

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

and

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

O.S.A.No.262 of 2016

V.Gopalakrishna Chetty  
S/o. V.I.T.T.A.Rangiah Chetty  
1C, T.K.Pani II St., Periyar Nagar  
West K.K.Nagar, Nesapakkam  
Chennai -78 ....Appellant/Plaintiff

vs.

Chennai Corporation  
Greater Chennai  
having its Administrative Office  
at Rippon Building,  
Park Town, Madras - 3 .... Respondent/Defendant

(Amended vide order of Court dated 13.11.2017)

Appeal filed under Order XXXVI Rule 1 of O.S.Rules  
against the order judgement 05.11.2015 made in C.S.No.465 of  
1988.

PRAYER IN CS.465/1988

Plaint filed and numbered as civil suit under order 4  
rule 1 of the Madras High court Original side Rules, praying  
for judgment and decree against the defendant:

A)to direct the defendant to pay a sum of Rs.1,50,000/-  
on the value of the damage to the building;

B)Interest on the said amount at 6% per annum from the  
date of plaint till the date of realisation; and

C) for costs of this suit.

For Appellant : Mr.Shanmugam

For Respondent : Mrs.Karthikaa Ashok

## JUDGEMENT

[Judgement of the Court was delivered by RAJIV SHAKDHER, J.]

1. This appeal is directed against the judgement and decree dated 05.11.2015.

2. The appellant herein is the original plaintiff in the suit.

2.1. The appellant had filed a suit for recovery of a sum of Rs.1,50,000/-, on account of the alleged damage caused to the suit property.

2.2. In addition thereto, interest at the rate of 6% per annum from the date of institution of the suit till the date of realization of the amount was also claimed.

3. By virtue of the impugned judgement, the learned single Judge has dismissed the suit.

4. In the suit, four (4) issues were framed. All the four (4) issues were decided against the appellant.

5. Mr. Shamugam, who appears on behalf of the appellant, assailed the judgement of the learned Single Judge on the following grounds:

(i) That the learned single Judge has erroneously come to the conclusion that the evidence produced by the respondent Corporation was believable, though, the appellant had produced evidence with regard to the damage caused to the suit property by the respondent Corporation.

(ii) A report of the Chartered Engineer (Ex.P3) dated 14.5.1986, filed in this behalf, was not given due weightage by the learned single Judge.

(iii) The appellant in the first instance had secured an ex parte decree dated 16.11.1992, which, after the period of ten (10) years, was set aside at the say so of the respondent Corporation.

(iii)(a) The respondent Corporation had, in support of its application to set aside the ex parte decree, filed an application for condonation of delay of 3030 days.

(iii)(b) The result of this event was that both the counsel, who was engaged at the relevant point of time, and the Chartered Engineer had expired. Therefore, the appellant could not cite the Chartered Engineer as a witness to prove Ex.P3.

(iii)(c) In other words, according to the appellant, if these events have not transpired, Ex.P3 could have been proved by the appellant.

6. On the other hand, the learned counsel for the respondent Corporation says that, no material was placed on record by the appellant in support of his claim for damages.

6.1. The learned counsel, thus, relies upon the judgement of the learned single Judge to resist the appeal.

7. Before we proceed further in the matter, the following brief facts are required to be noticed:

7.1. The suit property appears to have been constructed, concededly, as far back as in 1910-1911. The property was in the possession of the Administrator General and Official Trustee of Tamil Nadu (in short "Official Trustee").

7.2. The property came to be owned in the first instance by the grandmother of the appellant and thereafter, devolved upon his father. The father of the appellant, admittedly, died in 2003.

7.3. The respondent Corporation entered into the suit property as a tenant as far back as in 1952 and, continued in possession of the suit property till 1987.

7.4. The record shows that the respondent Corporation had attempted to acquire the suit property. The proceedings in that behalf were taken out by the respondent Corporation, which was challenged by the appellant by filing a writ petition in this Court.

