

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2016

PRONOUNCED ON : 15.11.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.825 of 2006

K.Madavan ..Appellant/1st defendant

Vs

1.R.Nachimuthu (died) ...1st Respondent/Plaintiff

2.M/s.Madras Forgings and
Allied Industries (cbe) Ltd.,
Main Road, Karamadai Post,
Mettupalayam Taluk.

3.The Official Liquidator,
High Court of Madras,
Appointed in C.P.No.83 of 1997
in the matter of
M/s.The Madras Forgings and
Allied Industries (cbe) Ltd.,
Under Liquidation.

4.M/s.Madras Forgings and
Allied Industries (cbe) Ltd.,
by its Managing Director,
Sri.Shyamsundar,
Main Road, Karamadai Post,
Mettupalayam Taluk.

5.Tmt.Lakshmiammal

6.Shanmugasundaram

7.Kandasamy

8.Tmt.Amudha

9.Tmt.Shanthi

(R5 to R9 are brought on record as
LRS of deceased R1 vide order of
court dated 14.09.2007 made in
MP.Nos.3&4 of 2007)

..Respondents 2to9

Prayer:- Second Appeal has been filed under Section 100 of
C.P.C., against the judgment and decree in A.S.No.78 of 2000 on
the file of the Appellate Authority cum Additional District and

Sessions Court, Fast Track No.2, Coimbatore dated 05.10.2005 confirming the judgment and decree in O.S.No.30 of 1995 on the file of the District Munsif Court, Mettupalayam dated 16.12.1999.

For Appellant : Mr.R.Krishnan, for
Mr.A.Sivaji

For R.1 : Died
For RR2 & 4 : Not ready notice
For R.3 : No Appearance
For RR5 to 9 : Mr.A.S.Baalaji

JUDGMENT

Brief facts, leading to this appeal, are as under:-

The plaintiff Mr.Nachimuthu, and the first defendant Mr.Madhavan were the employees under the second defendant management. For the welfare of its employees, the second defendant management purchased a large piece of land and converted the same into house sites and sold it to its employees. The plaintiff Mr.Nachimuthu purchased house Site No.41 for a valuable consideration from the second defendant company management vide Ex.A.1 dated 31.08.1976 and put up construction over the land availing loan from the housing society through his employer. While so, the first defendant namely Mr.Madhavan was put into possession of the suit property, as a tenant, for a monthly rent of Rs.150/- with a specific understanding that the second defendant management will deduct the rent from the salary of Mr.Madhavan and remit into the loan account of the plaintiff, Mr.Nachimuthu.

2.While the facts being so, the first defendant when asked to vacate the suit property by the plaintiff, for his own use and occupation, he refused to vacate. Therefore, the plaintiff issued notice on 10.04.1985 calling upon the first defendant to vacate and surrender possession. Wherein, the first defendant replied containing false and frivolous allegations against the plaintiff. Hence, the suit for direction to the first defendant to vacate, surrender the possession of the suit property and to put the plaintiff in possession and enjoyment of the same, was filed by the plaintiff.

3.The said suit was contested by the first defendant, by filing a written statement wherein, he denied the landlord - tenant relationship between the plaintiff and him, pointing out that there is a dispute over the title and without seeking

declaration of title, the plaintiff cannot sustain a suit. The specific claim of the defendant in his written statement was that he is the absolute owner of the suit property and he is not paying any rent to the plaintiff and he has performed "grapravesham" at his own cost as absolute owner and occupied the house in question as an allottee by the second defendant company.

4.The case of the first defendant is that one Sri.Kondasamy Naidu built the houses and allotted the same to his workers and deducted the amount from their salary in installment for discharge of loan amount from the bank. Therefore, non impleading of Sri.Kondasamy Naidu makes the suit as bad for non joinder of necessary party. Alleging that the plaintiff was not regular to his employment and therefore, the house site allotted to him was allotted to the first defendant with a consent of the second defendant management and accordingly, the first defendant occupied the suit house on the understanding that it will be given to him. Though, the suit property is in the name of the plaintiff, he has nothing to do with the property and it is the first defendant who is paying the loan amount. Thus, he has become the absolute owner of the suit property.

