

Reserved on : 31.08.2016

Delivered on : 15.09.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.09.2016

CORAM:

THE HON'BLE MR. JUSTICE M.DURAIWAMY

Second Appeal No.251 of 2015

Velaayudam

... Appellant

Vs.

Shenbagarajan

... Respondent

Second Appeal filed under Section 100 of the Code of Civil Procedure decree and judgment dated 10.03.2015 in A.S.No.28 of 2014 on the file of the Principal District Court, Puducherry confirming, the judgment and decree dated 18.11.2014 passed in O.S.No.104 of 1993 on the file of the Additional Subordinate Court, Puducherry.

Appellant : Mr.T.Velaayudam
(party-in-person)

For Respondent : Mr.T.R.Rajagopalan, Senior Counsel,
for Mrs.P.Veena Suresh

J U D G M E N T

The above Second Appeal arises against the judgment and decree

passed in A.S.No.28 of 2014 on the file of the Principal District Court, Puducherry, confirming the judgment and decree passed in O.S.No.104 of 1993 on the file of the Additional Subordinate Court, Puducherry.

2.The plaintiff is the appellant and the respondent was the defendant in the suit. The plaintiff filed the suit in O.S.No.104 of 1993 for delivery of possession.

3.The brief case of the plaintiff is as follows:

(i)According to the plaintiff, he is the absolute owner of the suit property by virtue of a registered Sale Deed dated 27.11.1974 having purchased the same from one Vijayalakshmi. The defendant had orally taken the said property on lease from the plaintiff's vendor Vijayalakshmi in the year 1973 for the purpose of Timber business in the said property on a monthly rent of Rs.7,000/- for a period of three years. The defendant attorned tenancy in favour of the plaintiff. However, he has not chosen to pay any rent either to the plaintiff or to his vendor. After the expiry of the lease period, the defendant continued to hold possession of the suit property.

(ii)On 08.06.1988, the plaintiff sent a lawyer's notice calling upon the

defendant to vacate the suit property. On 27.06.1988, the defendant sent a reply through his lawyer denying the plaintiff's right and title over the suit property. In his reply, the defendant has stated that he is a tenant under one N.Ganapathy Naicker and has been paying the rent to him. On 10.07.1988, the plaintiff sent a re-joinder to the defendant mentioning the purchase made by him from Vijayalakshmi. Despite the said re-joinder, the defendant did not choose to pay the monthly rent or to vacate the suit property.

(iii) Subsequently, the defendant expressed his willingness to purchase the suit property from the plaintiff and as such, an Agreement of Sale was entered into between the plaintiff and defendant on 12.11.1990. The sale price was fixed at Rs.3,20,000/- and the defendant paid a sum of Rs.75,000/- as advance. Since the defendant did not come forward to purchase the suit property, the Sale Agreement was cancelled and the same was intimated to the defendant. The defendant has been enjoying the suit property as a tenant under the plaintiff without paying any rent to him. The plaintiff did not take steps to file a suit against the defendant for eviction on the basis of the notice dated 08.06.1988 as he had agreed to purchase the said property from the plaintiff. By notice dated 26.04.1993, the plaintiff called upon the defendant to vacate the suit property on or before

31.05.1993 and deliver vacant possession of the same on 01.06.1993. The defendant has not given any reply or vacated the suit property. In these circumstances, the plaintiff filed the suit for delivery of possession.

4.The brief case of the defendant is as follows:

(i)According to the defendant, the plaintiff has no right or title over the suit property. The suit property absolutely belonged to one Ganapathy Naicker under whom the defendant is a tenant since 12.06.1973. The defendant had taken on lease the suit property under the said Ganapathy Naicker under a registered Lease Deed. The premises was leased initially for a period of five years on a monthly rent of Rs.180/- for the 1st three years and Rs.200/- for the remaining years. The defendant has been in possession and enjoyment of the suit property as a tenant under the said Ganapathy Naicker without any interference from anybody. The defendant never attorned tenancy in favour of the plaintiff or his vendor. As per the Sale Deed produced by the plaintiff, the property was purchased only for a sum of Rs.10,000/- on 27.11.1974. However, in the plaint, the plaintiff has stated that the property was leased out to the defendant by the alleged vendor of the plaintiff in the year 1973 for a sum of Rs.7,000/- per month. Therefore, the claim of the plaintiff is unimaginable and concocted story with a view to extract money from the defendant.

(ii)The lease in favour of the defendant was renewed periodically by Ganapathy Naicker by executing several Lease Deeds. The defendant is a statutory tenant under Ganapathy Naicker to whom the monthly rent is being paid by the defendant without any default. The defendant never paid any rent either to the plaintiff or to his vendor. In the year 1990, the plaintiff approached the defendant claiming that he had purchased the suit property and that he has got all the Title Deeds and Court judgments declaring that he is the owner of the property. However, the plaintiff did not produce any of the documents for verification.