7.5. Resultantly, in and about 22.04.1987, the suit property was handed over by the respondent Corporation to the appellant, as obviously, the attempt at acquisition did not fructify.

7.6. It is important to note that the respondent Corporation had, at the time when it intended to acquire the suit property, deposited a sum of Rs.2,05,167.30p., which it envisaged, was the appropriate compensation payable for acquiring the suit property. The said amount was deposited with the Special Deputy Collector (Acquisition) For City Works.

7.7. The appellant, having secured the physical possession of the suit property, issued a notice dated 03.5.1987 to the respondent Corporation. This notice was received by the respondent Corporation on 05.5.1987.

7.8. In this notice, the appellant, evidently, conveyed to the respondent Corporation that he would be claiming compensation for the damage caused to the suit property.

7.9. It appears that the appellant was, at that point in time, in the process of having the damage assessed by the Chartered Engineer, who, ultimately, generated the report in that behalf. The said report is dated 04.5.1987 and, is marked as Ex.D3.

the respondent Corporation.

8.1. By this notice, the appellant claimed damages to the tune of Rs.1,80,918/- from the respondent Corporation.

8.2. This notice was received by the respondent Corporation on 29.05.1987.

8.3. Given the fact that there was no movement in the matter, insofar as the demand for damages was concerned, the appellant filed a suit, i.e., C.S.No.465 of 1988, in this Court.

8.4. As indicated above, the ex parte decree dated 16.11.1992, was passed in favour of the appellant.

8.5. Upon the respondent Corporation moving the Court, the ex parte decree dated 16.11.1992 was set aside by the Court in and about 2002.

8.6. Thereafter, in the suit, issues were framed. As adverted to above, four (4) issues were framed in the matter; These being:

"... .. (i) Whether the plaintiff is entitled to claim the suit amount as such made in the plaint from the defendant for all or any of the reasons stated in the plaint?

(ii) Whether the amount of damages claimed is exorbitant?

(iii) Whether the defendant is liable to pay a subsisting interest to defend the suit, since the building itself has been demolished? and

(iv) to what relief the plaintiff is entitled to? ... .."

8.7. The record shows that issue No. "(iii)", as extracted above, was recast and framed as follows:

" (iii) Whether the defendant is liable to pay the damages as per the estimate made in Ex.P-3 by the plaintiff's Chartered Engineer?"

8.8. The suit went to trial. Thereupon, the impugned judgement was passed by the learned single Judge.

9. As noted above, the suit was dismissed by the learned single Judge. Pertinently, via the impugned judgement, the learned single Judge answered all issues against the appellant.

10. Having regard to the submissions made by the learned counsel for the parties and having perused the record, the only aspect, which, according to us, requires consideration is: as to whether the appellant was able to place on record, the relevant evidentiary material to prove that he had suffered damage qua the suit property.

11. The only material which the appellant relies upon is the report of the Chartered Engineer, Ex.P3.

12.1. A perusal of the report would show that the said report primarily adverts to renovation, which was required to be brought about, qua the suit property i.e. the superstructure.

12.2. The amounts, adverted to, against each head are clearly estimates and not the actual cost, which had been incurred, if at all, by the appellant.

12.3. Concededly, no material has been placed on record as to the amount actually spent by the appellant in making the repairs to the suit property.

13. This apart, as noted by the learned single Judge to which we have not received any answer, neither in the notice nor in the plaint, are there any averments as regards to the damage caused to the suit property by the respondent Corporation.

14. It is also not disputed that when the Chartered Engineer visited the suit property, no notice was given to the respondent Corporation as regards the inspection of the suit property at the relevant point of time. The respondent Corporation clearly had no clue that the suit property had been inspected by the Chartered Engineer prior to generation of his report.

