

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.01.2016

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THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1526 of 2007 and
M.P.No.1 of 2007 MP. 1 and 2 of 2015

M/s.Indian Oil Corporation Ltd.,
Represented by its Manager (Retail Sales),
Mr.R.Suresh,
500, Anna Salai,
Teynampet, Chennai - 600 018. ... Appellant/1st Defendant

vs.

1.V.S.A.Jamal Mohamed
2.V.S.A.Mohamed Farook
3.V.S.A.Akbar Ali
4.V.S.A.Ashraf Ali
5.V.S.A.Abdul Kadher

6.Babu Enterprises,
No.7, Gandhi Irwin Road,
Egmore, Chennai - 8. ... Respondents/Plaintiff/2nd Defendant

Prayer:- This Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 10.09.2007 passed in A.S.No.513 of 2006 on the file of the learned VI Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 09.12.2003 passed in O.S.No.4415 of 1998 on the file of the learned XVIII Judge, City Civil Court, Chennai.

For Appellant : Mr.T.R.Rajagopalan, Senior Counsel
For Mr.Anand, Abdul & Vinoth Associates
For RR1 to 5 : Mr.S.Sounthar
For R.6 : Mr.T.S.Rajamohan

JUDGMENT

The first defendant in O.S.No.4415 of 1998 on the file of the learned XVIII Assistant Judge, City Civil Court, Chennai is the appellant herein. The respondents 1 to 5 are the plaintiffs and the 6th respondent is the second defendant in the suit. The plaintiffs have filed the said suit for ejectment after terminating the lease. The trial Court by decree and judgment dated 09.12.2003 decreed the suit as prayed for. As against the same, the appellant herein filed an appeal in A.S.No.513 of 2006

on the file of the learned VI Additional Judge, City Civil Court, Chennai. By decree and judgment dated 10.09.2007, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellant is before this Court with this second appeal.

2. When this second appeal came up for hearing on 20.12.2007, this Court ordered notice of motion to the respondents returnable by 6 weeks. Mr.S.Sounthar, learned counsel has entered appearance for the respondents 1 to 5 as caveator. On service of notice, the sixth respondent has entered appearance through Mr.T.S.Rajamohan, learned counsel.

3. After very long time, this second appeal has come up today for admission. I have heard Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the appellant and Mr.S.Sounther, learned counsel appearing for the respondents 1 to 5/caveator and there is no representation for the sixth respondent. I have also perused the records carefully.

4. The case of the plaintiffs is as follows:-

The suit property was originally owned by one Mr.Athmarama Iyer. The appellant is a public limited company known as M/s.Indian Oil Corporation Ltd. The said company has entered into lease agreement with the said Mr.Athmarama Iyer on 24.01.1968 for a period of 10 years and thereafter, it was renewed for another 10 years. After that, there was no further renewal of lease. The appellant also committed default in payment of rent. The suit property was purchased by the father of the plaintiffs herein from Mr.Athmarama Iyer. After the demise of the father of the plaintiffs, the plaintiffs have become the absolute owners of the suit property. As per the terms of the agreement, since, the lease period came to an end in the year 1988, the appellant ought to have vacated the suit property and handed over vacant possession of the same to the plaintiffs. But, despite demand made by the plaintiffs to vacate and hand over vacant possession of the suit property to the plaintiffs, the appellant/first defendant failed to do so. There was also arrears of rent to the tune of Rs.25,200/-. Therefore, the plaintiffs have filed the present suit for ejection and for payment of arrears of rent to the tune of Rs.25,200/- with interest.

5. In the written statement, it was contended by the first defendant/appellant that the legal notice dated 11.11.1997 issued by the plaintiffs to the first defendant is not valid, as it does not satisfy the requirement of Section 106 of the Transfer of Property Act. It was further contended that since the lease period is in existence, the plaintiffs have got no right to claim title over the suit property.

6. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, one witness was examined and as many as six documents were exhibited. On the side of the defendants neither oral nor documentary evidence was let in.

7. Having considered all the above, the trial Court decreed the suit which was confirmed by the First Appellate Court. That is how the appellant/first defendant is before this Court with this second appeal.