5.With this rival contentions, the case was taken up for trial and the trial Court based on the pleadings, framed the following issues:-

- "(i)Whether the plaintiff is entitled for the possession as prayed for
- (ii)What other reliefs the parties are entitled for?"

The additional issue framed by the trial Court is that "Whether the Tamil Nadu Buildings (Lease & Rent Control) Act, is applicable in respect of the suit property?".

6.The plaintiff and the first defendant mounted witness box and put forth their respective case and subjected themselves for cross examination. In addition, other witnesses were examined on behalf of the plaintiff and one witness was examined on behalf of the first defendant.

7.The trial Court, on appreciation of the depositions and the exhibits, let in by the parties, has found that the house Site No.41 was allotted to the plaintiff and the first defendant was put in possession of the property at the instance of the second defendant company management and there is no evidence to show that the first defendant has taken possession of the property as owner of the property and paying monthly installments for the loan availed.

8.Further, on the issue whether the Tamil Nadu Buildings

(Lease & Rent Control) Act, is applicable in respect of the suit property, the trial Court has held that the first defendant was never a tenant under the plaintiff and he is in occupation of the premises illegally and therefore, the suit is the only remedy for the plaintiff and the plaintiff cannot resort to rent control proceedings.

9. On appeal, the First Appellate Court has confirmed the finding of the trial Court relying upon the admission of the first defendant in his deposition that house Site No.41 was allotted to the plaintiff by the second defendant management and the plaintiff was not regular in attending the office and therefore, the second defendant management allotted the house site in question to him and he occupied the house after conducting the 'house warming ceremony' and the loan amount for the said house is deducted from his salary. The trial Court held that the contention of the first defendant that he is paying the loan amount for the house in question is not proved and Ex.B.13 series which are relied by the first defendant for payment of loan due is not proved it to be maintained in respect of housing loan. Since, the amount deducted is not consistent and it varies from Rs.100 to Rs.165, if it is for housing loan, then he should have been constant and also specific. Accepting Exs.A.1 & A.2, which are in favour of the plaintiff, regarding the allocation of the suit house in his favour, the First Appellate Court has held that the first defendant has no right to be in possession and enjoyment of the suit house. Since, the plaintiff has title over the suit house, he is entitled for declaration and possession.

10. The First Appellate Court, on considering Exs.B.5 to B.8, has held that whatever the money deducted from the first defendant by the second defendant was towards the loan due of the plaintiff and from Exs.A.1 to A.4, the case of the plaintiff is proved to the effect that the suit house was allotted to him by the second defendant management and he has paid the rental due through the second defendant who was in occupation of the suit house and the plaintiff had done so with the consent and approval of the second defendant management.

11. Aggrieved by the concurrent finding, the appellant who is the first defendant has preferred this second appeal, on the ground that the Courts below have not properly appreciated the evidence and documents more fully Exs.B.1, B.3 and B.13.

12. The learned counsel for the appellant referring to Ex.B.1, the letter written by the plaintiff to the first defendant who is the appellant herein, submitted that this letter is singularly enough to show that the house site No.41 which was originally allotted to Mr.Nachimuthu was re-allotted

to Mr.Madhavan by the second defendant management and coming to know about the said fact, the plaintiff, Mr.Nachimuthu has approached the management and he was informed that when he recovers from illness and start reporting duty, he will be allotted a house.

13.Relying upon Ex.B.3, which is an invitation card for 'house warming ceremony' in the name of the appellant, the learned counsel for the appellant submitted that if these Exhibits viz., Exs.B.1 and B.3 in the light of B.13 which is an account register relating to deduction of monthly rent will clearly show that the plaintiff has no case.

14.Ex.B.3 is an 'house warming ceremony' invitation which stands in the name of Mr.K.Madhavan & Mrs.M.Kannammal. Mrs.M.Kannammal is probably his wife. What best could be inferred from this exhibit is that on 31.05.1981, there was a 'house warming ceremony' at Karamadai Kondasamy Naidu colony and Mr.Madhavan and Mrs.M.Kannammal had invited the friends and relatives to participate in the 'house warming ceremony'.

