

Reserved on : 09.12.2015

Delivered on : 05.01.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

**C.R.P.(NPD).No.616 of 2003
and A.S.No.263 of 2003
and C.M.P.Nos.699 & 700 of 2012**

C.R.P.(NPD).No.616 of 2003:

1.M/s.Opal Lapidaries Inc

2.K.Muneerudeen

3.Nazeen

... Petitioners

Vs.

V.Parthasarthy

... Respondent

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 amended by Act 23 of 1973 and Act 1 of 1980 against the judgment and decree dated 07.01.2003 passed in R.C.A.No.1376 of 1996 by the Rent Control Appellate Authority/VII Judge, Court of Small Causes, Chennai confirming the order of XI Judge, Small Causes Court, Chennai dated 13.09.1996 passed in R.C.O.P.No.1816 of 1993 passing an order of eviction against the appellants on the alleged ground of willful default.

A.S.No.263 of 2003:

M/s.Opal Lapidaries Inc.,
 rep by its Partner K.Muneerudeen
 carrying on business at
 No.429, Mount Road, Chennai - 600 035.

... Petitioner

Vs.

1.V.Parthasarathy

2.Indian Bank, Mylapore Branch,
 Head Office at Chennai - 600 001
 Branch Office at Mylapore, Chennai - 600 004.

3.J.Mohana Krishnan

4.T.R.Shyam Sunder

... Respondents

(R3 impleaded as party respondent vide order dated 07.10.2009 made in C.M.P.No.9154 of 2006, R4 impleaded as party respondent vide order dated 04.09.2012 made in C.M.P.NO.615 of 2012.)

First Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 04.09.2002 made in O.S.No.10770 of 1996 on the file of the III Additional Judge, City Civil Court, Chennai.

For Petitioners/Appellants : Mr.K.Chandrasekaran
 (C.R.P.(NPD).No.616/2003 &
 A.S.No.263/2003)

For Respondents : Mr.P.B.Balaji
 (Sole Respondent in
 C.R.P.(NPD).No.616/2003
 R1 - A.S.No.263/2003)

Mr.D.Srinivasan
 R4 - A.S.No.263/2003

R2 & R3 - no appearance
 (A.S.No.263/2003)

COMMON JUDGMENT

A.S.No.263 of 2003 arises against the judgment and decree passed in O.S.No.10770 of 1996 on the file of the III Additional Judge, City Civil Court, Chennai. The plaintiff is the appellant and the respondents were the defendants in the suit. The plaintiff filed the Original Suit before this Court in C.S.No.1431 of 1993, which was subsequently transferred to the file of the III Additional Judge, City Civil Court, Chennai and renumbered as O.S.No.10770 of 1996 for the relief of specific performance and permanent injunction.

2.C.R.P.(NPD).No.616 of 2003 arises against the judgment and decree passed in R.C.A.No.1376 of 1996 on the file of the Rent Control Appellate Authority/VII Judge, Court of Small Causes, Chennai, confirming the order passed in R.C.O.P.No.1816 of 1993 on the file of the Rent Controller/XI Judge, Court of Small Causes, Chennai. The tenants are the petitioners and the respondent is the landlord. The respondent/landlord filed R.C.O.P.No.1816 of 1993 for eviction on the ground of willful default.

3.Since in both the matters the properties are one and the same and the disputes are between the same parties, both the matters are disposed of by this common judgment.

4.The brief case of the plaintiff in O.S.No.10770 of 1996 is as follows:

(i)According to the plaintiff, the suit property belongs to the 1st defendant and on 06.03.1991, the 1st defendant leased out the suit property to the plaintiff and received several amounts towards advance. On 18.08.1991, the 1st defendant agreed to sell the suit property to the plaintiff and executed a Sale Agreement fixing the Sale Consideration at Rs.7,85,000/- and he received a sum of Rs.61,000/- as advance. The 1st defendant agreed to adjust the several amounts in the advance. After the Sale Agreement, the plaintiff made improvements in the suit property. According to the plaintiff, the suit property was mortgaged in favour of the 2nd defendant Bank. On 06.07.1992, the plaintiff also wrote a letter to the 2nd defendant Bank. The 1st defendant filed a Original Petition in R.C.O.P.No.1816 of 1993 against the plaintiff. Since the 1st defendant failed to execute the Sale Deed, the plaintiff has filed the suit.

