

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2015

CORAM:

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

C.M.A.No.897 of 2006
and
C.M.P.No.8291 of 2006

1. Gopal (died)
2. G.Virappane
3. G.Ramalingam
4. G.Sarasvady
5. G.Ramamurthy
6. G.Djiva
7. G.Indira

... Appellants/Respondents/
LRS of deceased Plaintiff

(Appellants 2 to 7 are brought on record
as legal heirs of the deceased sole
appellant vide order dated 02.03.2007
made in C.M.P.No.523 of 2007)

Vs.

Kannan ... Respondent/Appellant/Defendant

Prayer : This Appeal filed under Order 43 Rule (1)(U) of C.P.C.
against the Judgment and the decree dated 23.02.2004 passed in
A.S.No.52 of 2003 on the file of the Principal District Court,
Pondicherry, reversing the Judgment and the Decree dated
14.10.2003 passed in O.S.No.399 of 2001 before the Principal
District Munsif Court, Pondicherry.

For Appellants : Ms.R.Meenal

For Respondent : Mr.R.Natarajan

JUDGMENT

The Civil Miscellaneous Appeal is filed against the
Judgment of the Lower Appellate Court, thereby, remanding the
suit for fresh disposal, after giving opportunity to both sides
to implead all the necessary and proper parties by suitably
amending the pleadings and to adduce additional oral and
documentary evidence if need be.

2. The few facts which are relevant for consideration herein are that the plaintiff, who is the appellant before this Court, came forward with the present suit in O.S.No.399 of 2001 for granting the relief of permanent injunction restraining the defendant from in any manner putting up any kind of construction in the suit property and also from entering upon the same and also for mandatory injunction directing the defendant to close the opening made by him on the rear side of the shop to enter upon the vacant site situated on the back side. According to the plaintiff, he has taken the suit property on lease in 1969 for 100 years from the original owner, by name, Rajamannar Chettiar, and, he constructed the shops and the shops were rented out to Third parties by the plaintiff and one Krishnaraj and his wife Shanta took on lease one of the shops and was running a liquor shop and they have been paying rent regularly to the plaintiff under due receipt issued by the plaintiff and thereafter, the said Krishnaraj sub-let the property to the Defendant Kannan for carrying on the same liquor business and the defendant, having attained tenancy, has been paying the rent regularly and directly to the plaintiff and while so, the defendant, without the consent and knowledge of the plaintiff put up a compound wall and made an opening in the same to enable him to enter upon the suit vacant site on the backside so as to put up construction in the same.

3. The suit was resisted by the defendant by denying any tenancy relationship between the plaintiff and the defendant. According to him, Krishnaraj and his wife Shantha are the direct tenants under the original owner and the present defendant is one of the Partners in the liquor business carried on by Krishnaraj and his wife Shantha and he was inducted as Partner in the place of Shantha and thereafter, he has been along with Krishnaraj carried on the business in the disputed portion.

4. Both the parties, in support of their respective contentions, adduced oral and documentary evidence before the trial Court.

5. The trial Court, on the basis of available evidence, arrived at a conclusion that the plaintiff took the property on lease from the original owner, by name, Rajamannar Chettiar and constructed the shops and he has been in possession of the same and the defendant has failed to prove his possession of the suit property as a tenant and the defendant without any right broke open the rear side wall of the shop and the plaintiff is hence entitled to the suit reliefs as prayed for. The trial Court accordingly decreed the suit by granting both the permanent injunction and mandatory injunction as sought for in the suit.

6. Aggrieved against the aforesaid Judgment, the defendant filed A.S.No.52 of 2003 before the lower Appellate Court.

7. The lower Appellate Court, after appreciating the entire evidence, found that the Lease Agreement entered into between the original owner Rajamannar Chettiar and the plaintiff for 100 years is in respect of the property measuring North-South 35 feet and East-West 25 feet, which is a portion of the total extent of 2 kanies, 82 kuzhies and 8 veesams and the written lease agreement is thus not for the entire property in Cadastre Nos.186 and 187 and Ex.B1 is the Settlement deed executed by the heirs of the original owner Rajamannar Chettiar in favour of the plaintiff in respect of different property and the plaintiff by taking gift of some other property gave his permanent leasehold right in respect of the above mentioned property and consequently, the lease was also cancelled vide Ex.B2-lease cancellation deed, but no attestors have been examined to prove the execution of Exs.B1 and B2, which is denied by P.W.1. The Lower Appellate Court has also found that the plaintiff has not taken any steps to prove the oral lease in respect of larger extent of the property for 100 years and it is also not made clear as to whether the row of shops alleged to have been constructed and leased out to various tenants by the plaintiff, are situated on the property leased out under Ex.A2 or in some other portion in the larger extent of the property and exact portion in which the shops are constructed. The lower appellate Court also found that the suit reliefs are not properly framed and all the necessary parties have not been impleaded. The plaintiff has neither established his interest, title or his possession over the property. The lower Appellate Court having found so remanded the suit to trial Court for fresh disposal, after giving due opportunity to both sides to implead all the necessary and proper parties by suitably amending the pleadings and to adduce additional oral and documentary evidence, if need be.

8. Aggrieved against the said remand order, the plaintiff is now before this Court.

9. The Civil Miscellaneous Appeal is admitted on the following substantial question of law "whether the order of the remand is in accordance with the provisions of law under Order 41 Rule 23 and 24 of C.P.C."

10. For better appreciation of the issue involved herein, it is necessary to extract Order 41 Order 23, 23A and 24 C.P.C. and the same is extracted hereunder:

"23. Remand of case by Appellate Court - Where the Court from whose decree an appeal is preferred has

disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to readmit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

23A. Remand in other cases - Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under Rule 23.

24. Where evidence on record sufficient, Appellate Court may determine case finally - Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds."

The plain reading of the provisions as extracted above would reveal that the endeavor of the Appellate Court should be when the evidence upon the record is sufficient to pronounce judgment to finally determine the suit. Whereas the course adopted by the lower Appellate Court in the present case is totally against law.

11. The Lower Appellate Court having rendered specific findings both for and against the plaintiff in connection with the main controversy in issue involved herein, ought to have ultimately decided the Appeal on the basis of the findings above rendered. Instead the lower Appellate Court remanded the matter without any sufficient reason and without such relief sought for by both the parties. That being so, this Court is of the view that the order of remand made by the Lower Appellate Court to the trial Court for fresh disposal by the trial Court, is contrary to the procedure without sufficient reason and is legally unsustainable and the same warrants interference by this Court.

12. In the result, the Civil Miscellaneous Appeal is allowed by setting aside the impugned order of remand made by the Lower

Appellate Court and the appeal is remanded back for fresh disposal by the Lower Appellate Court on merits. No costs. Consequently, connected miscellaneous appeal is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Pondicherry.
2. The Principal District Munsif,
Pondicherry.
3. The Record Keeper,
V.R.Section,
High Court, Madras - 104.

+1cc to M/s.R.Subramanian, Advocate, S.R.No.43368

+1cc to M/s.R.Natarajan, Advocate, S.R.No.43216

C.M.A.No.897 of 2006

RSK(CO)
CA(03/11/2015)

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