

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2016

PRONOUNCED ON : 22.12.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No. 327 of 2011 & M.P.No.1 of 2011
and S.A.No.328 of 2011

S.Velayutham	..	Appellant in both Second appeals
	Vs.	
1.N.Muthukumar		
2.P.R.Rathnam @ Nagappan..		1 st and 2 nd respondents in S.A.327/2011
N.Meenal	..	3 rd Respondent in in S.A.327/2011 & Respondent in S.A.No.328 of 2011

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 04.08.2010 and made in A.S.Nos.20 of 2009 & 90 of 2009 respectively on the file of the First Additional District Judge, Coimbatore, confirming the judgment and decree dated 26.11.2007 and made in O.S.No.961 of 1999 & 1494 of 1998 respectively on the file of the Principal Sub ordinate Judge, Coimbatore.

For Appellants	
in both second appeals	: Mr.A.Bharathi for M/s.Muthumani Doraisami

For Respondents	
in both second appeals	: Mr.D.Veerasekaran

COMMON JUDGMENT

Challenge in the second appeal No.327 of 2011 is made by the defendant against the judgment and decree dated 04.08.2010 made in A.S.No.20 of 2009 on the file of the First Additional District Court, Coimbatore, confirming the judgment and decree dated 26.11.2007 made in O.S.No.961 of 1999 on the file of the Principal Subordinate Court, Coimbatore.

2. Challenge in the second appeal No.328 of 2011 is made by the plaintiff against the judgment and decree dated 04.08.2010 made in A.S.No.90/2009 on the file of the First Additional District Court, Coimbatore, confirming the judgement and decree dated 26.11.2007 made in O.S.No.1494 of 1998 on the file of the Principal Subordinate Court, Coimbatore.

327.

3. The suit has been laid by the plaintiffs, in O.S.No.961 of 1999 /respondents in both second appeals, for declaration, mandatory injunction and damages

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

The first plaintiff is the son of the plaintiffs 2 & 3. The suit property was purchased on 30.10.1987 in the name of the first plaintiff, when he was a minor and the suit property has been leased out to various tenants and following the dispute over the tenants in sharing the electricity consumption, the electricity connection to the motor and pumpset and the pipe fittings from sump to the overhead tank were removed. The suit property was previously leased out to one Thillai Natarajan by the second plaintiff on a monthly rent of Rs.2,500/- and he vacated the portion by the end of June, 1994.

5. The defendant is a property broker and he helped the second plaintiff with reference to certain sales and had received his brokerage commission in connection with the same, from the second plaintiff. In July-August 1994, on coming to know that Thillai Natarajan had vacated the suit property and the same was lying vacant, the defendant approached the second plaintiff that he would fix up a suitable tenant for the property and obtained the key from the second plaintiff for the purpose of inspection of the property by the intending tenants and gaining the confidence of the second plaintiff, the defendant got the custody of the key to the suit property for the purpose of facilitating the inspection of the property to the intending tenants and believing the defendant, the second plaintiff

allowed him to be in the custody of the key of the suit property and his occupation of the suit property is by permission and licence for the specific purpose of finding suitable tenant to the suit property. The defendant is not a tenant of a suit property at any point of time.

6. While so, the defendant instituted a suit against the third plaintiff in O.S.No.3647/1996 claiming to be the tenant of the suit property and also, seeking a recovery of money based upon an agreement of sale deed dated 11.02.1992 on the footing that the defendant had paid the advance amount for an agreement of sale and that he is also entitled to brokerage commission and the defendant has also laid another suit against the plaintiffs for permanent injunction and also filed Rent Control Proceedings for restoration of amenities. The defendant claims recovery of money from the third plaintiff based upon the agreements dated 11.02.1992 and 10.12.1995, which are nothing but fabricated documents. Hence, the suit has been laid by the plaintiffs for seeking necessary declarations, mandatory injunction and also damages.

7. The defendant's case, in brief, is as follows:

The third plaintiff let out the suit property to the defendant and the defendant is a tenant and not a licensee of the suit property. The

third plaintiff entered into an agreement dated 23.09.1991 in respect of the suit property with one Devendran and it is the defendant, who had paid the advance a sum of Rs.30,000/- for the same and in view of the same and also towards the brokerage commission, the defendant was allowed to occupy the suit property as a tenant and the rent was agreed to be adjusted towards the interest. The defendant filed a suit in O.S.No.3647/1996 as his possession was threatened by the plaintiffs. Further, as amenities are disconnected, the defendant was forced to file the Rent Control Proceedings for restoration of the amenities. The plaintiffs are not entitled to seek the reliefs sought for and hence, the suit is liable to be dismissed.