(ii)According to the plaintiff, the suit Agreement was produced as Document No.1 along with the plaint. The said Agreement was signed by the 1st defendant. The plaintiff has been paying the monthly rents regularly. The 1st defendant obtained an order of eviction in R.C.O.P.No.1816 of 1993, against which the plaintiff has filed an appeal in R.C.A.No.1376 of 1996 and

obtained an order of interim stay in the appeal. The plaintiff spent a sum of Rs.2,00,000/- for improving the property. In these circumstances, the plaintiff filed the suit.

5.The brief case of the 1st defendant is as follows:

According to the 1st defendant, the alleged Agreement dated 18.08.1991 is a fabricated document. The Agreement is not binding on the 1st defendant. The suit property belongs to him and the plaintiff is a tenant in respect of the said property. Since the plaintiff defaulted in paying the monthly rents, he filed R.C.O.P.No.1816 of 1993. The 1st defendant's father obtained loan from the 2nd defendant Bank and the 1st defendant was the Guarantor. The plaintiff has not made any improvement in the suit property. The plaintiff promised to advance loan for the discharge of the Bank loan. However, he has not advanced any money and on the contrary, he executed the forged document. On a perusal of the document, it could be seen that it is a forged document. The plaintiff gave loans to the 1st defendant. However, there was no Agreement to sell the property to the plaintiff. Suppressing the real facts, the plaintiff has filed the suit. In these circumstances, the 1st defendant prayed for dismissal of the suit.

6.Before the trial Court, on the side of the plaintiff, P.W.1 was examined and 8 documents, Exs.A1 to A8 were marked. On the side of the defendants, D.W.1 was examined and one document, Ex.B1 was marked.

7.The trial Court, after taking into consideration the oral and documentary evidences let in by the parties, dismissed the suit. Aggrieved over the same, the plaintiff has filed the Appeal in A.S.No.263 of 2003.

8.The brief case of the respondent/landlord in R.C.O.P.No.1816 of 1993 is as follows:

According to the landlord, the petitioner was inducted as a tenant in respect of the petition property on a monthly rent of Rs.3,000/-, exclusive of electricity charges, telephone charges and inclusive of amenities charges. The tenants paid rent upto September 1991 and from October 1991, the tenants defaulted in paying the monthly rents. In the year 1991, the tenants showed interest to purchase the petition premises from the landlord. However, subsequently, they dropped the idea of purchase. In these circumstances, the respondent/landlord filed R.C.O.P for eviction on the ground of willful default.

9.The brief case of the petitioner/tenant is as follows:

According to the petitioner/tenant, the landlord received several amounts as advance from them expressing that he was facing certain financial difficulties. He had also stated that in respect of the loan of Rs.6,00,000/- taken by his father from the Indian Bank, Mylapore Branch, he was a Guarantor and he had deposited the Title Deeds with the Bank. On 18.08.1991, the landlord agreed to sell the property by a separate document for a sum of Rs.7,85,000/- and treated a sum of Rs.61,000/- as advance from and out of the amounts received by him on various dates after adjusting the rents for the months from April to August, 1991. The tenants have been calling upon the landlord to perform his part of the contract and even indicated to the Bank that the property was being sold in order to liquidate the debts of the Bank. The tenants also spent large amounts for improving the property. The various payments made by the tenants should be adjusted towards the rent. In these circumstances, the tenants prayed for dismissal of the R.C.O.P.

10.Before the Rent Controller, on the side of the landlord, P.W.1 was examined. However, no document was marked. On the side of the tenants, R.W.1 was examined and 6 documents, Exs.R1 to R6 were marked.

11.The Rent Controller, taking into consideration the oral and documentary evidences, ordered eviction. Aggrieved over the same, the tenants preferred an appeal in R.C.A.No.1376 of 1996 on the file of the VII Judge, Court of Small Causes, Chennai and the Rent Control Appellate Authority also confirmed the order of eviction and dismissed the appeal. Aggrieved over the same, the tenants have filed the Civil Revision Petition in C.R.P.(NPD).No.616 of 2003.

12.Heard Mr.K.Chandrasekaran, learned counsel for the petitioner/ appellant, Mr.P.B.Balaji, learned counsel for the sole respondent in C.R.P.(NPD).No.616 of 2003/1st respondent in A.S.No.263 of 2003 and Mr.D.Srinivasan, learned counsel for the 4th respondent in A.S.No.263 of 2003.

13.Mr.K.Chandrasekaran, learned counsel appearing on behalf of the appellant/petitioner submitted that in the absence of any acceptable evidence, the trial Court should not have come to the conclusion that the respondent had signed the blank papers, which were used for creating the suit Agreement by the plaintiff. Further, the learned counsel submitted that Ex.A1 Agreement is a valid document and the appellant had established

their case by oral and documentary evidences, in such case, the trial Court should have decreed the suit as prayed for.

