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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.680 OF 2011

1.S.Srinivasan
2.Dr.S.Kannan

... Appellants/Plaintiffs

-Vs-

1.Bharat Petroleum Corporation Limited,
No.1, Ranganathan Garden,
1/2, 11th Main Road, Anna Nagar,
Chennai - 600 040.

2.A.R.Dhamodhara Mudaliar

... Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 15.02.2010 made in A.S.No.2 of 2007 on the file of the Additional District Court (Fast Track Court No.II), Cuddalore, confirming the judgment and decree dated 30.08.2005 made in O.S.No.119 of 2003 on the file of the I Additional Sub Court, Cuddalore.

For Appellants : Mr.T.R.Rajagopalan, Senior Counsel
For M/s.D.Ravichander

For R1 : Mr.O.R.Santhanakrishnan

For R2 : Mr.V.Ramesh
For M/s.Sampath Kumar Associates

J U D G M E N T

This Second Appeal has been filed against the judgment and decree dated 15.02.2010 made in A.S.No.2 of 2007 on the file of Additional District Court (Fast Track Court No.II), Cuddalore, confirming the judgment and decree dated 30.08.2005 made in O.S.No.119 of 2003 on the file of I Additional Sub Court, Cuddalore.



2. The plaintiffs are the appellants in the Second Appeal. The appellants filed a suit in O.S.No.119 of 2003 for delivery of possession and to recover the rental arrears against the first and second respondents.

3. The Trial Court framed four issues, which reads as under:

"(i) Whether the plaintiffs are entitled to take delivery of possession?

(ii) Whether the plaintiffs are entitled to recover the rental arrears, damages and mean profits ?

(iii) Whether the second defendant is a tenant in accordance with law ?

(iv) To what relief, the plaintiffs are entitled to ? "

4. The first plaintiff examined himself as P.W.1 and marked Exs.A1 to A21. On the side of the defendants, two witnesses were examined and Exs.B1 to B10 were marked. While analyzing the first issue as to whether the plaintiffs are entitled to get delivery of possession, the Trial Court has gone into the validity of the sale made pursuant to the decree passed in O.S.No.14 of 1997 taking benefit under Section 9 of the Tamil Nadu City Tenants Protection Act. The Trial Court has held that the property belong to a Public Trust and the sale is not legally valid and thereby, the plaintiffs are not the title holders and the title itself is invalid and there is no cause of action for maintaining the suit and accordingly, dismissed the suit.

5. Aggrieved over the findings of the Trial Court, the plaintiffs filed an appeal on the ground that the Trial Court erred in adjudicating on the title of the plaintiffs on the suit property without framing any issue to that effect. There is no dispute by the defendants as to the title of the plaintiffs, jural relationship between the plaintiffs and defendants and liability to pay rent. The first defendant Bharat Petroleum Corporation Limited, has contended that there is a subsisting lease for 20 years and therefore, the demand for delivery of possession is not maintainable and the second defendant also toed the first defendant. In such circumstances, deciding an issue which is not relevant to the suit and without framing any issue on that aspect, the order passed by the Trial Court was sought to be set aside.



6. The Lower Appellate Court had elaborately discussed the issue as to whether the plaintiffs are entitled to claim delivery of possession and confirmed the findings of the Trial Court that the plaintiffs have failed to prove their title. Aggrieved over the same, the above Second Appeal was preferred.

7. The Second Appeal was admitted by this Court on 14.08.2014 on the following substantial questions of law:

"(a) When the appellant / plaintiff has purchased the suit property under Exs.A10 and A11, dated 10.08.1999, pursuant to the order passed under Section 9 of the Tamil Nadu City Tenants Protection Act, without there being any challenge to the validity of the sale deed dated 10.08.1999 executed under the order of the Court, whether it is open to the trial Court to invalidate the sale deeds marked as Exs.A10 and A11 ?

(b) When there is no dispute whatsoever to the title of the plaintiff / appellant in respect of the suit property, moreover no plea whatsoever has been raised in the written statement, whether the learned District Judge is right in dismissing the suit holding that Exs.A10 & A11 are not valid ?

(c) Whether the learned District Judge is right in holding that the plaintiff will not get title to the suit property without obtaining permission of the District Court under the Public Trust Act, 1920, ignoring the right of the Tenant acquiring the title by invoking his right under Section 9 of the Tamil Nadu City Tenants Protection Act ?

(d) When the defendant had accepted the title of the plaintiff and thereupon agreed to attorn the tenancy, whether it is open to the learned District Judge to refuse the relief of delivery of possession of the suit property ? "

8. When the matter is taken up for final hearing today, the learned Senior Counsel Mr.T.R.Rajagopalan, appearing for the appellants would submit that no issues were framed on the aspect of title. The Trial Court and the Lower Appellate Court should have confined themselves in respect of the suit alone. On the other hand, they have exceeded the jurisdiction and decided irrelevant issues.



9. The learned counsel for the respondents would submit that the suit has been rightly dismissed.

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10. On a perusal of the judgment of the Courts below, it is very clear that the issue framed was in respect of the plaintiffs' entitlement to get delivery of possession. When the defendants have categorically admitted the jural relationship as landlord and tenant, the Trial Court ought not to have ventured into the issue of title, but should have restrained itself only in respect of relevant issue, i.e., delivery of possession. But while discussing the particular issue, the Trial Court has deviated into the issue of title and enlarged the scope of the suit. In that process, the relevant issue was not properly considered. Even assuming that the title of the plaintiffs to the property is in dispute, a specific issue should have been raised and the parties should have been allowed to let in evidence on that aspect. Without framing an issue and without giving an opportunity to adduce evidence on the particular issue, the decision taken by the Trial Court is materially irregular and the judgment passed on the non-issue is patently illegal. The Lower Appellate Court also, without considering the issue in proper perspective, had confirmed the judgment erroneously.

11. Since there is material irregularity in deciding a non issue, without giving opportunity to the parties to adduce evidence, a clear miscarriage of justice had occasioned. Further, while deciding the issue of delivery of possession, it is unnecessary to go into the validity of the decree passed by the Court, which has attained finality and also the validity of the title which is an admitted fact by the contesting respondents. Therefore also, this Court is inclined to set aside the order impugned in this Second Appeal.

12. In such circumstances, this Court, without going into the other aspects on merits, set aside the decree and judgment passed by the Courts below and remits the matter to the Trial Court for being tried afresh by framing suitable issues. The Trial Court is further directed to complete the trial within a period of six months from the date of receipt of a copy of this order.



13. With the above observations and directions, this Second Appeal is disposed of. No costs.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge
(Fast Track Court No.II)
Cuddalore.
2. The I Additional Subordinate Judge,
Cuddalore.
3. The Section Officer,
VR Section, High Court, Madras.

+1cc to M/S.Sampath Kumar & Associates, Advocate Sr.78435
+1cc to Mr.D.Ravichander, Advocate Sr.78410
+1cc to Mr.O.R.Santhanakrishnan, Advocate Sr.78419

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srg 22/11/2018