

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 09.11.2016
PRONOUNCED ON : 23.11.2016
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.No.213 of 2011

A/m.Karkodiamman Devastanam
Ramanavakan Street,
Nungambakkam,
Chennai-600 034.

Rep. by its Executive Officer ... Appellant/Respondent/
Appellant

Vs.

G.Arumugam ...2nd Plaintiff/2nd
Respondent

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 11.02.2010 passed in A.S.No.595 of 2006 on the file of the Additional District Judge, Fast Track Court-II, Chennai, reversing the judgment and decree dated 17.06.2005 passed in O.S.No.6906 of 1999 on the file of the V Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.A.K.Sriram for
M/s.A.S.Kailasam & Associates
For Respondent : No Appearance

J U D G M E N T

Challenge in the Second Appeal is made by the defendant against the judgment and decree dated 11.02.2010 made in A.S.No.595 of 2006 on the file of the Additional District Judge, Fast Track Court-II, Chennai reversing the judgment and decree dated 17.06.2005 made in O.S.No.6906 of 1999 on the file of the V Assistant Judge, City Civil Court, Chennai.

2.Suit for declaration and permanent injunction.

3.The case of the plaintiffs in brief is as follows:

The first plaintiff's husband and the second plaintiff's father Gopalan Naicker was occupying a small piece of land commonly known as Vethilai Thottam, also known as Koil Thottam

measuring 12' X 35' feet and in or about 1948, the defendant Temple claimed that the land belonged to them and they wanted a rent of Rs.2/- as land rent for the occupation of the land. Gopalan Naicker was paying the same and residing in the hut with the first plaintiff as the exclusive owner of the super structure. In the year 1950, the Managing Trustee of the Temple enhanced the rent up to Rs.5/- and Gopalan Naicker was paying the same. Due to fire accident, the rental receipts were lost. Some of the receipts available are filed herewith. In the year 1960, the rent was enhanced to Rs.12/- and on 01.08.1977, the rent was further enhanced to Rs.24/-. The plaintiffs are paying rent without default. There is no arrears up to date. By letter dated 29.02.1988, the then Executive Officer, claimed that the Devasthanam is the owner of the superstructure and on that basis wanted to enhance the rent for the house to Rs.229.50. The first plaintiff by her letter dated 15.03.1988 informed the Executive Officer that the building belonged to her and the rent was Rs.24 and that the same is paid only for the land. She also informed that she is prepared to pay the reasonable increase in the land rent. On 26.07.1997, the Executive Officer again issued a notice claiming right over the superstructure. By a lawyer's notice dated 22.09.1997, the plaintiffs replied that the tenancy is in respect of the land only and that the building is constructed by the plaintiffs. During the year 1988, plaintiffs hut was completely destroyed and subsequently the first plaintiff repaired it at a cost of Rs.15,000/- by putting up asbestos sheets. The defendant has not spent any amount for the construction. The property is also assessed in the name of the first plaintiff. The defendant is refusing to receive the rent and therefore, the plaintiffs are sending the rent by way of Demand Draft. On 29.10.1999, the defendant came to the premises with staff to evict the plaintiffs from the premises. However, the same was prevented. Hence, the suit.

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

The suit is not maintainable either in law or on facts. The suit is hit under Section 9 of the Civil Procedure Code and under Section 34 of the Specific Relief Act. The suit is barred by limitation. The plaintiffs have not issued notice under Section 80 of the Civil Procedure Code prior to the institution of the suit. It is false to state that Gopalan Naicker was paying the rent and subsequently, the plaintiffs are paying the rent only for the land and not for the superstructure. The land and the superstructure belong to the defendant absolutely. Gopalan Naicker was a tenant in respect of the superstructure and on his death, the first plaintiff was recognized as a tenant. The averments regarding the fire accident are denied. The rent was periodically revised and it is false to state that the plaintiffs are not in arrears of rent. The defendant

is the owner of the site and building, the rent was revised by HR & CE with effect from 01.08.1977 and this was communicated to the first plaintiff and the other tenants of the defendant. It is false to state that the defendant unlawfully attempted to evict the plaintiffs from the suit premises. There is no cause of action for the suit. Hence, the suit is liable to be dismissed.

5. In support of the plaintiffs' case PW1 has been examined. Exs.A1 to A16 were marked. On the side of the defendant DW1 has been examined. Exs.B1 to B4 were marked. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to dismiss the suit. As against the judgment and decree of the trial Court, the plaintiffs preferred the first Appeal. The first Appellate Court set aside the judgment and decree of the trial Court and decreed the suit as prayed for. Challenging the same, the present Second Appeal has been instituted by the defendant.

