

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.152/2017 & CMP.No.3195/2017

Mr.M.Amirthalingam .. Appellant / 2nd Defendant

Versus

1. The Assistant Commissioner/Executive Officer
Arulmighu Arunachaleswarar Thirukoil
controlled by the Hindu Religious and
Charitable Endowment Department,
Having its office at the temple premises
at Thiruvannamalai ..1st Respondent/Plaintiff
- Chockalingam [Deceased] ..Respondent/1st Defendant
- 2.M.Suresh ..2nd Respondent/3rd Defendant
- 3.M.Sundar .. 3rd Respondent/4th Respondent

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 21.07.2015 made in AS.No.31/2013 on the file of the XVII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 10.11.2011 made in OS.No.5381/2001 on the file of the learned V Assistant City Civil Judge, Chennai.

For Appellant : Mr.R.Neelakandan

JUDGMENT

The 2nd defendant in OS.No.5381/2001 filed by the 1st respondent herein is the appellant and he lost before the Trial Court as well as before the Lower Appellate Court and hence, this Second Appeal.

2 This Court, for the sake of convenience, is adopting the nomenclature / array of parties as adopted by the Trial Court.

3 The 1st respondent in the Second Appeal / Plaintiff filed the above said suit on the file of the Court of learned V

Assistant City Civil Judge, Chennai, against Chockalingam [Deceased] [Chief Tenant], the appellant herein [Sub Tenant] and the Legal Representatives of the 1st Defendant, praying for the judgment and decree for delivery of vacant possession of land bearing Old No.7, New No.26, Saiva Muthiah Mudali 2nd Street, Royapettah, Chennai-14, admeasuring to an extent of 598 sq.ft., and also for recovery of a sum of Rs.35/- being the arrears of rent as on 30.08.2011 and for a sum of Rs.600/- per month, being the damages for use and occupation from 01.09.2011 till the date of handing over the possession and for costs of the suit.

4 The plaintiff would aver among other things, that they are the sole and absolute owners of the schedule mentioned property and the 1st Defendant is a tenant in respect of the same on monthly rent of Rs.7/- and the tenancy being computed according to the English Calendar month. The 1st Defendant was very irregular in payment of rents and was due and payable a sum of Rs.21/- being the arrears of rent as on 30.06.2001 and in spite of repeated demand made to pay the said rent, the 1st Defendant did not cared to do so and he has also put up an additional construction on the schedule mentioned property without consent and approval of the plaintiff/temple and has also sub-let the property in favour of the 2nd Defendant/appellant herein and collecting huge rents from him.

5 The plaintiff / temple would aver that it has caused a legal notice dated 28.07.2001 [Ex.A2], terminating the tenancy of the 1st Defendant by the expiry of the end of month of August, 2001 and calling upon the Defendants to pay the arrears of rent, to quit and deliver vacant possession and the 2nd Defendant had acknowledged the receipt of the said notice under Ex.A3 and however, notice addressed to the 1st Defendant was returned with an endorsement "left" [Ex.A4] and it is the specific case of the plaintiff that the 1st Defendant without any authorisation or consent, had sub-let the property in favour of the 2nd Defendant and subsequently, abandoned the same and the occupation of the property is with the 2nd Defendant and it is also in the nature of trespass and as such, he is not entitled to any protection under law and despite receipt of legal notice, the 2nd Defendant did not care to vacate and deliver vacant possession and therefore, came forward to file the said suit.

6 The 1st Defendant reported as dead and the Defendants 3 and 4 were brought on record as his legal representatives and they remained ex-parte and the 2nd Defendant alone has filed his written statement contending among other things, that after demise of the 1st Defendant [Chief / Original Tenant], his wife, viz., Tmt.Saradambal and his daughter viz., Tmt.Rani, has sold a portion of the superstructure put up on the suit mentioned property with the Leasehold Right of the land to a third party facing the other street in the year 1985 itself

and rest of the portion were held by them, measuring about 598 sq.ft., and in the year 1988, they sold the remaining portion of the building with Leasehold Right and the land in favour of the 2nd Defendant and thereafter, they left the place. The 2nd Defendant would further aver that by virtue of the said sale in the year 1988, he became the absolute owner in possession and enjoyment of the building with the Leasehold Right from the year 1986 onwards and started paying rent for the land till 30.06.2001 in the name of the 1st Defendant.

7 The 2nd Defendant would also aver that the predecessor in title of the building with the Leasehold Right promised to change the tenancy of the land in his favour with the aid of the plaintiff ; but they could not do the same and despite the fact that the plaintiff is very well aware as to the right of the 2nd Defendant, made a false claim.

