

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Second Appeal Nos.382 and 383 of 2012

Yesudiyana

... Appellant in both Appeals

Vs.

1. S.Chellammal
2. K.S.Janarthanan
3. K.S.Karthikeyan ... Respondents in both Appeals

Second Appeal No.382 of 2012 filed under Section 100 C.P.C. against the judgment and decree dated 02.12.2011 passed in A.S.No.49 of 2011 by the I Additional Sub Court, Erode District, confirming the judgment and decree dated 31.03.2011 passed by the II Additional District Munsif Court, Erode District in O.S.No.150 of 2007.

Second Appeal No.383 of 2012 filed under Section 100 C.P.C. against the judgment and decree dated 02.12.2011 passed in A.S.No.50 of 2011 by the I Additional Sub Court, Erode District, confirming the judgment and decree dated 31.03.2011 passed by the II Additional District Munsif Court, Erode District in O.S.No.190 of 2006.

For Appellant in both Appeals : Mr.I.C.Vasudevan

For Respondents in both Appeals: Mr.M.Guruprasad

C O M M O N J U D G M E N T

The above Second Appeals are directed against the common judgment and decree dated 02.12.2011 passed in A.S.Nos.49 and 50 of 2011 by the I Additional Sub Court, Erode District, confirming the common judgment and decree dated 31.03.2011 passed by the II Additional District Munsif Court, Erode District in O.S.No.150 of 2007 and O.S.No.190 of 2006.

2. This Court, by an order dated 27.03.2012 ordered only notice of motion returnable in four weeks and thereafter, the matter stood adjourned. Today, the above Second Appeals are taken up for final disposal on merits.

3. O.S.No.150 of 2007 is filed by the respondents herein for delivery of possession and arrears of rent and O.S.No.190 of 2006 is filed by the appellant herein seeking permanent injunction restraining the respondents herein from evicting him by force.

4. According to the respondents herein, who are the plaintiffs in O.S.No.150 of 2007, the suit property originally belonged to the husband of the 1st respondent viz. K.S.Sadasivam, who died intestate on 07.08.2006. Respondents 2 and 3 are the sons of the 1st respondent and the deceased Sadasivam. On 01.04.2002, the appellant herein took the suit property on lease orally from the deceased K.S.Sadasivam, on a monthly rent of Rs.2000/-. The appellant herein has paid the advance amount towards the lease and also assured at the time of entering into a lease agreement that the suit property will be used only for residential purpose. But, the appellant voluntarily started a Church in the suit residential building. When the husband of the 1st respondent herein questioned the appellant on several occasions to stop conducting prayer meeting in the suit property, the appellant did not heed to his words and continued to hold the suit property even after the expiry of the lease period. Moreover, the appellant had also defaulted in payment of rent, despite repeated demands.

5. While so, the appellant herein filed O.S.No.190 of 2006 seeking the relief of permanent injunction. According to him, he is a tenant and the respondents herein are the absolute owners of the suit property. The appellant took the suit property on oral lease from the month of April 2002 on a monthly rent of Rs.2,000/- and he had paid an advance of Rs.10,000/- to the respondents herein and he had been continuing to pay monthly rent promptly and without any default. According to the appellant, he is the Pastor of Apostolic Fellowship Tabernacle Church conducting prayer and congregation meetings in the Chapel run in the suit property. He is living in one portion of the suit property while the other portion is used for church purposes and the Church has also become an immensely popular place of worship. It is the further case of the appellant that the respondents, in the first week of March 2006, demanded him to vacate the suit property on the plea that the suit property would fetch better price, if it is sold. Hence, the appellant filed the above suit for permanent injunction. Only thereafter, the respondents herein filed a suit in O.S.No.150 of 2007 for delivery of possession and arrears of rent.

6. The Trial Court, on a consideration of the oral and documentary evidence, by a common judgment and decree dated 31.03.2011, dismissed the suit in O.S.No.190 of 2006 against the

appellant herein and allowed the suit in O.S.No.150 of 2007 in favour of the respondents herein, thereby directing the appellant to hand over vacant possession of the suit property to the respondents in two months. Aggrieved by the said common judgment, the appellant herein filed two separate appeals in A.S.Nos.49 and 50 of 2011 and the First Appellate Court, by a common judgment and decree dated 02.12.2011, dismissed the said appeals, thereby confirming the judgment and decree of the Trial Court. Challenging the same, the appellant is before this Court by way of the present Second Appeals.