(iii)Since the defendant has been doing business in a large scale, he had an apprehension in his mind that his business would be affected if the property is transferred in favour of any 3rd party, therefore, he had agreed to purchase the said property and subsequently, came to know that the plaintiff had created a document with his vendor Vijayalakshmi claiming to be a Sale Deed. The Sale Deed dated 27.11.1974 said to have been executed by Vijayalakshmi in favour of the plaintiff is a sham and nominal document created for the purpose of cheating the defendant. The alleged Sale Agreement dated 12.11.1990 is not valid in law, since the plaintiff himself had no title over the suit property. The defendant also came to know that

several litigations are going on between the plaintiff, the plaintiff's vendor and other parties in respect of the suit property. When the plaintiff's title itself is defective and when there is no attornment of tenancy in favour of him, the plaintiff has no right to file the suit for delivery of possession against the defendant. The suit is also bad for non-joinder of proper parties. There is no cause of action for the filing of the suit. There is no landlord-tenant relationship between the plaintiff and the defendant. In these circumstances, the defendant prayed for dismissal of the suit.

5. Before the trial Court on the side of the plaintiff, he was examined as P.W.1 and 33 documents, Exs.A1 to A33 were marked and on the side of the defendant, he was examined as D.W.1 and 13 documents, Exs.B1 to B13 were marked.

6. The trial Court, after taking into consideration the oral and documentary evidences of both parties, dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal in A.S.No.28 of 2014 on the file of the Principal District Court, Puducherry and the lower Appellate Court also confirmed the judgment and decree of the trial Court and dismissed the appeal. Aggrieved over the concurrent findings of the Courts below, the plaintiff has filed the above

Second Appeal.

7. Heard Mr.T.Velaayudam, the appellant in the Second Appeal as party-in-person and Mr.T.R.Rajagopalan, the learned Senior Counsel appearing for the respondent.

8. The appellant has raised the following substantial questions of law in the Second Appeal:

- a) Whether the plaintiff has become the landlord of the suit property under Section 44 of the Transfer of Property Act r/w Section 2(g) of the Pondicherry Cultivating Tenants Protection Act, by virtue of its purchase from within the half share of the property from the co-owner followed by the holding of the property by the plaintiff is admitted by the defendant who is the existing tenant from another co-owner?
- b) Whether the registered Lease Deed in favour of the existing defendant tenant can supersede and substitute the oral lease of the another co-owner to comply the Section 107 of the Transfer of Property Act?
- c) Whether the non payment of rent by the defendant and failure of periodical renewal of the lease by the plaintiff for a period of 14 years disqualify the plaintiff being the

landlord of the property by the law of limitation or any other law?

- d) Whether the Sale Deeds (Exs.B8 to B13) executed by Ganapathy Naicker during the pendency of the suit in O.S.No.902 of 1990 of the 11 Additional District Court, Pondicherry without the authority and permission of the Court violating Section 52 of the Transfer of Property Act is lawful documents?
- e) Whether the Sale Deeds (Exs.B8 to B13) executed by Ganapathy Naicker has become void documents following the dismissal of the suit in O.S.No.902 of 1990 of the 11 Additional District Court, Pondicherry on 20.01.1998?
- f) Whether the Release Deeds documents (Exs.B1 to B6) can be created to validate the void Sale Deeds (Exs.B8 to B13) documents?
- g) Whether the Release Deeds documents (Exs.B1 to B6) created during the pendency of the suit in the trial Court in O.S.No.104 of 1993 without the authority and permission of the trial Court violating Section 52 of the Transfer of Property Act is lawful documents?
- h) Whether the contention of the defendant that he continued to enjoy the suit property on the basis of illegal documents of Sale Deeds (Exs.B8 to B13) and Release Deeds (Exs.B1 to

B6) is lawful?

- i) Whether the order passed by the trial Court under Section 195 of Cr.P.C. rejecting the petition/complaint of the plaintiff is within the principles of natural justice?
- j) Whether the failure of the Principal District Judge, Pondicherry to order under Section 24(2) of CPC to re-try the proceedings that were conducted by the trial Court during the pendency of TOP No.17 of 2014 is within the principles of natural justice?
- k) Whether the defendant is estopped under Section 115 and 116 of the Indian Evidence Act to deny the title of the plaintiff or as his landlord after admitting his title, possession and enjoyment of the suit property by Sale Agreement dated 12.11.1990 (Ex.A9)?
- l) Whether the suit can be dismissed by the trial Court as per the common order in I.A.No.1899/1995, 1900/1995, 1901/1995, 2224/1995, 2225/1995 and 2226/1995 dated 01.12.1995 ignoring this order which states as that in the event of failure by the plaintiff to prove the landlord tenant relationship an opportunity can be given for the plaintiff at the appropriate stage to amend the plaint and only in that eventuality the defendant can treat the suit as a title suit?