8 The 2nd Defendant took a legal plea that there is no proper and valid termination as per the provisions of the Transfer of Property Act and his status is not that of the sub-tenant and by virtue of the sale in his favour in the year 1986 by the wife and daughter of the deceased / 1st Defendant, he became the absolute owner in the title and possession in respect of the suit property and therefore, prayed for dismissal of the suit.

9 During the course of trial, the Inspector of the Hindu Religious and Charitable Endowment Department was examined as P.W.1 and Exs.A1 to A5 were marked. The 2nd Defendant examined himself as D.W.1 and Exs.B1 to B11 were marked.

10 The Trial Court, after framing necessary issues, found that the due to huge sale of the property in favour of the 2nd Defendant in the year 1988 by the wife and daughter of the 1st Defendant, no Sald Deed has been produced and marked on behalf of the 2nd Defendant and even for the sake of argument, if there was a sale in his favour, it is null and void in the light of section 34 of the Hindu Religious and Charitable Endowment Act, 1959, for want of approval of the Commissioner of HR&CE Department and therefore, the 2nd Defendant can be construed only as a trespasser. Insofar as the plea taken by the 2nd Defendant is concerned that at the time of issuing the notice of termination, the 1st Defendant was no more and the Trial Court, after taking note of the decision reported in 2006 [3] LW 66 [K.V.Pushpavalli Vs. Arulmighu Theerthabaleeswarar Devasthanam and another], there is no necessity to give notice to quit u/s.106 of the Transfer of Property Act, to a trespasser.

11 The Trial Court further found that as per Ex.A5, the Executive Officer of the Plaintiff/temple has been authorised to sue and be sued on behalf of the plaintiff/temple

as per the proceedings of the Commissioner, HR&CE [Admn] Department, dated 11.08.1961 and having found that the property is located in a prime place of Chennai City, found that the sum of Rs.600/- demanded towards use and occupation, cannot said to be exorbitant or excessive and citing the reasons above, has decreed the suit as prayed for vide judgment and decree dated 10.11.2011.

12 The 2nd Defendant, aggrieved by the said decree and judgment passed by the Trial Court, filed an Appeal in AS.No.31/2012.

13 The Lower Appellate Court on perusal of the grounds of Appeal as well as other materials, framed the following points for consideration:

[a] Whether the decree and judgment of the Lower Court is to be set aside? ; and

[b] Whether the Appeal is to be allowed?

14 The Lower Appellate Court, found that though the appellant/2nd Defendant contended that the wife and daughter of the 1st Defendant / deceased [Chief Tenant] has sold the portion of the building with the Leasehold Right in favour of the Krishnan, S/o.Vadivelu Chettiyar in the year 1985 and they retained 598 sq.ft., no such document has been filed and no document has also been filed, evidencing sale in favour of the 2nd Defendant during the year 1988. The Lower Appellate Court further found that notice of termination u/s.106 of the Transfer of Property Act was issued under Ex.A.2 and though the 2nd Defendant contended that the 1st Defendant died on 25.05.1983, notice returned with an endorsement "left" and not "deceased" and taking note of the decision reported in 2006 3 LW 66 [cited supra], held that since the 2nd Defendant is only a trespasser, notice to him is not necessary. The Lower Appellate Court has also taken note of the admission made by 2nd Defendant as D.W.1 as to the arrears of rent due and payable by the 1st Defendant as well as the admission of the title of the land vest in favour of the plaintiff/temple, further found that the documents under Ex.B3 and Ex.B4, were prepared by the Counsel of the 2nd Defendant alone and with regard to the contention put forth by him that the above extent of land and building sold to the third parties, no pleadings have been made in the written statement.

15 The Lower Appellate Court further found that mere payment of rent by the 2nd Defendant, said to have been accepted by the agent of the plaintiff/temple, would not signify assent to tenancy and also placed reliance upon the judgment reported in 2005 TNLJ 142 [Civil] and further found that prior to the sale in favour of the 2nd Defendant by the wife and daughter of the 1st Defendant, no prior permission has been obtained and even otherwise, it is hit by section 34 of HR&CE Act, 1959. The

Lower Appellate Court further found that though the 2nd Defendant took a stand that the sale in his favour took place in the year 1986, made a submission that he came into possession of the property in the year 1990 and with regard to the promise made by the Chief Tenant to change the tenancy in his favour also, no substantial materials have been produced and assigning the said reasons, has dismissed the appeal vide impugned judgment and decree dated 21.07.2015 and challenging the legality of the same, the appellant came forward to file the present Second Appeal.

16 In the grounds of appeal, the appellant raised the following substantial questions of law:

"[1] Is there any valid notice of termination under section 106 of the Transfer of Property Act was issued to the 1st Defendant, the original owner of the suit property as per the records of the plaintiff-temple before the filing of the suit as required under law?