7. It is the contention of the learned counsel for the appellant that the First Appellate Court failed to consider that the respondents themselves admitted the existence of loan due to Federal Bank, Erode Branch and hence, the burden is on the respondents to prove discharge of the same. He further contended that Federal Bank, Erode Branch, had taken possession of the suit property and sold the same and hence, the respondents herein have no title to the suit property.

8. On the other hand, learned counsel appearing for the respondents submitted that the 2nd respondent himself in his evidence has deposed that the loan was discharged and no further action was taken by Federal Bank, Erode and the title still vests with the respondents.

9. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

10. The only substantial question of law that arises for consideration in this case is as follows:

"Whether the Bank can direct/seek possession of the suit property from the appellant/tenant, without being a party to the suit? "

11. It is an admitted case that the appellant is a tenant under the respondents herein and it is not in dispute that he is in occupation of the suit property. It is also admitted that the husband of the 1st respondent herein had borrowed loan from Federal Bank, Erode and that the suit property had been given as security. For non-payment of the bank loan, proceedings under the SARFAESI Act have been initiated against the respondents herein and possession of the suit property has been taken in terms of the SARFAESI Act. As contemplated, if there is any tenant, he/she must be put on notice by the Bank initially, before possession of the property is taken over. In that

regard, the Bank has issued eviction notice to the appellant/tenant on 10.09.2014 asking him to vacate the premises.

12. According to the appellant herein, in the Written Statement, he has categorically averred that Bank is not a party to the suit and in case, the Bank is not made a party, the suit is not maintainable and the remedy lies before the Debts Recovery Tribunal and other forums. It is his contention that the Courts below have proceeded on the basis of the statement made by the landlord, viz. the respondents herein that the entire amount towards the loan has been repaid. It is also his contention that the respondents herein have not produced any document before the Civil Court to show that the entire amount has been paid.

13. In the case on hand, the appellant is only a tenant and he cannot try to usurp the property or continue to stay in the property on technical grounds. It is true that notice has been issued to the appellant/tenant as regards eviction of premises. But, when the entire amount has been paid by the respondents/landlord to the Bank, which has been accepted by the Trial Court, the Civil jurisdiction, at no stretch of imagination can be sought to be ousted. Even though the issue of DRT has been raised, the First Appellate Court has considered the same and proceeded on the basis that the landlord, i.e. the respondents herein, has cleared the loan amount and repaid the entire dues. It has also proceeded on the basis that there is no encumbrance to the property in question. Since the finding rendered by the First Appellate Court is based on finding of fact and also, as there is no encumbrance, the First Appellate Court is perfectly justified in confirming the judgment and decree of the Trial Court.

14. In view of the above discussion, the concurrent findings of the Courts below do not warrant any interference by this Court under Section 100 CPC. It is settled law from a catena of decisions of the Supreme Court and this Court that the findings of facts concurrently recorded by the Trial Court, as also by the First Appellate Court, could not be legally upset by this Court, sitting in Second Appeal under Section 100 CPC, unless it is shown that the findings are perverse, being based on no evidence or that on the evidence on record, no reasonable person could come to that conclusion. Further, the scope for interference with the concurrent findings of fact, while exercising jurisdiction under Section 100 CPC, is very limited, and re-appreciation of evidence is not permissible, and if the Trial Court and the First Appellate Court misdirected themselves in appreciating the question of law or placed the onus on the

wrong party, certainly, there is a scope for interference under Section 100 CPC. This Court finds no illegality or perversity in the concurrent findings of both the Courts below, and hence, they are liable to be confirmed. There is no question of law much less substantial question of law that arises for consideration in this Appeal.

15. After dictating the judgment, learned counsel for the appellant pleaded four months' time to enable the appellant to vacate the premises and hand over the same to the respondents. Accepting his plea, this Court directs the appellant herein to hand over vacant possession of the suit property to the respondents herein within a period of four months from the date of receipt of a copy of this judgment.

With the above direction, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. No costs. Consequently, connected M.P.No.1 of 2012 in S.A.No.382 of 2012 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The I Additional Sub Judge,
Erode District.
2. The II Additional District Munsif,
Erode District.

+1cc to M/S.I.C.Vasudevan, Advocate Sr.42978
+2cc to M/S.M.Guruprasad, Advocate Sr.43251, 43250

S.A.No.382 & 383 of 2012

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srg 10/07/2017