9.The appellant submitted that he is the absolute owner of the suit property and that the respondent/defendant is a tenant under him having attorned tenancy in his favour. Further, the appellant relied upon Ex.A1 Sale Deed dated 27.11.1974 executed by one Vijayalakshmi in respect of the suit property. According to the appellant, the defendant was a tenant under his vendor viz., Vijayalakshmi paying a monthly rent of Rs.7,000/- to her. According to the appellant, the lease was for a period of three years commencing from 1973. The property was alleged to have been purchased by the appellant under Ex.A1 Sale Deed dated 27.11.1974 for a consideration of Rs.10,000/-. When the suit property was leased out to the defendant by his vendor Vijayalakshmi in the year 1973 for a monthly rent of Rs.7,000/-, the necessity for selling the suit property in the year 1974 under Ex.A1 Sale Deed only for Rs.10,000/- was not explained by the appellant. When the property was fetching Rs.7,000/- per month as rent, selling the property for a total Sale Consideration of Rs.10,000/- creates a doubt with regard to the execution of the Sale Deed. That apart, when the defendant disputes the title of the plaintiff as well as his vendor, the plaintiff should have examined his vendor to prove the correctness of the

Sale Deed in respect of the suit property, apart from proving her title over the suit property.

10. The appellant has also filed the written submissions running to 38 pages narrating his case. Since this is a Second Appeal, under Section 100 of the Civil Procedure Code, a Second Appeal shall lie to the High Court from the decree passed by the Lower Appellate Court only if the High Court is satisfied that the case involves a substantial question of law. The Second Appeal shall be heard on the question of law raised in the Second Appeal and the respondent be allowed to argue that the case does not involve such question of law. The filing of the written arguments by the appellant, running to 38 pages, does not raise any substantial question of law to be decided in the Second Appeal. That apart, in the written arguments, the appellant has also gone beyond the pleadings filed in the suit. Hence, the Second Appeal is being decided only as per Section 100 of the Civil Procedure Code. It is settled position that a party to the suit cannot put forth his case beyond the pleadings. Since the appellant has raised some issues, which were not pleaded either in the plaint or in the written statement, the same cannot be considered.

11. Mr. T.R. Rajagopalan, learned Senior Counsel appearing for the respondent submitted that the appellant has miserably failed to establish

his title and right over the suit property, therefore, the Courts below have rightly dismissed the suit.

12. In support of his contention, the learned senior counsel for the respondent relied upon the following judgments:

(i) AIR 1966 Supreme Court 337 [Thayyil Mammo and another Vs. Kottiath Ramunni and others] wherein the Hon'ble Supreme Court held as follows:

“... ”

But those cases do not lay down a proposition of universal application that a deed styled a deed of release cannot operate as a conveyance. In Hemendra Nath Mukerji V. Kumar Nath Roy, 12 Cal WN 478, by a registered Deed called a deed of disclaimer the executants relinquished all their rights, title and interest and claim in the properties in favour of the release upon the condition that the releasee would discharge certain debts and the executants would be under no liability to pay those debts. Though the deed was stamped only as a release and not with ad valorem stamp, Machlean, C.J., held that on its true construction it was a transfer. We think that a registered instrument styled a release deed releasing the right, title and interest of the executant in any property in favour of the release for valuable consideration may operate as a conveyance, if the document clearly discloses an intention to effect a transfer.”

(ii)AIR 1967 Supreme Court 1395 Kuppuswami Chettiar Vs. A.S.P.A.Arumugam Chettiar and another] wherein the Hon'ble Supreme Court held as follows:

“...

Now, it cannot be disputed that a release can be usefully employed as a form of conveyance by a person having some right or interest to another having a limited estate, e.g., by a remainderman to a tenant for life, and the release then operates as an enlargement of the limited estate. But in this case, we are not concerned with the release in favour of the holder of a limited estate. Here, the deed was in favour of a person having no interest in the property, and it could not take effect as an enlargement of an existing estate. It was intended to be and was a transfer of ownership. A deed called a deed of release can, by using words of sufficient amplitude, transfer title to one having no title before the transfer. The cases relied upon by counsel are not authorities for the proposition that the operative words of a release deed must be ignored. In S.P.Chinnathambiar's case, 1953-2 Mad LJ 387 : (AIR 1954 Mad 5) the document could not operate as a transfer, because a transfer was hit by S. 34 of the Court of Wards Act, and viewed as a renunciation of a claim, it could not vest title in the release.”

