

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2016

PRONOUNCED ON : 26.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No. 118 of 2011

and

M.P.No.1 of 2011

Hebshiba William (since deceased)

1. W.Prem Raj

2. W.Greety

3. W.Cyrill

4. W.Joyce

5. W.Lawrance

6. W.Samson

7.W.Walter

8.W.Richard

9.W.John Manoharaj

... Appellants/Defendants

Vs.

C.S.I.Wesly Church, Ketti

Rep.by Rev.T.K.Stephen Raj Ebenezer,

The Nilgiris District.

... Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree of the Subordinate Judge at Udhagamandalam made in A.S.No.11 of 2010 dated 8.9.2010 confirming the Judgment and Decree of the Learned District Munsif Cum Judicial Magistrate, Coonoor made in O.S.No.13 of 2000 dated 17.11.2009.

For Appellants : Mr.D.Jayasingh
For M/s.Devadason & Sagar

For Respondent : Mr.N.Ramesh
for M/s.J.Franklin

JUDGMENT

The defendants have challenged the Judgment and Decree of the Subordinate Court, Udhagamandalam made in A.S.No.11 of 2010 dated 08.09.2010 confirming the judgment and decree of the

District Munsif Court, Coonoor made in O.S.No.13 of 2000 dated 17.11.2009.

2. The suit is for recovery of possession and for damages.

3. The averments in the plaint are briefly stated as follows:

The plaintiff is the landlord of the suit property and the defendants are the tenants under the plaintiff on a monthly rent of Rs.100/-. As the plaintiff required the suit property for its necessity, it had requested the defendants to vacate and hand over the possession and despite promise, the defendants delayed in handing over the possession of the suit property. Hence, the plaintiff issued a legal notice on 06.09.1999 terminating the tenancy and despite the same, since the defendants did not comply with the demand made in the legal notice and on the other hand, sent a reply containing false allegations, the suit has been laid.

4. The averments in the written statement filed by the defendants are briefly stated as follows:

The suit is not maintainable either in law or on facts. It is admitted that the plaintiff is the landlord and the defendants are tenants under the plaintiff on a monthly rent of Rs.100/-. It is falsely stated that the plaintiff required the suit property for its necessity and therefore, the defendants should hand over vacant possession of the suit property of the plaintiff. The defendants sent a proper reply notice to the legal notice sent by the plaintiff. There is no cause of action and the suit is liable to be dismissed.

5. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to 3 were marked. On the side of the defendants, DW1 has been examined and no document has been marked.

6. On a consideration of the oral and documentary evidence adduced by the parties, the trial Court was pleased to decree the suit as prayed for. The first appellate Court was pleased to dismiss the first appeal preferred by the defendants. Aggrieved over the judgement and decree of the first appellate court, the defendants have preferred the present second appeal.

7. That the plaintiff is the landlord of the suit property is admitted. That the defendants are tenants under the plaintiff in the suit property on a monthly rent of Rs.100/- is also admitted. The plaintiff has laid the suit for possession and according to the plaintiff, the suit property is required for its necessity and therefore, for terminating the tenancy of the defendants by issuing a legal notice, the suit has been laid for possession. The defendants have sent a reply, according to the plaintiff, containing false allegations.

8. The defendants, in the Courts below, have not disputed the plaintiff's locus standi as landlord to institute the suit. The Courts below have found that the notice of termination issued by the plaintiff is proper and valid as per law. Therefore, considering the rival submissions of the parties, on the basis of the evidence adduced, as rightly found by the Courts below, the plaintiff is entitled to seek possession of the suit property from the defendants.

9. The only question, that has been put forth by the defendants' counsel, is that the suit should have been laid in a representative capacity under Order 1 Rule 8 CPC and according to the defendants, the plaintiff being an unregistered body, without filing the suit Under Order 1 Rule 8 CPC, the suit is not maintainable.

10. The plaintiff's counsel contended that such a plea has not been taken by the defendants in the Courts below and for the first time, it is disputing the locus standi of the plaintiff to institute the suit and the defendants are barred from raising such a plea, as per Section 116 of the Indian Evidence Act.

11. With reference to the above submission, the defendants' counsel submitted the decision reported in (2004) 1 M.L.J. 617) Inbaraj and another Vs. Kalunguvilai CMS Sudhanga Suvisesa Sabai, through its President, Rajiah Nadar and others). However, as rightly argued by the plaintiff's counsel, the above decision has no applicability to the facts and circumstances of the present case. It is not the case of the defendants that in the present suit, numerous parties with same interest are involved. Therefore, the requirement for instituting the suit under Order 1 Rule 8 CPC is not attracted.

12. In such view of the matter, inasmuch as the condition for laying the suit under Order 1 Rule 8 CPC is found to be not

applicable to the present case and as the suit has been instituted by the plaintiff being the landlord against the defendants, being the tenants, simpliciter for recovery of possession of the suit property, after terminating the tenancy as per law, it could be seen that there is no need for the plaintiff to institute the suit under Order 1 Rule 8 CPC as put forth by the defendants' counsel.

13. The other decision, relied on by the defendants, reported in 1999 (1) MLJ 392 (Rev.Noble Gambeeran and others Vs. Peter P.Ponnan for himself and as representative of members of C.S.I. Christian Community) also would not be applicable to the facts and circumstances of the present case as argued by the plaintiff's counsel. It could be seen that the present suit of the plaintiff does not require the institution of under Order 1 Rule 8 CPC as numerous persons with same interest are not involved in the present suit. In such circumstances in the light of the absence of common interest of various parties being involved in the subject matter of the suit and as this suit is only between the landlord and the tenants and when the status of the landlord and the tenants are not at issue, the termination of the tenancy being valid in law, it could be seen that merely because, the plaintiff is a Church would not require that the suit for possession against the defendants should have been filed in a representative capacity under Order 1 Rule 8 CPC. Therefore, considering the above facts, it could be seen that as argued by the plaintiff's counsel, the above said decision also would not be applicable to the facts and circumstances of the present case.

14. Further, as argued by the plaintiff's counsel, considering the nature of the relief sought for in the respective cases involved in the above said authorities it has been held that the suits laid are not maintainable and that the suits should have been laid Under Order 1 Rule 8 CPC, as it was found in those cases that numerous parties with same interest are involved and considering the nature of the relief sought for by the plaintiff, it was found that the permission of the Court should have been obtained to institute the suit under Order 1 Rule 8 CPC and on such basis, it was held that the Church, an incorporate body should have instituted the suit under Order 1 Rule 8 CPC. However, as far as the present case is concerned, as found earlier, the status of the plaintiff as landlord and the status of the defendants as tenants are not controverted and no third parties are involved in the present suit for possession and this is a suit simpliciter between the plaintiff landlord and the defendants tenants. Therefore, it could be seen that, as rightly argued by the plaintiff's counsel, the defendants, as

per section 116 of the Indian Evidence Act, cannot dispute the status of the plaintiff to institute the suit against the defendants for recovery of the possession as landlord after having admitted its status in the written statement as well as in the evidence before the Courts below.

In the light of the above discussion, I do not find any substantial question of law is involved in this second appeal. Accordingly, the second appeal is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Subordinate Judge,
Udhagamandalam.
- 2.The District Munsif Cum Judicial Magistrate,
Coonoor.

Copy to

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

+1cc to M/S.J.Franklin, Advocate Sr.61128

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and
M.P.No.1 of 2011

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