[2] Even after noticing that the notice of termination was issued to the deceased person, the 1st defendant herein only, is it necessary to issue a fresh notice of termination to the immediate surviving legal heirs of the deceased 1st Defendant and file a fresh suit against them?

[3] Whether the suit is valid and maintainable on the question of notice of termination under section 106 of the Transfer of Property Act?

[4] Whether a valid sanction was obtained from the Hindu Religious and Charitable Endowment Board for prosecuting the case against the defendants for getting delivery of possession of the suit leasehold land and also for recovering the arrears of rents and also for damages for use and occupation payable for the suit leasehold land?

[5] Having found that the 1st defendant against whom the sanction for prosecuting the case was obtained was already dead long ago, is it necessary to obtain a fresh sanction for prosecuting a fresh case against the immediate surviving legal heirs for getting delivery of the suit land and also for recovery of arrears, rent and also for damages for use and occupation payable for the suit leasehold land?

[6] In short, whether there is valid sanction for the prosecution of the case against the defendants for getting delivery of the suit land and also for recovering the arrears of rents and damages for use and occupation payable for the suit leasehold land?

[7] Whether the appellant herein is a sub tenant or a trespasser in respect of the suit leasehold land?"

17 Mr.R.Neelakandan, learned counsel appearing for the appellant / 2nd Defendant has invited the attention of this Court to the judgments rendered by the Trial Court as well as the Lower Appellate Court and would vehemently contend that though very many legal points have been urged, both the Courts below have not at all taken into consideration of the same and they choose to arrive at an erroneous findings and as such, interference is warranted at the hands of this Court in exercise of its jurisdiction under section 100 of the Code of Civil Procedure, 1908.

18 This Court paid its best attention to the submissions made by the learned counsel appearing for the appellant / 2nd Defendant and also perused the judgments rendered by the Trial Court as well as the Lower Appellate Court.

19 According to the plaintiff/temple, the suit property/land was leased out in favour of the 1st Defendant and he did not pay the rent properly and without any authorisation, he sub-let a portion of the property in favour of the 2nd Defendant. The primordial plea put forward by the 2nd Defendant/Appellant is that at the time of issuing Ex.A2, Termination Notice on 28.07.2001, the 1st Defendant is no more. It is pertinent to point out at this juncture that as per Ex.A4-Endorsement, it was returned only as "left" and not as "deceased". In the light of the settled legal position, notice need not be issued to the 2nd Defendant, who is a sub-tenant/trespasser, according to the plaintiff.

20 Though the appellant / 2nd Defendant contended that in the year 1986, remaining portion of the building as well as the Leasehold Right in respect of the land belonging to the plaintiff/temple has been sold, no document whatsoever, has been produced except the Encumbrance Certificate. It is also not made clear by the appellant/2nd Defendant that though he purchased the property in the year 1986, he came into possession later and started paying rent for the land till 30.06.2001. It is pertinent to point out at this juncture that the sale of the land without prior permission is hit by section 34 of HR&CE Act, 1959 and admittedly, the legal representatives of the deceased /

1st Defendant had failed to obtain the consent of the Commissioner of HR&CE Department and even for the sake of argument that the 2nd Defendant / appellant is a sub-tenant, there is no express consent has been given by the plaintiff to do so. Therefore, in the considered opinion of the Court, the possession of the 2nd Defendant / Appellant can be construed only as a trespasser and not as a lawful tenant.

21 It is to be noted at this juncture that the property is situated in one of the prime localities in Chennai and therefore, the damages for use and occupation at the rate of Rs.600/- cannot be said to be exorbitant.

22 The necessary valid sanction has also been obtained by the Executive Officer to file the suit and as such, the plea raised by the appellant/2nd Defendant in that regard, is also unsustainable. In the considered opinion of the Court, the Trial Court as well as the Lower Appellate Court, had taken note of the pleadings and appraised the oral and documentary evidences in proper perspective and rightly reached the conclusion to decree the suit and thereby upholding the case of the plaintiff.

23 The findings rendered by the Courts below are concurrent in nature and the substantial questions of law raised by the appellant herein have already been answered by the both Courts below.

24 This Court, on an independent application of mind to the entire materials, is of the considered view, that there are no questions of law much less the substantial questions of law arose for consideration, for warranting interference in the well considered findings rendered by the Courts below.

25 The Second Appeal lacks merits and substance and accordingly, the same is dismissed at the admission stage itself. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The XVII Additional Judge
City Civil Court, Chennai.
2. The V Assistant City Civil Court
Chennai.
3. The Assistant Commissioner/Executive Officer
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+1 CC to Mr. V.K. Kumarasamy, Advocate sr 14340

SA.No.152/2017

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