

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 15.02.2017

Date of Verdict : 24.02.2017

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No.766 of 2016

S.Prabu DossAppellant/Appellant/
Plaintiff

Vs.

1. The Bishop of Church of South India,
No.256, Race Course Road,
Coimbatore.
 2. N.Balraj
 3. G.Prabu
 4. The Church of South India
Trust Association,
Rep. by its Managing Trustee,
No.5, Whites Road, Royapettah,
Chennai - 14.
(Impleaded as per order in
I.A.No.643/2009 dated 27.07.2000
and amended as per order in
I.A.No.1220/2010 dated 13.12.2010)
 5. The Property Manager,
Diocese, C.S.I.
Coimbatore.
 6. The Assistant Property Manager,
Diocese - Erode Area,
C.S.I., Coimbatore.
(R 5 and 6 are impleaded as per order
in I.A.No.466/2013 dated 04.12.2013)
(Amended as per order in I.A.No.571/2013
dated 04.01.2014)
- ...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree of the learned First Additional Sub Judge, Erode in A.S.No.28 of 2015 dated 25.01.2016 confirming the judgment and decree of the learned II

Additional District Munsif, Erode in O.S.No.280 of 2009 dated 15.04.2015 are liable to be set aside.

For Appellant : Mr.V.Kadhirvelu

For Respondents: Mr.MA.P.Thangavel

JUDGMENT

The plaintiff is the appellant herein. The suit is filed for permanent injunction to restrain the defendants from dispossessing the plaintiff by force or interfering with his peaceful possession and enjoyment of the suit property as a tenant except under due process of law.

2. The courts below after examining documentary and ocular evidence, held that the plaintiff was not a tenant under 4th defendant. He was permitted to use the space free of cost by the first defendant. It was a license and not a lease. No easement or interest in the property passed on to the plaintiff. The plaintiff was permitted to use the vacant land to keep his sapling and carry on business free of cost. The permission was revoked. Under law, possession of the property is always with the licensor and not with the licensee. On facts, on the date of filing the suit, the plaintiff was admittedly not in possession of the suit property therefore, the plea of injunction restraining the defendant from dispossessing is not sustainable.

3. Aggrieved by the concurrent finding, the plaintiff filed the present second appeal is preferred raising the following substantial questions of law:-

1) Have not the courts committed an error of law to the facts and the circumstance of the case, in dismissing the suit as not maintainable in view of the fact, that the appellant is not in possession of the suit property and he is a trespasser?

2) Have not the courts committed an error of law in coming to conclusion since the appellants flower pots were stolen, therefore he was not in possession of the suit property?

4. Before admitting the second appeal, notice to respondents was served to hear them whether any substantial question of law is involved in this case. The respondents appeared through counsel and made their submission in support of the judgment impugned.

5. The case of the plaintiff is that he was tenant under the 4th defendant represented by the first defendant. The suit property measuring 300 sq.ft was leased out to him by the first defendant for a monthly rent of Rs 200/-, through the permission letter of the first defendant dated 07.08.2002. Subsequently, there was oral agreement between him and the first defendant for additional 600 sq.ft and the rent was fixed at Rs 500/- pm. Since then he is in possession of the suit property and running a nursery garden. The rent was increased to Rs 700/- in the year 2007. Upto January 2009, the first defendant was receiving the rent. Thereafter evaded receiving rent and started demanding enhancement of rent. As a statutory tenant he is in possession of the suit property, the defendants tried to evict him illegally on 28.02.2009, which led to lodging a complaint to police on 01.03.2009, followed by and lawyer notice on 03.03.2009. On 02.05.2009, the defendants with the help rowdy elements entered into the suit property destroyed the iron fencing and removed the thatched hut put up. They have stolen property worth 1,50,000/-. Police complaint was lodged for the incident. Again on 19.05.2009, the first defendant and others tried to level the land and lay foundation stone for the Church library, the attempt was foiled by the plaintiff with great difficulty.

6. The defendants countered the plaint averments denying the tenancy and the alleged attempt to evict the plaintiff by force. The alleged oral agreement of tenancy and payment of rent were denied. No statutory right to occupy the suit property devolve on the plaintiff based on the permission letter of the first defendant or by paper advertisements or by payment of professional tax documents relied by the plaintiff to show he is a tenant under the first respondent. The plaintiff is neither a tenant nor a leasee. His alleged possession is unlawful. As a licensee, his possession is only permissive and that to was withdrawn on 03.03.2009. The plaintiff has vacated the suit premises on 02.05.2009 and construction of book stall is going on. On the date of filing the suit the plaintiff was not in possession of the suit property. In the absence of tenancy agreement, the suit itself not maintainable.

7. On the factual issue whether the plaintiff was in actual possession of the property on the date of filing the suit, both the courts have held that on 25.05.2009, the date of filing the suit, the plaintiff was not in possession of suit property. Only after getting interim order of injunction he has re-entered into the suit property. The documents relied by the plaintiff are either self serving documents such as paper advertisements and professional tax receipts or documents subsequent to the suit. Therefore this Court does not find any illegality or perversity in the factual finding of the Courts below.

8. The legal issue involved in this case is the status of the plaintiff and his right to be in possession of the suit property. The only document relied by the plaintiff to sustain his right to claim possession of the suit property is Ex A-1. It is a request letter of the plaintiff to the first defendant to permit him to keep and sell flower pots at the frontage of the CSI campus without causing disturbance to anyone and erk his livelihood. The first respondent has endorsed with the word "permitted". In this letter there is no whisper about tenancy or lease or rental amount. Thus the very basis of the plaint averment is found false. Likewise the plea of subsequent oral agreement and enhancement of rent from Rs 300/- to 500/- and later to Rs.700/- not supported by documents like receipts. Particularly, the averment of oral agreement found in the pleadings is not even mentioned in the presuit notice.

9. Therefore the status of tenant claimed by the plaintiff is not true and contrary to his own document Ex.A.1. The reading of Ex.A.1 clearly establishes that he was only granted permission to use the 15 x 20 sq.ft of land. He was never permitted to use more than that. The said permission also expressly withdrawn through the notice dated 11.03.2009 Ex.A.8. The evidence indicates that the plaintiff was not a statutory tenant as he claims. To be a statutory tenant there must be transfer of interest and in consideration of such transfer of interest there must be a promise to pay money or share of crops or service or any other thing of value to be rendered periodically or on specific occasions to the transferor by the transferee. In this case non of the above ingredient found in Ex.A.1. Whereas, the recital of the letter and the endorsement squarely fall within the definition of license.

10. A comparison of section 105 of Transfer of Property Act and section 52 of Easement Act is extracted below for better understanding of the legal position.

"Section 105: Lease defined- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

"Section 52 Easement Act. "License" defined - Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in

or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a license."

11. As a licensee, the plaintiff right to enjoy the suit property gets terminated once the grant is withdrawn or revoked. Under license possession never transfer to the licensee. It is only the right to use is granted. Unlike a lease, in case of license it is not a question of possession or dispossession, the real question is whether the grant of right withdrawn or not. In this case, it is established through the exchange of notices, the grant of right is withdrawn as early as 03.03.2009. Therefore plaintiff claim as tenant itself a misnomer. His right as licensee had been duly withdrawn through Ex A-8. No other process is contemplated in law.

12. As a result, no substantial question of law found in this second appeal. Hence, the second appeal is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rts

To

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

+1 cc to Mr.V.Kadhirvelu Advocate sr 12232
+1 cc to Mr.MA.P.Thangavel Advocate sr 17959

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