15.While appreciating this exhibit, two things has to be bear in mind, first is, admittedly, Mr.Madhavan was a Union Leader of the second defendant company. Kondasamy Naidu colony, was admittedly formed by the second defendant company for the welfare of its employees. The evidence reveals that the colony was inaugurated by Kondasamy Naidu, who was an architect of this project. Nowhere this invitation, which is marked as Ex.B.3, reveals that Mr.Madhavan has any house in that colony or more particularly show he is conducting the 'house warming ceremony' for house site No.41 of Kondasamy Naidu colony. It is a general invitation for the 'house warming ceremony' to be held at Kondasamy Naidu Colony. Admittedly, on that particular day, Kondasamy Naidu colony was inaugurated with 32 built up houses. While so, this Ex.B.3 without any specific claim on any particular house site to be owned by Mr.Madhavan cannot be construed that Mr.Madhavan the appellant herein owns the house site No.41 in Kondasamy Naidu colony. When he himself has not said so in this invitation, only an adverse inference could be drawn from this document that Mr.Madhavan was not allotted site No.41 by the management on that particular day.

16.Likewise, Ex.B.13, which is an account register containing various entries of cash receipts and debits for the employees presumably under the second defendant, contains the name of the appellant at page No.62. Peculiarly, the entries found in this exhibit does not appear to be kept in the normal course of business conduct but, appears to be extracted from some other record at one point of time and not during different period, covering from July 1981 - Februaru 1997. Except the

first page of Ex.B.13 which shows that it is "Sri.S.K.Naidu Nagar, Housing Account Workers Deduction Details", there is no evidence to vouch safe that it pertains to the loan paid by the respective employees. More particularly, by Mr.Madhavan towards the loan amount in respect of house site No.41 which is a subject matter of the suit.

17.Regarding Exs.B.1-letter, it should be read along with Ex.B.2, reply of the appellant, to appreciate it properly. The appellant herein in response to the letter of the plaintiff dated 19.01.1985 marked as Ex.B.1 has given reply dated 11.02.1985 which is marked as Ex.B.2 wherein, he has stated that he has occupied the suit house on the oral instruction of the second defendant managing director and the plaintiff should restrain from taking claim over the suit house and concluded his reply saying that he and the Managing Director of the second defendant together should arrange to make him the absolute owner of the suit property. The tenor of his reply clearly show that the the first defendant has occupied the suit property not by any consent of the plaintiff who is the owner of the suit house or by any written approval of the second defendant management.

18.If the contention of the appellant is true then, he should have sought for the assistance of the management to speak in favour of him. Though the second defendant management is made as a party by the plaintiff, neither the management on its own nor at the request of the appellant has appeared before this Court to support the case of the first defendant. Contrarily, Ex.A.2 dated 06.06.1981 and Ex.A.3 dated 19.10.1984 clearly prove the fact that Mr.Nachimuthu, the plaintiff herein has requested the second defendant management to allow Mr.Madhavan to occupy his house No.41 and pay the housing loan from the money deducted from the salary of Mr.Madhavan. The second defendant management in Ex.A.3, has categorically said that Mr.Nachimuthu, due to illness, could not occupy his house and on his request, Mr.Madhavan was permitted to occupy the house and loan amount is repaid from the amount deducted from the salary of Mr.Madhavan; and the second defendant management has no objection to get back the possession from Mr.Madhavan and hand over it to Mr.Nachimuthu, if Mr.Nachimuthu requires the assistance and cooperation of the management. Thus, the issue is made very clear through these letters that the plaintiff is the owner of the property, the second defendant management for the welfare of its employees has purchased a vast extent of the land and converted it as house sites. The second defendant management has arranged for loan to the employees to put up construction on the said house sites and the plaintiff herein was one of the beneficiary under the scheme. Therefore, through

Ex.A.1, it is well established that the plaintiff is the owner of the disputed property.