6. The Second Appeal was admitted and the following substantial questions of law are formulated for consideration in this Second Appeal:

(a) Whether the lower Appellate Court was right in law in placing the burden on the defendant to prove that the superstructure had not been built by the plaintiffs?

(b) Whether the lower Appellate Court was right in law in interpreting Ex.A1 Series and hold that it was for land rent?

(c) Whether the lower Appellate Court was right in law in reversing the judgment and decree of the trial court without holding that the findings of the trial Court were wrong?

(d) Whether the lower Appellate Court was right in law in ignoring the established proposition that the plaintiff had to plead and prove his case?

(e) Whether the lower Appellate Court was right in law in ignoring Exs.B1 to B4, which had not been disputed?

(f) Whether the lower Appellate Court was right in law in holding that the plaintiffs are entitled to declaration without upsetting the findings of the trial Court on issue No.3?

7. It is admitted that the suit land belongs to the defendant Temple. Further, it is also admitted by the plaintiffs that the plaintiffs and prior to them their predecessor-in-interest Gopalan Naicker was the tenant of the suit land under the defendant Temple. Now, according to the

plaintiffs, Gopalan Naicker and subsequently the plaintiffs are the tenants under the defendant Temple only in respect of the suit land and the superstructure on the suit land absolutely belongs to them and the rent paid by them pertains only to the land and not to the superstructure and in as much as the defendant Temple attempted to evict the plaintiffs unlawfully, they have preferred the suit.

8. Per contra, according to the defendant Temple, the plaintiffs and their predecessor-in-interest are tenants under the defendant Temple both for the superstructure and the land and the Temple had been revising the rent periodically and the same has been paid both by Gopalan Naicker and subsequently by the plaintiffs. However, the plaintiffs are not in the habit of paying rents regularly and keeping huge arrears and therefore according to the defendant, the plaintiffs are not entitled to seek the reliefs sought for.

9. To establish that the plaintiffs have put up the superstructure on the suit land, as rightly found by the trial Court, absolutely there is no material forthcoming on the side of the plaintiffs. The plaintiffs have produced 8 numbers of rental receipts issued by the defendant Temple to Gopalan Naicker, which are marked as Ex.A1. As rightly found by the trial Court, a perusal of Ex.A1 would go to disclose that the same pertains only to the building and the amount mentioned therein has not been stated to be the land rent only. Therefore, Ex.A1, Series does not in any manner substantiate the case of the plaintiffs that they are the tenants of the suit land only and not of the superstructure. On the other hand Ex.A1, Series disclose that the plaintiffs and their predecessor-in-interest having been paying rent to the defendant Temple and for the superstructure also and the contention now put forth by them that they are not the tenants in respect of the superstructure under the defendant Temple cannot be countenanced. Similarly, the rent receipts marked as Ex.B1, Series also would go to disclose that the predecessor-in-interest of the plaintiffs and the plaintiffs are paying rent for the superstructure also to the defendant Temple. It could be seen that periodically rent has been revised by the defendant Temple. Accordingly, it could be seen that fixing the fair rent, the Deputy Commissioner has also issued the proceedings for higher rent and the copy of the proceedings has been marked as Ex.B2.

10. That apart in the letter dated 29.02.1988 Ex.A2, sent by the defendant Temple to the plaintiffs, there is reference about the Door No.26 belonging to the defendant Temple. If really the plaintiffs are the owners of the superstructure, the defendant in Ex.A2 would not have claimed or mentioned that the superstructure belongs to the defendant Temple. Under Ex.B4,

letter, the first plaintiff has sought for enhancement of amenities to the suit property. From the same also it could be seen that as rightly found by the trial Court, she being the tenant of the superstructure under the defendant Temple has sought for additional amenities in respect of the property enjoyed by her.