13.It is the case of the appellant that after the purchase of the suit property from Vijayalakshmi under Ex.A1 Sale Deed dated 27.11.1974, the respondent attorned the tenancy in his favour. Since the respondent has not paid any rent to him, he issued a notice on 08.06.1988 under Ex.A10 calling upon the respondent to vacate the suit property. Under Ex.A11 reply dated 27.06.1988, the respondent denied the averment stated in Ex.A10 notice. The appellant issued a re-joinder under Ex.A12 dated 10.07.1988 giving the details of the purchase of the suit property made by him from Vijayalakshmi. According to the appellant, under Ex.A9 Sale Agreement dated 12.11.1990, he entered into an agreement with the respondent for the sale of the suit property for a consideration of Rs.3,20,000/- and also received an advance of Rs.75,000/- from the respondent. Further, he has contended that since the respondent did not come forward to purchase the suit property, the Sale Agreement was cancelled.

14.When the appellant is contending that he purchased the suit property from Vijayalakshmi under Ex.A1 dated 27.11.1974 and even after attornment of tenancy by the respondent in the year 1974 itself, the necessity for waiting till 08.06.1988 to issue a notice to the respondent to vacate the suit property when the appellant is contending that the

respondent has not been paying any rent from 1974 also creates a doubt with regard to the case put forth by the appellant. The necessity for waiting for fourteen years for issuing a notice for delivery of possession was not explained by the appellant. The respondent contended that the appellant has no right or title over the suit property and the suit property belong to one Ganapathy Naicker under whom the respondent is a tenant by virtue of Ex.B7 a registered Sale Deed dated 12.06.1973. The respondent also contended that there is no landlord- tenant relationship between the appellant and himself. When the respondent is disputing the title of the appellant stating that one Ganapathy Naicker is the owner of the suit property, the appellant cannot maintain the suit merely for delivery of possession. He should have filed a suit for declaration to declare his title and right over the suit property. The appellant has not produced any document to prove that the respondent had attorned tenancy in his favour. He has also failed to produce any document to prove that the respondent was a tenant under his vendor or under him.

15. According to the appellant, the lease period of the defendant had expired in the year 1976 itself, however, in spite of not receiving a single pie from the respondent towards rent, for the reasons best known to him, he waited till 1988 for issuance of notice calling upon the respondent to vacate

the suit property. Under Ex.A9 Sale Agreement dated 12.11.1990, the appellant and the respondent entered into an agreement in respect of the suit property. According to the appellant, the said agreement was cancelled. However, the appellant has not produced any document for the alleged cancellation of the Sale Agreement. The appellant contended that since the respondent entered into Ex.A9 Sale Agreement with him, he should be construed as the owner of the suit property. Mere execution of a Sale Agreement shall not confer title over the suit property. When the appellant is contending that the respondent was a tenant under Vijayalakshmi, which contention was denied by the respondent, the appellant should have examined his vendor Vijayalakshmi to establish her title over the suit property and also the jural relationship between the parties. In the absence of any document produced before the Courts below, the Court cannot confer title on the appellant.

16. When the burden of proof lies on the appellant/plaintiff, he has not examined any other witness, except himself. When the respondent is disputing his right and title over the suit property, the appellant should have established his right and title over the suit property by adducing oral and documentary evidences. Even in Ex.A11 reply, the respondent had denied the tenancy under the appellant. Except Exs.A1 to A3 documents,

the appellant has not produced any title documents to establish either his title or his vendor's title over the suit property. Under Ex.B7 registered Lease Agreement dated 12.06.1973, the respondent has proved that he was a tenant under one Ganapathy Naicker. Ex.B7 would disprove the case of the appellant that the respondent was a tenant under Vijayalakshmi.

17.The suit was filed by the appellant before the trial Court on 14.06.1993. During the pendency of the suit, the appellant executed a Release Deed under Ex.B2 document dated 26.03.1999 relinquishing his entire right over the suit property in favour of the respondent for a valuable consideration of Rs.1,52,000/-. However, the appellant has denied the execution of the said document. Exs.B2 and B3 Release Deeds are registered documents executed by the appellant. In spite of the documents being registered, the appellant went to the extent of denying the execution of the same. The Lower Appellate Court has rightly observed that the denial of the said document would make it clear that the appellant has not come to the Court with clean hands. Since the appellant had failed to prove the relationship of landlord - tenant between himself and the respondent and in the absence of any evidence produced by the appellant to prove the jural relationship, the Courts below have rightly dismissed the suit.

18. In these circumstances, I find no ground much less any substantial question of law warranting interference in the concurrent findings of the Courts below. The Second Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Index : No
Internet : Yes
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15.09.2016

To

- 1.The Principal District Court,
Puducherry.
- 2.The Additional Subordinate Court,
Puducherry.

M.DURAIWAMY, J.

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**Judgment in
S.A.No.251 of 2015**

15.09.2016