14. In the Rent Control matter, the learned counsel for the petitioner submitted that the tenants have not committed any default and in fact, the landlord was having the amounts in excess of the rents payable to him and therefore, the Courts below ought not to have ordered eviction. That apart, the learned counsel also submitted that the landlord had failed to establish his case by oral and documentary evidence, therefore, the order of eviction is liable to be set aside.

15. In support of his contentions, the learned counsel appearing for the appellant/petitioner relied upon the following judgments:

(i) 2004 (4) CTC 150 [P.D'Souza Vs. Shondrilo Naidu] wherein the Hon'ble Supreme Court held that in case of contract for sale of immovable property, the grant of relief of specific performance is a rule and its refusal an exception based on valid and cogent grounds.

(ii) (2010) 1 Supreme Court Cases 83 [Grasim Industries Limited and another Vs. Agarwal Steel] wherein the Hon'ble Supreme Court held that when a person signs a document, presumption is that he has read the

document properly and understood it and only then affixed his signatures thereon, unless there is proof of force or fraud.

(iii)AIR 1988 Madras 84 [N.B.Namazi Vs. Central Chinmaya Mission Trust] wherein a Division Bench of this Court held that the delay cannot be put against the plaintiff purchaser so as to deny the specific performance on the grounds that relief is discretionary.

(iv)2010 (2) CTC 751 [B.Nemi Chand Jain and another Vs. G.Ravindran and others] wherein a Division Bench of this Court held that an agreement should be read as a whole and the intention of the parties to such documents must be gathered from the document itself.

(v)2008 (5) CTC 690 [Chokkammal and 3 others Vs. K.Balraj] wherein this Court held that readiness and willingness is important consideration for grant of specific performance and when the draft Sale Deed typed on stamp papers had been signed by the vendors and such a draft Sale Deed acknowledged payment of entire Sale Consideration and if the draft Sale Deed found to be genuine, in such a case, a purchaser had proved readiness and willingness.

16. Countering the submissions made by the learned counsel for the appellant/petitioner, Mr.P.B.Balaji, the learned counsel for the sole respondent/C.R.P.(NPD).No.616 of 2003/1st respondent in A.S.No.263 of 2003 submitted that Ex.A1 Agreement cannot be construed as a Sale Agreement at all for the reason that the recital itself would establish that it is not a Sale Agreement. Further, the learned counsel submitted that since the document has been fabricated by the appellant, the trial Court has rightly dismissed the suit.

17. With regard to the Rent Control matter, the learned counsel submitted that the tenants have willfully defaulted in paying the monthly rents. Hence, both the Courts below concurrently ordered eviction. In these circumstances, the learned counsel prayed for dismissal of the Appeal as well as the Civil Revision Petition.

18. In support of his contentions, the learned counsel relied upon the following judgments:

(i) 1999 (III) CTC 5 [Sankaran Pillai (dead) by LRs Vs. V.X.Venuuguduswami and others] wherein the Hon'ble Supreme Court held that the expression "sufficient cause" necessarily implies element of sincerity *bonafides* and reasonableness.

(ii)AIR 1923 Privy Council 47 [Harichand Mancharam Vs. Govind Luxman Gokhale] wherein the Privy Council held that the intention of the parties should be gathered from the language of the documents. The Privy Council further held as follows:

“Whether an agreement is a completed bargain or merely a provisional arrangement depends on the intention of the parties as deducible from the language used by the parties on the occasion when the negotiations take a concrete shape. As observed by the Lord Chancellor (Lord Granworth) in Ridgway Vs. Walton, the fact of a subsequent agreement being prepared may be evidence that the previous negotiation did not amount to an agreement, but the mere fact that persons wish to have a formal agreement drawn up does not establish the proposition that they cannot be bound by a previous agreement.”

(iii)AIR 1973 Madras 70 [Mrs.Rajabu Fathima Buhari and another Vs. S.V.Ramakrishna Mudaliar and others] wherein a Division Bench of this Court held that the terms of the agreement must be certain in order to create binding obligation.

(iv)1997 (III) CTC 39 [S.Venkatesulu Vs. V.Chandra and 2 others] wherein this Court held that the duty of tenant is to pay rent or deposit

rent with permission of Court which alone will show *bonafides*. Subsequent conduct in non-payment or non-deposit of rent will establish willful default of rent on part of tenant.

19. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, the following points arise for consideration in the above matters:

- a) Whether Ex.A1 Agreement is true and genuine document?
- b) Whether Ex.A1 is a Sale Agreement as contented by the plaintiff?
- c) Whether Ex.A1 Agreement is binding on the parties?
- d) Whether the plaintiff is entitled for a decree for specific performance?
- e) Whether the tenants have committed default in paying the monthly rents?
- f) Whether the landlord is entitled to an order of eviction?

20. The main contention raised by the respondent is that the petitioners are not entitled for a decree for specific performance for the reason that Ex.A1 Agreement cannot be construed as a Sale Agreement at all for the reason that the recitals in the said agreement itself would establish that the document was not meant for sale of the suit property. On a perusal of Ex.A1 agreement, it could be seen that the nomenclature of the Agreement has been mentioned as “property sale advance receipt”. In 1st page in paragraph - 4 in last two lines of the document, it has been mentioned as follows:

“and have decided to get into a separate sale agreement as soon as I wipe out the overdue interest to the Indian Bank.”

When it is specifically mentioned that a separate agreement of sale will be entered into as soon as the appellant wipes out the overdue interest to the Indian Bank, that recital itself is sufficient to establish that Ex.A1 document is not a Sale Agreement at all and it is not meant for selling the property to the appellant. When the above recital found in Ex.A1 is seen along with the nomenclature of the document, it is clear that Ex.A1 document is not a Sale Agreement. Filing a suit based on Ex.A1 document is speculative in nature, which was rightly rejected by the trial Court. Apart from this, in the 3rd

page of the document, the date of the document has been corrected. The plaintiff has not explained as to who had corrected the date in the document. When the corrections made in page - 2 of the document were initialed by the party, the reason for not initialing the correction at page - 3 of the document was also not explained by the plaintiff. It is also pertinent to note that no witness had attested the document. The space has been left blank in the document for the signature of the attestors. If all these aspects are taken together, it would land into an indisputable conclusion that the document is not a Sale Agreement and that the same has been fabricated by the plaintiff for the purpose of filing a suit for specific performance. Since Ex.A1 document is not a Sale Agreement, the same is not binding on the respondent/defendant.

21. Though there is no dispute with regard to the ratios in the judgments relied upon by the learned counsel for the appellant, since it is found that Ex.A1 document is not a Sale Agreement and the same is a fabricated one, the ratios laid down in those documents are not applicable. The judgments relied upon by the learned counsel for the respondent squarely applies to the facts and circumstances of the present case. The trial Court has rightly dismissed the suit for specific performance.

22. With regard to the Rent Control proceedings, it is the contention of the petitioner/tenant that since there was a Sale Agreement between the parties, they did not pay the rent. Since this Court has confirmed the dismissal of the suit for specific performance filed by the tenants finding that Ex.A1 is a fabricated document, the contention raised by the tenants cannot be accepted.

23. That apart, pursuant to the orders of the Rent Control Appellate Authority, the tenants deposited a sum of Rs.2,40,000/- towards arrears of rent. It is also the case of the tenants that they made improvements in the petition premises with the permission of the landlord. According to the landlord, the tenants committed default from October 1991 to June 1993. Admittedly, the monthly rent was Rs.3,000/-. Though the tenants contended that they made improvements in the premises with the permission of the landlord, the landlord denied that no such permission was granted to the tenants for improving the premises. However, the said contention was not proved by the tenants by any documentary evidence. Therefore, the Courts below rightly rejected the contention of the tenants.

24. That apart, though the tenants contended that there was a Sale Agreement between them and the respondent/landlord, even the alleged

Sale Agreement was not produced before the Rent Controller. Therefore, the Courts below disbelieved the case of the tenants and rightly found that the tenants had committed willful default in paying the monthly rents and ordered eviction. The order of eviction granted by both the courts below are just and proper.

25. In these circumstances, I do not find any ground to interfere with the judgment and decree passed by the Courts below. The First Appeal and the Civil Revision Petition are liable to be dismissed. Accordingly, the same are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : No
Internet : Yes
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05.01.2016

To

1. The Rent Control Appellate Authority/
VII Judge,
Court of Small Causes, Chennai.
2. The XI Judge,
Small Causes Court, Chennai.
3. The III Additional Judge,
City Civil Court, Chennai.

M.DURAIWAMY,J.
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udgment made in
C.R.P.(NPD).No.616 of 2003
and A.S.No.263 of 2003
and C.M.P.Nos.699 & 700 of 2012

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