11.The plaintiffs though claim to have put up superstructure on the suit property as their own. As adverted to earlier, no material what so ever has been filed to hold that they had to put up superstructure on the suit land. With reference to the same, the plaintiffs have made a plea that due to the fire accident in the year 1950 most of the documents were lost. Further according to the plaintiffs, again there was a fire accident in the 1988 and there after the first plaintiff had put up the superstructure with asbestos sheets at the cost of Rs.15,000/-. If according to the plaintiffs they had put up superstructure on their own without any assistance or involvement of the defendant Temple, as rightly put forth by the learned counsel for the defendant Temple, the plaintiffs would have produced the supporting materials to substantiate the same. However, no material what so ever has been placed by the plaintiffs to establish that their predecessor-in-interest and subsequently, the first plaintiff had put up super structure on the suit land as projected by them. In as much as the superstructure belongs to the defendant Temple, it could be seen that the plaintiffs under Ex.B4, sought for additional amenities. In such circumstances, merely because under Ex.A4, which has been subsequently sent, the plaintiffs have denied the title or right of the superstructure of the defendant would not by itself lead to the conclusion that the defendant Temple has not right over the superstructure. The receipts marked on the side of the plaintiffs as Exs.A6 to A10 and A14 to A16 for Water and Sewerage and Electricity charges, property tax by itself would not confer title on the first plaintiff over the superstructure on the suit land.

12.As seen and the admitted case of both the parties the suit land belongs to the defendant Temple. It has not been established by the plaintiffs that they had obtained the water connection and electricity connection with the knowledge and consent of the land owner namely the defendant Temple. Therefore, Exs.A6 to 10 and Exs.A14 to 16 on their own would not be adequate to hold that the superstructure belongs to the plaintiffs. Other than Ex.A6 to A10 & Exs.A14 to A16, no material is produced by the plaintiffs to establish that they have any right over the superstructure.

13.In such view of the matter, as rightly argued by the learned counsel for the defendant Temple, the first Appellate Court has erred in shifting the burden on the defendant Temple

and holding that in as much as the defendant Temple has failed to establish that the superstructure had been built up by them the same belongs to the plaintiffs. The above approach of the first Appellate Court on the face of it seems unacceptable. The plaintiffs having come forward with a specific case that the superstructure belongs to them, admitting the ownership of the land on which the superstructure stands rests with the defendant have failed to establish that they have put up superstructure on the suit land and further when the rent receipts marked on behalf of the plaintiffs as well as on behalf of the defendant Temple indicate that the same pertain both to the superstructure as well as the land and does not indicate that it pertain only to the land and when the defendant demanded the enhancement of rent and when the first plaintiff had requested the defendant to provide for certain amenities, the findings of the lower Appellate Court that the plaintiffs are the owners of the superstructure on the footing that the defendant Temple have failed to establish that they are the owners of the superstructure cannot be upheld in the eyes of law.

14. In light of the above discussion, as rightly argued, the lower Appellate Court has erred in placing the burden on the defendant Temple to prove that the superstructure had not been built up by the plaintiffs. Similarly, it could be seen that the lower Appellate Court was not right in interpreting Ex.A1 & B1 Series of rent receipts that it pertains only for land and not for the superstructure also. The lower Appellate Court while reversing the judgment and decree of the trial Court has not given a finding that the trial Court has erred in approaching the matter wrongly or that the findings of the trial Court are perverse or unacceptable. On the other hand without giving reason for differing from the view of the trial Court, the lower Appellate Court without any material on the side of the plaintiffs by wrongly placing the burden of proof on the defendant Temple, has held that the superstructure belongs to the plaintiffs. The lower Appellate Court has failed to observe the basic dictum of law that the plaintiffs, who have come forward with prayer for specific reliefs, have to plead and prove their case. Accordingly, it could also be seen that the lower Appellate Court has not properly appreciated Ex.B1 to B4 when the same had not been contravened by the plaintiffs. It could therefore be seen that without any material and proof, on wrong appreciation of evidence and wrong application of law wrongly shifting the burden of proof, it could be seen that the lower Appellate Court has erred in holding that the superstructure on the suit land belonged to the plaintiffs and not to the defendant Temple. The above findings of the lower Appellate Court are nothing but perverse.

15. The substantial questions of law formulated in this Second Appeal are answered in favour of the defendant Temple and

against the plaintiffs.

16.In conclusion the Second Appeal is allowed and the judgment and decree dated 11.02.2010 made in A.S.No.595 of 2006 on the file of the Additional District Judge, Fast Track Court-II, Chennai are set aside and the judgment and decree dated 17.06.2005 made in O.S. No.6906 of 1999 on the file of the V Assistant Judge, City Civil Court, Chennai are restored. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

dn

To

1.The Additional District Judge,
Fast Track Court-II, Chennai

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

3 The Section Officer
VR Section High Court Chennai

+1 cc to M/s.A.S Kailasam Advocate sr 68127

S.A.No.213 of 2011

aa27/12/2016

WEB COPY