8. The case of the plaintiff, in O.S.1494 of 1998/the appellant in both second appeals, in brief, is as follows:

The defendant entered into a sale agreement with one Devendran for the sale of her property and the plaintiff paid an advance amount of Rs.30,000/- for the same to the defendant and for arranging the sale transaction, the defendant also agreed to pay the brokerage commission to the plaintiff and the defendant also agreed to let out the property belonging to the defendant to the plaintiff on rental arrangement and the rent is to be adjusted in lien of interest as well as the commission amount. The parties have entered into the

agreements dated 11.02.1992 and 10.12.1995. The defendant is liable to pay the advance sum and the commission and hence, the suit.

9. The defendants' case, in brief, is as follows:

The suit is not maintainable either in law or on facts. It is false to state that the plaintiff had paid an advance a sum of Rs.30,000/- to the defendant in connection with the sale agreement, she had entered into with one Devendran. The defendant did not negotiate the sale agreement through the plaintiff nor promised to pay any brokerage commission to the plaintiff. The plaintiff is only a real estate broker and the agreement entered into Devendran did not culminate into a sale transaction. The defendant is not liable to pay any amount to the plaintiff. The alleged agreements dated 11.02.1992 and 10.12.1995 are false and fabricated documents. The property of the defendants was originally rented out to Thillai Natarajan and on his vacating the property, the plaintiff, under the guise of fixing suitable tenant for the same, obtained the key from the defendant's husband for the purpose of inspection of the property by the intending tenants and the rental arrangement pleaded by the plaintiff is not true. Hence, the suit is liable to be dismissed.

10. Both O.S.No.1494 of 1998 and O.S.No.961 of 1999 were jointly tried. The evidence was recorded in common in O.S.1494 of 1998 and the same was treated to be evidence in the other suit in O.S.No.961 of 1999.

11. In support of the plaintiff viz., S.Velayutham case, PWs1 and 2 were examined and Exs.A1 to 13 were marked. In support of the defendants case, DWs1 to 3 were examined and Exs.B1 to 15 were marked.

12. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to dismiss the suit filed by S.Velayutham and decreed the suit filed by N.Muthukumar and others. The first appeals preferred by S.Velayutham were dismissed. Aggrieved over the same, the present second appeals have been laid by Velayutham.

13. The appellant has filed the suit for recovery of money based upon two agreements dated 11.02.1992 and 10.12.1995 and based on the above said two agreements, he claimed to be the tenant of the property belonging to the respondents. The alleged agreements dated 11.02.1992 and 10.12.1995 marked as Exs.A1 and 2 have been

seriously challenged by the respondents and Therefore, the main point that arise for consideration is whether the agreements dated 11.02.1992 and 10.12.1995 pleaded by the appellant are true, valid and binding on the respondents.

14. Both second appeals are admitted and the following substantial questions of law are formulated for consideration in the second appeals.

S.A.No.327 of 2011

“ (i) whether the Courts below are right in rejecting Exs.A1 and A2 particularly when the execution of the same has not been denied by their author by way of oral evidence, more so when her signature has been admitted to by DW1?

(ii) Whether the Courts below were right in holding that there was no landlord-tenant relationship when the appellant has produced categorical proof by way of Exs.A3 to A8 and A10 to A12 to show that he is the tenant of the

property?

(iii) Whether the Courts below were right in holding that the recitals of A1 and A2 did not reflect any evidence of tenancy when A1 and A2 are acknowledgments of the cash received by the third respondent without interest in lieu of which the appellant was inducted as the tenant?

S.A.No.328 of 2011

(i) whether the courts below are right in rejecting Exs.A1 and A2 particularly when the execution of the same has not been denied by their author by way of oral evidence, more so when her signature has been admitted to by DW1?

(ii) Whether the Courts below were right in holding that there was no liability on the part of the respondent when Exs.A1 and A2, as compared to Ex.A9 clearly establish that the respondent is liable to make the payment to the appellant and the respondent had not entered the dock to deny her liability?

15. The plea of the appellant is that N.Meena, one of the respondents had entered into an agreement with one Devendran (DW3), in support of the sale of the property and for the payment of advance amount of Rs.30,000/- in connection with the said sale agreement, it is the appellant, who had paid the sum and therefore, according to the appellant, N.Meena is due to him a sum of Rs.30,000/- and also, as she had agreed to pay the brokerage commission, thus in toto, she is liable to pay a sum of Rs.57,500/- and pursuant to the above said transactions, according to the appellant, he was inducted into the possession of the suit property as a tenant in lieu of the interest and claiming the amount, he has laid the suit for recovery of the same.

