same afterwards; that since he did not pay the rent even after several oral demands, she chose to issue a notice dated 20.10.1993 terminating the tenancy by the end of November 1993 and requiring him to hand over vacant possession of the site after removing the superstructure by 01.12.1993 and that since the demand was not complied with, she was forced to approach the Court with the suit for ejectment.

11. Though the appellant/plaintiff would have contended that her predecessors-in-title were in receipt of rent from the respondent/defendant at the rate of Rs.10/- per month, the appellant/plaintiff had not chosen to produce any counterfoil of the receipts issued by her predecessors-in-title to the

respondent/defendant. Not even a scrap of paper containing the signature of the respondent acknowledging payment of rent and receipt of the rental receipt issued by the plaintiff's predecessors-in-title came to be produced. On the other hand, the appellant/plaintiff chose to produce Exs.A1 to A3 purporting to be the rental receipts evidencing payment of rent by the respondent/defendant to the appellant's/plaintiff's predecessors-in-title.

12. Both the Courts below, after bestowing their attention to the above said documents and the oral evidence touching those documents, noticed the fact that the receipts were not the counterfoils or the copies of the receipts meant for retention by the landlord and that they were the receipts meant for issuance to the tenant and both the Courts below concurrently held that if at all the respondent/defendant had paid rents and those receipts were issued to him, the receipts would have been available in the hands of the respondent/defendant and it could not have been with the appellant/plaintiff. It is not the case of the appellant/plaintiff that after issuing the receipts for payment of each month's rent, for one reason or other the plaintiff's predecessors-in-title got back the receipts from the respondent/defendant. On the other hand, it is the submission made by Mr. G.Jegadeesan, Power of Attorney holder of the appellant, who appears as a party-in-person that those receipts were handed over to the appellant / plaintiff by her predecessors-in-title stating that they had lost the counterfoils. The said explanation, as rightly held by the Courts below, cannot be accepted as a valid explanation and it is quite improbable that the landlord is in possession of the original rental receipts which are meant for the tenants. Based on the said finding alone, the learned trial Judge and the learned lower appellate Judge, rendered a concurrent finding that the appellant herein/plaintiff miserably failed to prove the jural relationship of landlord and tenant, which alone would have enabled her to terminate the tenancy by issuance of a notice under Section 106 of the Transfer of Property Act and file the suit for ejectment. Such a finding cannot be said to be either infirm or defective, much less perverse.

13. However, the appellant has made an attempt to introduce additional documents by filing C.M.P.No.924 of 2012 under Order XLI Rule 27CPC. So far as the above petition is concerned, it cannot be considered independently without perusing and considering the entire evidence already available on record. A person who comes forward with a petition under Order XLI Rule 27 CPC should bring his/her case within the ambit of Order XLI Rule 27 (1) (a) (aa) and (b) of the Code of Civil Procedure. For the sake of convenience the rule is reproduced hereunder:

"27. Production of additional evidence in Appellate Court:-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

¹[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

14. There is nothing in the supporting affidavit to show that the documents now sought to be produced were produced in the trial Court, but the trial Court refused to admit the same in evidence. Hence, the attraction of Sub-clause (a) of sub-rule (1) stands ruled out. The documents now sought to be produced as additional evidence are also not stated to be the documents which were not within the knowledge or within the control of the appellant/plaintiff and that notwithstanding exercise of due diligence, the documents could not have been produced before the trial Court at the time of trial. Hence, the attraction of sub-clause (aa) also has to be ruled out. Then, this Court has to consider whether the documents are of such a nature to enable this Court to pronounce a judgment paving a way for rendering a complete justice in this case. All the documents sought to be introduced as additional evidence are nothing but self-serving documents and the documents of the category of which Exs.A3 to A26 belong. The appellant/plaintiff wants to produce copy of the property tax assessment register and the connected records. The said documents show that the property tax assessment itself was made based on self assessment and at the initiation of the appellant herself. The entries in the Register maintained by the Municipality are also of recent origin, which have been made at the instance of the appellant. Those documents will not render any assistance to the Court. Hence, those documents cannot be relied on to prove the contention of the appellant that the respondent/defendant was a tenant under her

or under her predecessors-in-title. The above documents are not of the nature that without such documents this Court cannot pronounce a judgment and render complete justice. The attempt made by the appellant by filing the above said petition is only to plug the loopholes, if not to protract the case or fish out of troubled water after making confusion.

15. For all the reasons stated above, this Court comes to the conclusion that C.M.P.No.924 of 2012 deserves to be dismissed.

16. In the previous paragraphs, this Court pointed out the fact that the Courts below did not commit any error or mistake in rendering a finding that the appellant herein/plaintiff was not able to prove the existence of the jural relationship of landlord and tenant either between herself and the respondent or between her predecessors-in-title and the respondent/defendant at any point of time and that the said finding cannot be termed perverse. In view of the above said conclusion, the questions formulated as first and second substantial questions of law are bound to be answered against the appellant and in favour of the respondent. In line with the finding recorded in respect of Question Nos.1 and 2, this Court holds that notice issued under Section 106 of the Transfer of Property Act purporting to terminate the tenancy which is not established, is of no legal consequence and that hence the suit for ejectment praying for a decree directing respondent to handover vacant possession of the suit property after removing the superstructure is bound to fail; that the suit was rightly dismissed by the trial Court and that it was rightly confirmed by the lower appellate Court. The third substantial question of law is accordingly answered against the appellant and in favour of the respondent.

17. The answers provided for all the three substantial questions of law formulated at the time of admission of the second appeal, will be enough to dispose of the second appeal with the inevitable result that the second appeal shall be dismissed. However, the appellant has chosen to wake up belatedly and file a petition under Section 151 CPC as C.M.P.No.435 of 2015 praying for an order to withdraw the second appeal with liberty to initiate appropriate proceedings in an appropriate forum/court. The petition has not been filed for withdrawal of the suit with liberty to file a fresh suit under Order XXIII Rule 1(3) CPC. On the other hand, the appellant has chosen to file the petition with a prayer that she may be permitted to withdraw the appeal with liberty to approach the appropriate forum for appropriate relief. The withdrawal of the second appeal will have the effect of confirming the decree passed by the trial Court, which was in turn confirmed by the lower appellate Court. Since the appellant/plaintiff has been non-suited on the ground that the suit for ejectment was bound to fail as she was not able to prove the jural relationship of landlord and tenant, it is

always open to her to exhaust the other remedies by initiating appropriate proceedings. The appellant herself has come forward with C.M.P.No.435 of 2015. The said petition is allowed and the second appeal is dismissed as withdrawn. Liberty to file a suit for recovery of possession based on title is granted without expressing any opinion on the merit or maintainability of such a suit.

Accordingly, the second appeal is dismissed. No costs.

Sd/-
Assistant Registrar

True Copy
Sub Assistant Registrar

To

1. The Additional District Judge
Pondicherry, Karaikal
2. The Principal District Munsif
Karaikal

+ 1cc to Mr.T.Susindran,Advocate(sr.49674)

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

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S.A.No.667 of 2004 &
C.M.P.Nos.924 of 2012,
C.M.P.No.435 of 2015

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