19. Neither the letter of the defendant which was marked as Ex.A.1; nor the 'house warming ceremony' invitation which was marked as Ex.B.3; nor the statement of accounts marked as Ex.B.13 confer any right or title or permission to the appellant/first defendant to occupy the suit house. It is contended by the appellant that the plaintiff should have sought for a declaration in respect of the suit house. Ex.A.1 confers title to the plaintiff and Ex.A.3 letter of the second defendant management who arranged for loan for its employees to put up construction on the house sites has categorically recognised the plaintiff as the owner of house site No.41. Just because the appellant has occupied the house, cannot dictate the plaintiff to get the declaration regarding title when there is valid and overwhelming evidence to recognise his title available.

20. Similarly, the appellant/first defendant has denied the landlord - tenant relationship with the plaintiff ever since the suit notice. He cannot now turn around and say there is a jural relationship of landlord-tenant between him and the plaintiff, therefore, the plaintiff cannot resort to Civil Suit but, should only resort to the rent control proceedings.

21. This inconsistent stand by itself shows that the appellant by virtue of his position as Union Leader has somehow managed to take possession of the suit house from the plaintiff when he was sick and ill. Now, he try to set up title adverse to him. This Court finds no question of law involved in this case and therefore, the second appeal is liable to be dismissed.

22. In the result, the second appeal is dismissed. No order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Additional District and Sessions Court,
Fast Track No.2,
Coimbatore.

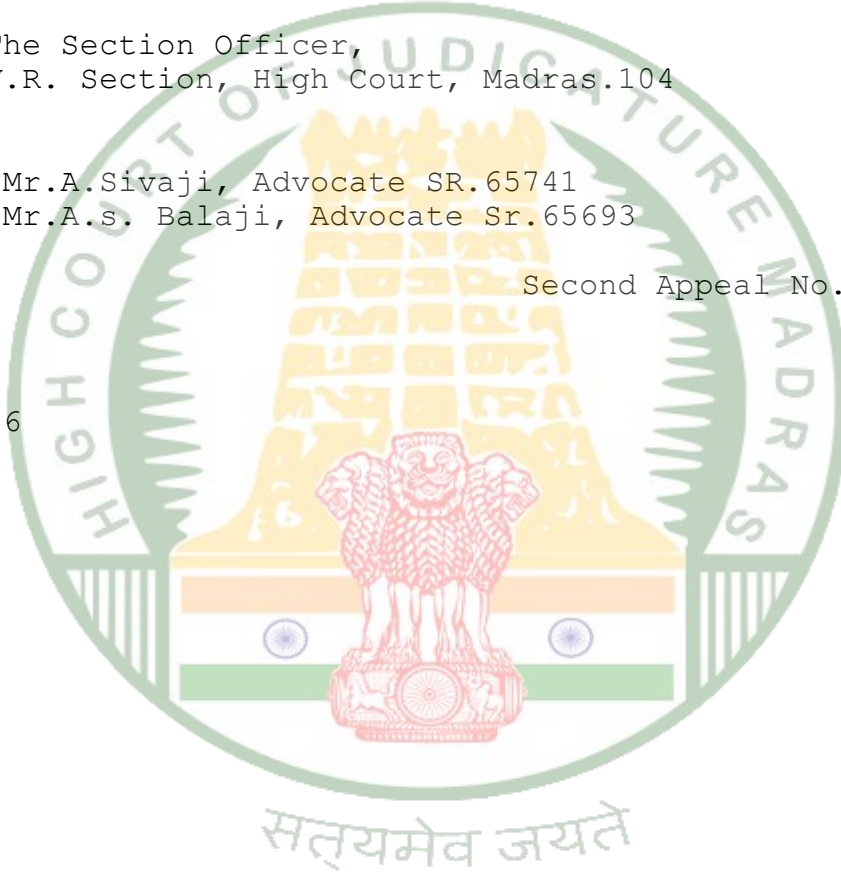
2.The District Munsif,
Mettupalayam.

Copy to: The Section Officer,
V.R. Section, High Court, Madras.104

+ 1 cc to Mr.A.Sivaji, Advocate SR.65741
+ 1 cc to Mr.A.s. Balaji, Advocate Sr.65693

Second Appeal No.825 of 2006

PVS (CO)
Eu 26.12.16



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