16. Per contra, the respondents have laid the suit against the appellant stating that the appellant is a property broker and the tenant Thillai Natarajan having vacated the suit property, the keys were handed over to the appellant on his assurance it is required for the inspection of the suit property by the intending tenants and believing his version, the keys were handed over to him and thus, the suit property is under the occupation of the appellant by virtue of the

respondents' permission and licence and the appellant is not a tenant of the suit property as claimed by him and the agreements put forth by the appellant Exs.A1 and 2 are fabricated and forged documents and the appellant is not entitled to recover any amount from N.Meenal and hence, the respondents have terminated the licence and permission, thus according to them, they have been necessitated to lay the suit for suitable reliefs.

17. The agreement holder Devendran has been examined as DW3 and the agreement entered into between him and N.Meenal has been marked as Ex.A9. As rightly found by the courts below, a perusal of the recitals found in Ex.A9 would go to show that there is nothing contained therein to indicate that the appellant had paid the advance amount of Rs.30,000/- to Devendran. On the other hand, the evidence of DW3 would go to show that it is only N.Meenal, who had advanced the amount to Devendran. Therefore, the plea of the appellant that he had paid the said sum cannot be accepted in any manner. The appellant admittedly being the property broker, if he had really advanced the said sum of Rs.30,000/- to N.Meenal for handing over to Devendran as per Ex.A9, nothing prevented the appellant from taking necessary receipt from N.Meenal in connection with the same.

18. Now, according to the appellant, N.Meenal had agreed to pay brokerage commission charges in respect of the sale agreement Ex.A9. It is seen from the evidence adduced by the respective parties that Ex.A9 did not materialise into the sale transaction, therefore, the question of paying brokerage commission to the appellant would not arise. Further, when nothing has been pointed out that it is only the appellant, who had arranged the sale agreement between Devendran and N.Meenal, when there is nothing to hold N.Meenal had agreed to pay the brokerage commission to the appellant, the case of the appellant that in lieu of the interest for the advance amount and brokerage sum, he was inducted as a tenant of the suit property by Meenal cannot be accepted in any manner.

19. Further according to the appellant, Ex.A1 agreement had been executed by Meenal in connection with the letting out of the suit property to the appellant pursuant to Ex.A9 sale agreement. However, as rightly found by the courts below, there is nothing found in Ex.A1 to show that the appellant was inducted as a tenant into the suit property by Meenal or the other respondents on some understanding between the parties as pleaded by the appellant. Further, according to the appellant, the second agreement marked as

Ex.A2 would go to show that he was inducted as a tenant in the suit property by the respondents. However, as rightly found by the courts below, when letting out of the suit property to the appellant by the respondents is not mentioned in Ex.A1 and for the first time, some recitals with reference to the same are found in Ex.A2. It is highly doubtful whether the appellant's case of being inducted into the suit property as a tenant, pursuant to Exs.A1 and 2 could be accepted as a valid plea. As rightly found by the courts below, both in Exs.A1 and 2, particularly, Ex.A2 it has not been mentioned as to when from, on what terms the appellant was inducted and treated as a tenant of the suit property by the respondents. The appellant has not chosen to examine one of the attesting witnesses to the agreement viz., Kesav. On the other hand, he has chosen to examine his son as PW2, who, as found by the courts below, being an interested witness, has deposed in favour of the appellant. However, based upon the interested witness's evidence, we cannot uphold the case of the appellant.

20. As seen supra, if really the appellant advanced a sum of Rs.30,000/- to Meenal, he would have obtained necessary receipt for the same. Further, under Ex.A1 there is nothing whispered that he was inducted into the suit property, in lieu of such advance sum. The period from which he was inducted into possession of the suit

property as a tenant is not mentioned. That apart, as rightly found by the courts below, Ex.A2 has come into existence 3 years after the execution of Ex.A1. The appellant claims to have initiated rent control proceedings in respect of amenities and also filed civil suit against the respondents for permanent injunction. In those proceedings, there is no reference about Exs.A1 and 2 and as seen by the courts below, he has also not filed the same in the above suit proceedings. Therefore, if really the above said agreements Exs.A1 and 2 have come into existence in the normal course of events as pleaded by the appellant, the said documents would have been pressed into service by the appellant in the other proceedings.