15. The argument of the learned counsel for the appellant that because the ex parte decree dated 10.11.1992 was set aside after the period of ten (10) years, Chartered Engineer could not be cited as a witness, cannot again help the cause of the appellant as dehors the Chartered Engineer's report, (Ex.P3), the appellant could have collected other evidence and placed the same on record to show the actual amount spent by him in repairing the suit property.

15.1. This is apart from what is noticed above, which is, that there was no prior notice and no pleading on record as to what exactly was the damage that the respondent corporation had caused to the suit property.

16. As noted by the learned single Judge, the property is more than 70 years old and that properties of such kind suffer normal wear and tear over a course of time.

17. The appellant's counsel, however, continues to assert before us that damage was caused by the respondent corporation.

18. Clearly, if any damage was caused, the same had to be proved - qua which the burden qua rested on the appellant and not on the respondent Corporation.

19. Therefore, having regard to the state of the evidence

and the age of the superstructure, we are not inclined to interfere with the judgement of the learned single Judge.

20. We find no merit in the appeal. The appeal is, accordingly, dismissed. However, there shall be no order as to costs.

Sd/-  
Assistant Registrar (CS-iii)

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Sub Assistant Registrar

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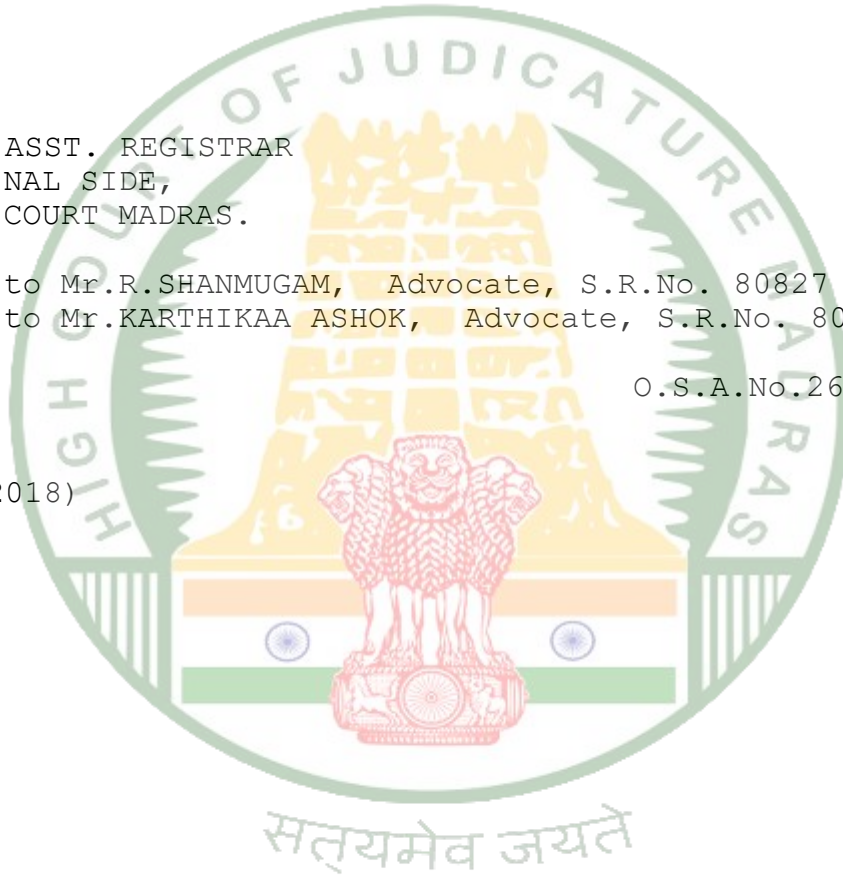
1 THE SUB ASST. REGISTRAR  
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HIGH COURT MADRAS.

+1cc to Mr.R.SHANMUGAM, Advocate, S.R.No. 80827

+1cc to Mr.KARTHIKAA ASHOK, Advocate, S.R.No. 80771

O.S.A.No.262 of 2016

NMI (CO)  
TR(10/01/2018)



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