

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.326 of 2014

and

M.P.No.1 of 2014

K.Loganathan

...Appellant/Defendant

Versus

1.L.Kandasamy

2.K.Jayavelu

...Respondents/Plaintiffs

Prayer: Second Appeal filed under Section 100 C.P.C., against the Judgment and Decree dated 11.12.2013 made in A.S.No.337 of 2013 on the file of the XVII Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 6.8.2013 made in O.S.No.5932 of 2011 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mrs.A.L.Ganthimathi

For Respondents: Mr.P.Gopiraja

JUDGMENT

Challenge in this Memorandum of Second Appeal has been made to the Judgment and Decree dated 11.12.2013 and made in the Appeal in A.S.No.337 of 2013 on the file of the learned XVII Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 6.8.2013 and made in O.S.No.5932 of 2011 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai.

2. The appellant herein is the defendant in the suit in O.S.No.5932 of 2011 whereas the respondents are the plaintiffs.

3. It is manifested from the records that the respondents (plaintiffs) have filed the above suit in O.S.No.5932 of 2011 against the appellant (defendant) to direct him to vacate and deliver vacant possession of the suit schedule property to them. This suit was contested by the appellant. On appreciation of both oral and documentary evidence, the Trial Court on 6.8.2013 had proceeded to allow the suit granting Decree as prayed for. Having been aggrieved by the Judgment and Decree passed by the Trial Court, the appellant has

preferred an Appeal in A.S.No.337 of 2013 on the file of the XVII Additional Judge, City Civil Court, Chennai.

4. The learned First Appellate Judge confirming the Judgment and Decree of the Trial Court has dismissed the appeal on 11.12.2013.

5. Challenging the correctness of the Judgment of the First Appellate Court, the appellant being the defendant in the suit stands before this Court with the Second Appeal.

6. Heard Mrs.A.L.Gandhimathi, learned counsel appearing for the appellant and Mr.P.Gopiraja, learned counsel appearing for the respondents.

7. The respondents are the absolute owners of the suit schedule property. The appellant had been in possession of the suit property as on date of the filing of the suit. These are all admitted facts.

8. What the respondents/plaintiffs would contend is, originally, the suit property situated in the ground floor measuring an extent of 100 sq.ft. was rented out to one Ezhilarasan in the year 1997 on a monthly rental basis based on a rental agreement dated 5.9.1997 for the purpose of carrying out the business of data entry works, data processing, software training class and job works of its related services. Thereafter, the rental period was extended for another 3 years commencing from 1.9.1999 to 1.9.2002. After the expiry of the period of rental agreement dated 1.9.1999, the respondents/plaintiffs had been to the suit shop to inform the said Ezhilarasan about the expiry of rental agreement but to their shock and dismay, the defendant (appellant) was found to be in occupation of the suit shop running money lending business in the name and style of "Sri Vishu Finance". It is the specific contention of the respondents/plaintiffs that the appellant/defendant taking advantage of the inability and soft approach of the respondents/plaintiffs, the defendant had forcibly occupied adjacent shop also having an extent of 100 sq.ft and thereafter, without the knowledge and consent of the plaintiffs he had demolished a partition wall situated in between the two shops. The demand made by the respondents/plaintiffs to vacate the suit property was not given any fruitful result. On the contrary, the appellant had issued a legal notice dated 9.3.2010 claiming himself as a tenant in respect of the suit premises. Hence, the above suit was filed by the respondents/plaintiffs for ejection of the defendant and for getting delivery of the vacant possession of the suit premises.

9. What the appellant/defendant would contend is that

he is the tenant under the respondents/plaintiffs in respect of the suit property and that he has been in possession of the said shop from 1997 onwards and the tenancy is for a non-residential purpose. He is also claiming that he has been running a finance company under the name and style of "Sri Vishnu Finance". It is also his specific case that there was money transaction between him and the first plaintiff's elder son viz., one Pari and after settlement of chit amount, the attitude of first respondent/plaintiff and his sons was completely changed and on account of this reason, they have been taking strenuous efforts to get him removed from the possession of the suit premises.

10. Based on the pleadings of the parties to the suit, the Trial Court has framed the following issues:-

- (i) Whether the plaintiffs are entitled for delivery of the suit property?
- (ii) Whether it is true that the defendant is a tenant?
- (iii) To what other relief?

11. The second respondent/second plaintiff has examined himself as PW.1 and during the course of his examination, Exs.A.1 to A.4 were marked. On the other hand, the appellant has examined himself as DW.1 and during his examination, Exs.B.1 to B.20 were marked.

12. On evaluating the evidences both oral and documentary, the Trial Court has found that the appellant has not filed any document to prove that he is a tenant under the plaintiffs in the suit property. Therefore, the suit was decreed with a finding that the respondents/plaintiffs are entitled to get delivery of the suit property from the appellant/defendant. The First Appellate Court has also found that the appellant/defendant has failed to prove that he is in occupation of the suit property as a tenant of the plaintiffs.

13. For the disposal of this Second Appeal, the following substantial questions of law have been formulated:-

- (i) Whether the Courts below are correct in finding that the defence of the defendant is hit by res-judicata?
- (ii) Whether the Courts below are correct in granting Decree without considering the question that the suit was barred by limitation?