21. The appellant claims to have occupied the suit property as a tenant after the earlier tenant Thillai Natarajan had vacated the same. As rightly found by the courts below, a perusal of Exs.B10 and 11 rent receipts issued in favour of Thillai Natarajan would go to show that he had vacated the premises only in the month of January, 1994. Such being the case, the plea of the appellant that he had been inducted into possession of the suit property as a tenant by the respondents in the year 1992 itself under Exs.A1 and A2 cannot be believed and accepted.

22. Further, the main contention put forth by the appellant is that Meenal has not chosen to come into the witness box to depose her case. However, as rightly found by the courts below, the respondents have examined her husband P.R.Rathinam as DW1 in support of their case. Further, when the case of the respondents has been amply substantiated by the evidence of Meenal's husband examined as DW1 and further witnesses examined as DW2 and 3, DW1 P.R.Rathinam being one of the parties to the suit, it could be seen he is competent to give evidence on the issues pertaining between the parties and he being the husband of Meenal would, as rightly argued, be having knowledge of the matter and therefore, the non examination of Meenal would not undermine the case of the respondents in any manner.

23. It is admitted that the appellant is a property broker. Therefore, it could be seen that as rightly pleaded by the respondents, on the earlier tenant Thillai Natarajan vacating the property, the appellant had secured the key of the said portion, with a view to facilitate the inspection of the property by the intending tenants. However, on noting that the respondents have rejected his case as regards the payment of amount claimed as advance sum and brokerage amount, the appellant could be seen to have taken a

hostile attitude towards the interest of the respondents and in that end, as argued by the respondents, created the agreements Exs.A1 and 2 by taking advantage of the keys given to him by the respondents and set up a case falsely that he has been inducted as a tenant of the property pursuant to the agreements Exs.A1 and 2.

24. Accordingly, it could be seen that inasmuch as the appellant has set up a false plea and remaining in the suit property unlawfully and as according to the respondents, the appellant has been in possession of the suit property only under their license and permission, it could be seen that the respondents have, by due notice, terminated the licence and permission granted to the appellant and despite the issuance of the notice, the appellant has not chosen to send any reply to the same.

25. The courts below have rightly analysed the evidence adduced by the parties concerned and come to the conclusion that the agreements Exs.A1 and 2 are fabricated and invalid documents and that the appellant is not a tenant of the suit property and that he has been in possession of the suit property only under the licence and permission granted by the respondents as the property broker and therefore, it could be seen that the case of the appellant is totally

false and rightly rejected by the courts below.

26. That apart, pursuant to the decree obtained by the respondents in their suit, they have also levied execution proceedings against the appellant. Challenging the same, in the High Court by way of CRP No.1401/2011, the appellant sought for stay of further proceedings in the EP. As rightly argued, in the above CRP, it appears that the parties have come to an understanding and compromise and it could be seen that based on the same, an order has been passed on 02.08.2011 in the above CRP that the appellant had agreed to vacate the property on or before 31.10.2011 and on his vacating the same, the respondents have also agreed to waive the arrears of rent and in the case of failure of the appellant to vacate the property as undertaken by him, the respondents would be at liberty to proceed further in the execution proceedings and seek suitable remedies. Therefore, the order passed in CRP No.1401/2011 dated 02.08.2011 would also go to show that the case of the appellant is not a true one and therefore, the appellant would be disentitled to seek the reliefs sought for.

27. The counsel for the appellant, in support of his contention, placed reliance upon the decisions reported in **2005 (3) CTC 12**

(P.Sood & Co., (Manufacturing), represented by its Partner, Krishna Kumar Sood, 218, Linghi Chetty Street, Chennai -1 V. Peerchand Misrimalji Bhansali, Prop., Meena Metals, No.74, C.P.Road, Bomaby – 400 054) and 2012 (1) CTC 801 (A.Seyed Hakim and five others V. K.S.Maideen and another). However, as rightly put forth by the counsel for the respondent, the above decisions are not applicable to the facts and circumstances of the case at hand.

28. In the light of the above discussions, the substantial questions of law are formulated in both the second appeals are answered against the appellant and in favour of the respondents.

In conclusion, both second appeals are found to be devoid of merits and consequently, both second appeals are dismissed. No costs. Consequently, connected miscellaneous petition in M.P.No.1 of 2011 in S.A.No.327 of 2011 is closed.

22.12.2016

Index : Yes/No
Internet: Yes/No
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To

1. The First Additional District Court,
Coimbatore.
2. The Principal Sub ordinate Court,
Coimbatore.

T.RAVINDRAN,J.

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Pre-delivery order in
S. A.No. 327 of 2011 &
M.P.No.1 of 2011
and S.A.No.328 of 2011

22.12.2016