8. In this second appeal, it is submitted by the learned Senior Counsel appearing for the appellant that the decree passed by the Court below is not sustainable, in view of the fact that, the legal notice dated 11.11.1997 issued by the plaintiffs to the first defendant does not satisfy the legal requirements of Section 106 of the Transfer of Property Act.

9. But, the learned counsel appearing for the respondents 1 to 5/plaintiffs would submit that the legal notice issued by the plaintiffs dated 11.11.1997 does satisfy the legal requirements of Section 106 of the Transfer of Property Act.

10. I have considered the above submissions.

11. At the outset, I should say that absolutely, there is no question of law much less a substantial question of law at all involved in this second appeal so as to admit the same. Further, I do not find any perversity in the findings of the Courts below. Admittedly, legal notice was issued by the plaintiffs on 11.11.1997. In that notice, it was stated that the lease was terminated with effect from 31.12.1997. What is required of under Section 106 of the Transfer of Property Act, is 15 days notice. Here, in this case, more than 15 days time was absolutely given by the plaintiffs to the first defendant. The very fact that the reply notice was issued by the appellant on 17.12.1997, would go to show that sufficient time was given. Thus, I do not find any infirmity in the findings of the Courts below. In the light of the above, I have to hold that there is no merit in this second appeal warranting admission.

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12.In the result, the second appeal fails and accordingly, the same is dismissed and the decree and judgment of the First Appellate Court is hereby confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

jbm

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

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

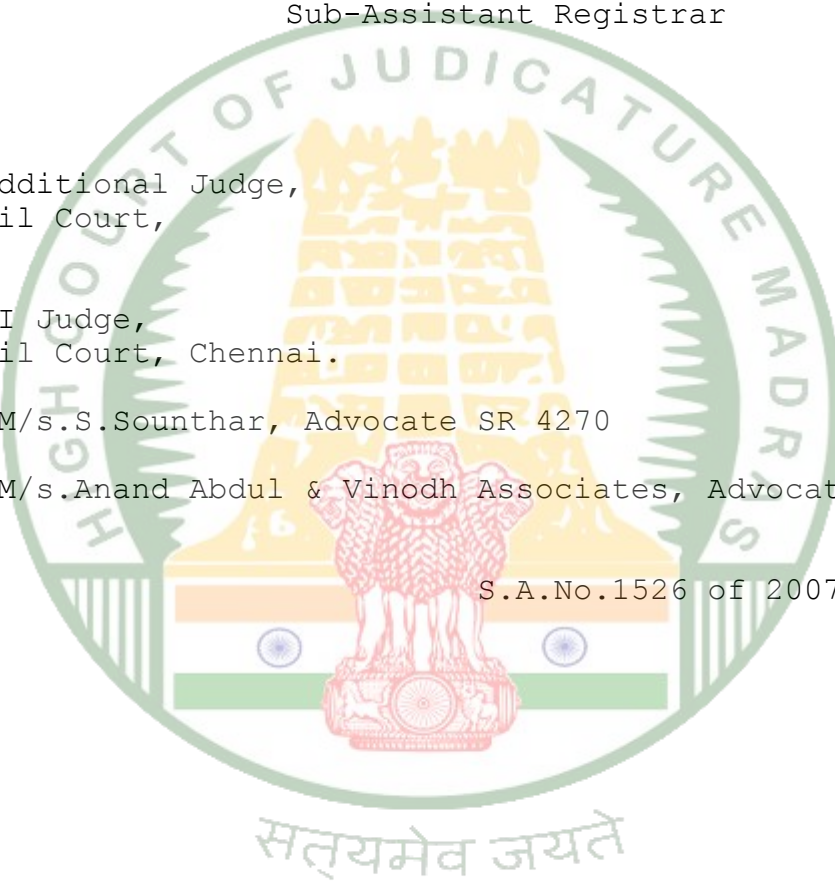
2.The XVIII Judge,
City Civil Court, Chennai.

+ 1 cc to M/s.S.Sounthar, Advocate SR 4270

+ 1 cc to M/s.Anand Abdul & Vinodh Associates, Advocate SR 5217

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S.A.No.1526 of 2007



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