14. Mrs.A.L.Gandhimathi, learned counsel appearing for the appellant has contended that as admitted by the respondents/plaintiffs they had visited the suit shop in the year 1999 and were shocked to notice that the

appellant/defendant was in occupation of the shop premises. In this connection, the learned counsel raised a question as to how the respondents/plaintiffs had kept quiet for about 13 years without initiating action against the appellant/defendant to get him vacated from the suit premises. She has also submitted that since the suit was not filed within a period of 3 years from 1999, the suit itself was squarely barred by limitation as it was filed after expiry of 13 years.

15. Admittedly, the Trial Court has not framed any issues with regard to limitation despite a specific stand was taken by the appellant (defendant) in his written statement. However, the question of limitation is having nexus with the jurisdiction of the Court and mixed with the facts of the case, which can also be raised even in the appellate stage.

16. On the other hand, Mr.P.Gopiraja, learned counsel appearing for the respondents (plaintiffs) has contended that prior to the filing the present suit in O.S.No.5932 of 2011, the appellant (defendant) had filed a suit in O.S.No.4435 of 2010 on the file of the XIV Assistant Judge, City Civil Court, Chennai, against the first respondent/first plaintiff viz., L.Kandasamy, seeking perpetual injunction restraining him from in any way interfering with the peaceful possession and enjoyment of the suit property without due process of law. That suit was contested by the first respondent/first plaintiff with a specific stand that the appellant (defendant) was not a tenant under him in respect of the suit premises. Accepting the contention of the first respondent/first plaintiff, the Trial Court had dismissed the above said suit in O.S.No.4435 of 2010. The Decree passed in the above suit has been marked as Ex.A.4 on the side of the first respondent/first plaintiff. Admittedly, no appeal was preferred against the Judgment of the dismissal of the suit in O.S.No.4435 of 2010. Hence, the said Judgment of dismissal has become final.

17. Now, in the given case on the hand, again, the appellant (defendant) has taken a stand that he is a tenant in respect of the suit property under the plaintiffs. Since this plea that he is a tenant in respect of the suit property was rejected in his earliest suit in O.S.No.4435 of 2010 and no appeal was preferred against that Judgment, he cannot reiterate the same stand in this suit. However, both the Courts below have given a concurrent finding that he has miserably failed to prove that he is a tenant in respect of the suit property. Therefore, there is every reason to record that he is a running trespasser in the suit premises and therefore, he is liable to be vacated as found by both the Courts below. Accordingly, the first substantial questions of law is answered against the appellant/defendant. The second substantial questions of law with regard to limitation goes in favour of the respondents/plaintiffs saying that the suit cannot be said to be

barred by limitation.

18. In the result, the Second Appeal is dismissed and the Judgment and Decree of the Courts below are confirmed. However, there shall be no order as to costs. Connected Miscellaneous Petition is closed. Two months' time is given for the appellant to vacate and handover the vacant possession of the suit premises to the respondents herein.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

asvm

To

1. The XVII Additional Judge,
City Civil Court, Chennai,

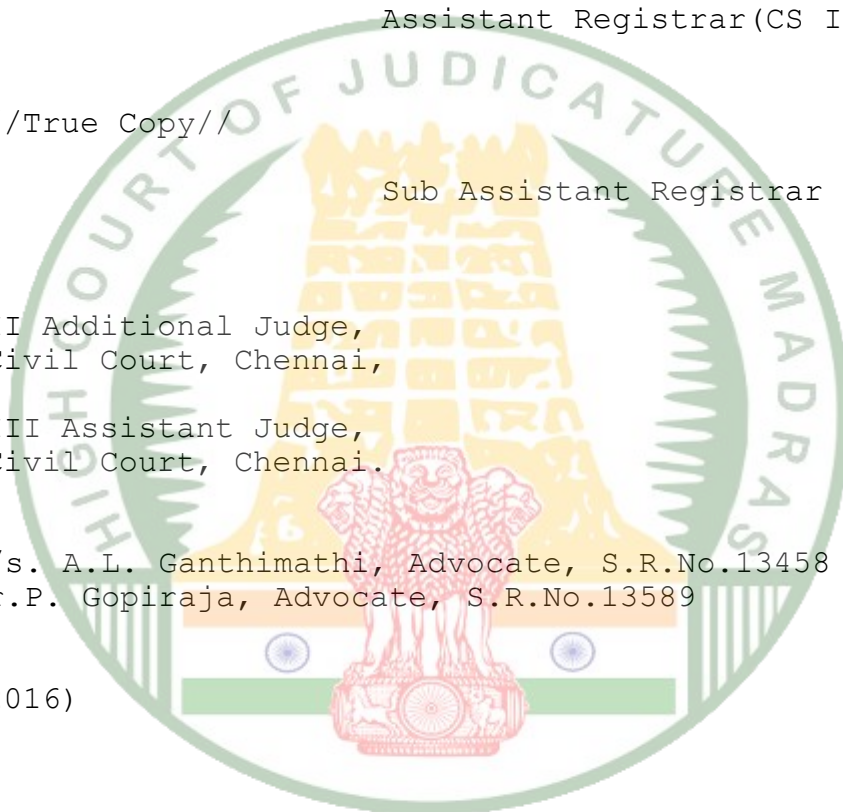
2. The VIII Assistant Judge,
City Civil Court, Chennai.

+1cc to M/s. A.L. Ganthimathi, Advocate, S.R.No.13458

+1cc to Mr.P. Gopiraja, Advocate, S.R.No.13589

SAI (CO)

EU(28/03/2016)



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