

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2016

CORAM

THE HONOURABLE MR.JUSTICE S. NAGAMUTHU

SECOND APPEAL No. 280 of 2015

&

M.P. Nos. 1 & 2 of 2015

C. Saraswathy ..Appellant/Plaintiff

Vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Park Town, Chennai 600 003.

2. The Revenue Officer,
Land and Buildings,
Ripon Buildings,
Park Town,
Chennai 600 003.

..Respondents/Defendants

Prayer: Second Appeal as against the judgment and decree dated 21.03.2014 in A.S. No. 457 of 2011 passed by the III Additional City Civil Court, Chennai and the judgment and decree dated 04.03.2011 in O.S. No. 3529 of 2010 passed by the II Assistant City Civil Judge, Chennai.

For Appellant :: Mr.R. Subramanian

For Respondents:: Mr.P.H. Arvinth Pandian
AAG V assisted by
Ms. Karthika Ashok
Standing Counsel for
Corporation of Chennai.

J U D G M E N T

The plaintiff in O.S. No. 3529 of 2010 on the file of II Assistant Judge, City Civil Court, Chennai is the appellant. The respondents are the defendants in the suit.

2. The suit in O.S. No. 3529 of 2010 was filed for a declaration that the demand notice for rent issued by the

defendants in Reference No. நீ.ம.உ.நு.க.எண்.எல்.இ7 சிறப்பு, 2010 dated 26.02.2010 is null and void and for a permanent injunction restraining the defendants from disturbing the peaceful possession and enjoyment of the plaintiff of the suit schedule property.

3. The Trial Court, by decree and judgment dated 04.03.2011, dismissed the suit. As against the same, the plaintiff filed an appeal in A.S. No. 457 of 2011. The III Additional Judge, City Civil Court, Chennai, by decree and judgment dated 21.03.2014, 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.

4. The case of the plaintiff, in brief, is as follows:
The suit property is owned by the defendants, namely, the Corporation of Chennai. The suit property was leased out by the defendants in favour of the plaintiff by order dated 14.11.1996 and a sum of Rs. 34,420/- was paid as deposit and the agreed monthly rent was Rs.3,285/-. According to the plaintiff, she has been paying the said agreed rent regularly without default. While so, on 26.02.2010, the defendants issued a notice calling upon the plaintiff to pay an additional rent of Rs.94,476/- within seven days from the date of receipt of the notice. The said notice is under challenge in the suit.

5. According to the plaintiff, since the plaintiff was paying the agreed rent and since there was no arrears, the demand notice is illegal.

6. The 1st defendant filed a written statement before the Trial Court wherein he contended that it is true that the monthly rent was fixed as Rs.3,285/-. The Corporation Council, which is competent to fix or revise the rent, passed a resolution on 28.06.2009 to enhance the rent by 10% at the end of every third year with effect from 01.04.2000. As per the said resolution, the enhancement was given effect to, from 01.04.2000 and the enhanced rent was calculated and accordingly, demand was made. Thus, according to the defendants, the notice is valid and the same cannot be interfered with.

7. Based on the above pleadings, the Trial Court framed appropriate issues. On the side of the plaintiff, she was examined as P.W.1 and as many as 5 documents were marked as Exs-A1 to A5. Ex-A1 is the order dated 14.11.1996; Ex-A2 is the impugned demand notice and others are correspondences. On the side of the defendants, neither any oral nor any documentary evidence was let in.

8. Taking into consideration all the above, the Trial Court dismissed the suit, which was confirmed by the Lower Appellate Court. That is how the appellant is before this Court with this second appeal.

9. In this second appeal, the following substantial question of law arises for consideration:

"Whether the Courts below were right in accepting the case of the defendants that the plaintiff was liable to pay the enhanced rent in the absence of either oral or documentary evidence in proof of the enhancement?"

10. Learned counsel for the appellant would submit that though it is stated in the written statement that the enhanced rent was fixed by means of resolution passed by the Corporation Council, no such resolution has been proved in evidence. He would further submit that there is no oral evidence even to prove the enhancement and to justify the same. The learned counsel for the appellant also submitted that at any rate, the enhancement cannot be retrospective. According to the learned counsel, the Courts below failed to consider all these aspects.

11. Learned Additional Advocate General appearing for the respondents would submit that it is proved that the resolution dated 28.06.2009 has not been marked in evidence. Ex-A1 itself would indicate that the Corporation has got power to enhance the rent @ 10% once in every three years. He would further submit that it is only, in accordance with the terms and conditions stipulated in Ex-A1, that the rent was enhanced and therefore, it cannot be said that the demand is retrospective.

12. I have considered the above submissions.

13. Though it is stated by the learned Additional Advocate General that Ex-A1 is the allotment order indicating the power of the Corporation to enhance the rent, in fact, Ex-A1 is only a letter dated 14.11.1996 by which the possession of the suit property was handed over to the plaintiff. Thus, the letter of allotment has not been marked in evidence by the defendants. Strangely, as per the written statement, the rent is demanded, not in terms of the letter of allotment, but on account of the resolution passed by the Council on 28.06.2009. However, even a copy of the said resolution has not been marked in evidence. There is no oral evidence let in to justify the enhancement. Absolutely, there is no explanation on the side of the defendants as to why neither oral nor documentary evidence was let in. All these aspects have not been considered by the Courts below. The Courts below have misinterpreted Ex-A1 that it is the letter of allotment and have dismissed the suit. Thus, in my considered view, the decree and judgment passed by the Trial Court as well

as the Lower Appellate Court deserve to be interfered with and the question of law is answered accordingly. But, at the same time, I feel that in order to enable the defendants to let in evidence and to enable the Court to decide the case on merits, the matter needs to be remanded back to the Trial Court.

14. In the result, the second appeal is allowed and the decree and judgment of the Trial Court as well as the Lower Appellate Court are set aside and the suit in O.S. No. 3529 of 2010 is remanded back to the Trial Court with a direction to the Trial Court to permit the parties to let in both oral and documentary evidence and thereafter, dispose of the suit, in accordance with law, within a period of three months from the date of receipt of a copy of this order. The Trial Court shall permit the appellant to produce additional pleadings, if any.

15. Before parting with the case, I would like to make the following observations:

Repeatedly, it has come to the notice of this Court, in several matters, that public servants, more particularly, the officials of Chennai Corporation have been so callous and indifferent in defending the suits or other legal proceedings initiated against the Chennai Corporation. In yet another matter, I have already issued a direction to the Commissioner, Municipal Administration, Chennai to issue an order to all the Corporations and Municipalities that disciplinary action would be initiated against those officials, who fail to respond to the summons or notice from Courts of law and who fail to conduct the case properly on behalf of the Corporations/Municipalities. It is not reported to this Court whether the Commissioner has issued any such order or not. The case on hand is yet another illustration showing the callous attitude of the officials of the Chennai Corporation. As already pointed out, it is not explained to the Court as to why the written statement was filed by the Corporation without making effective pleas to protect the interest of the Corporation and as to why no evidence, whatsoever, was let in. I hope that the Chennai Corporation will initiate appropriate action against the officials, who are responsible for the above lapses. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The II Assistant Judge,
City Civil Court,
Chennai.

2.The Commissioner,
Chennai Corporation,
Chennai.

3.The III Additional City Civil Judge,
Chennai.

4.The Section Officer,
VR Section,
High Court, Madras.

+lcc to M/S.Karthika Ashok, Advocate Sr.6428

Second Appeal No. 280 of 2015

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srg 03/03/2016



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