

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.07.2018

Pronounced on : 11-07-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

APPEAL SUIT NO. 1212 OF 2015 AND
MP.NO.1 OF 2015 AND CMP.NO.6377 OF 2017

A.P. Subramaniam ... Appellant/1st Defendant

Versus

1. Janaki
2. P. Sundaramurthy
3. S. Thilagavathy
4. P. Saravanan
5. S. Hemamalini ... Respondents 1 to 5/Plaintiff 1 to 5
6. B. Suresh Kumar ... 6th Respondent/3rd Defendant
- B. Shenbagakumari (died)/2nd defendant
(amended as per order dated 13.11.2014
in I.A. No. 656 of 2014)

Appeal filed under Section 96 of Code of Civil Procedure read with Order 41 Rule 1 of CPC against the Judgment and Decree dated 19.03.2015 made in O.S. No. 34 of 2013 on the file of I Additional District Judge at Erode.

For Appellant : Mr. V. Ayyadurai
For Respondents : Mr. E.J. Ayyappan

JUDGMENT

R. SUBBIAH, J

This appeal is filed by the first defendant in O.S. No. 34 of 2013 on the file of I Additional District Judge, Erode, by which the suit filed by the respondents 1 to 5 herein, as plaintiffs, for a direction to direct the defendants in the suit, to quit and deliver vacant possession of the suit property, was decreed.

2. The respondents 1 to 5 are the plaintiffs, who have instituted the suit in O.S. No. 34 of 2013. The appellant in this appeal is the first defendant in the suit. The respondents

6 and 7 in this appeal are the defendants 2 and 3 in the suit. Therefore, for the sake of convenience, the parties shall be referred to as plaintiffs and defendants, as has been arrayed in the suit before the trial court.

3. The case of the plaintiffs, as could be unfolded from the plaint averments are as follows:-

(i) The first plaintiff is the wife of one R. Palaniappan. The Plaintiffs 2 to 5 are the sons and daughter born to the first plaintiff and the said Palaniappan. The Plaintiffs are native of Erode for several decades. According to the plaintiffs, the suit properties belonged them, having been gifted by the husband of the first plaintiff and father of the plaintiffs 2 to 5 namely Mr. R. Palaniappan, by means of a registered gift deed dated 21.11.2011, registered as document No. 7129 of 2011 on the file of the Sub-Registrar, Erode. According to the plaintiffs, on execution of the gift deed dated 21.11.2011, the possession of the suit property was also handed over to them by Mr. R. Palaniappan. Thus, from the date of execution of the gift deed dated 27.11.2011, the plaintiffs are in possession and enjoyment of the suit property. It is the case of the plaintiffs that Mr. R. Palaniappan, husband of the first plaintiff and father of the plaintiffs 2 to 5 was a successful businessman, who was engaged in textile business and he carried on such business in the name and style of M/s. Palaniappa Swedeshi Stores at Kamaraj Street, Erode Town. From and out of the income derived through the said business, Mr. Palaniappan had purchased many immovable properties within Erode Town, including the suit property bearing Old Door Nos. 93 to 97, New Door No. 40, 40/1, Agilmedu, 6th Street, Erode Town comprised in Old T.S. No. 273/2, New T.S. No.9, Old Ward No.12, New Ward No.A, Block No.16 measuring an extent of 3115.5 square feet having purchased the same by way of a registered sale deed dated 04.09.1968 bearing document No. 2392 of 1968 in Book-I, Volume 385, page Nos. 199 of 204, on the file of Sub-Registrar, Erode and from the date of such purchase, Mr. Palaniappan was in possession and enjoyment of the suit property till 21.11.2011, the date on which he had executed the registered gift deed in favour of the plaintiffs.

(ii) It is the further case of the plaintiffs that the husband of the first plaintiff and father of the plaintiffs 2 to 5 namely R. Palaniappan had earlier executed a registered Will dated 10.02.1993 registered as document No.12 of 1993 in Book III, Volume - 10, Page Nos. 103 to 105 whereby he had bequeathed the suit properties in favour of his grand son B. Suresh, Son of Late. Balamurugan. According to the plaintiffs, the said Balamurugan was the second son of Mr. R. Palaniappan. The said P. Balamurugan, during his life time, had left the family after his marriage and was living at various places and on 24.09.2009 he died intestate at Palladam, Thirupur District, where he was

residing at the time of his death. Prior to his death, the said Balamurugan, on the strength of the Will executed by Palaniappan in his favour had entered into a lease agreement dated 03.03.2002 with the first defendant/appellant and let out the suit property for rent to him for a period of five years. At the time of inducting the first defendant as tenant, the said Balamurugan had also received a sum of Rs.25,000/- as rental advance and the monthly rent was fixed at Rs.2,000/- per month. According to the plaintiffs, thereafter, the said Balamurugan left the suit properties, migrated from Erode District along with his family to a place where he wished to reside. On coming to know the death of his son Balamurugan on 24.09.2009 and also the factum of letting out the suit property for rent in favour of the first defendant, the above said Palaniappan had cancelled the Will dated 10.02.1993 executed by him in favour of his grand son B. Suresh by means of a registered Deed of Cancellation of Will dated 23.07.2007 bearing Registration No. 92 of 2007 in Book - 3, on the file of Sub-Registrar, Surampatti. According to the plaintiffs, the Will dated 10.02.1993 has been cancelled on 23.07.2007 and it is on the basis of the Will dated 10.02.1993, Balamurugan had let out the property to the first defendant. In such circumstances, Palaniappan, husband of the first plaintiff and father of the plaintiffs 2 to 5, had issued a notice dated 01.07.2008 calling upon the first defendant to vacate and handover the vacant possession of the suit property on or before 31.07.2008 and deliver vacant possession to him. On receipt of the notice dated 01.07.2008, a reply notice dated 09.07.2008 was sent by the first defendant denying the title and ownership of Palaniappan over the suit property. It was contended in the reply notice dated 09.07.2008 that Mr. Palaniappan has no right to seek for evicting the first defendant from the suit property. Not content with sending a reply notice dated 09.07.2008, the first defendant also instituted a suit in O.S. No. 467 of 2008 before the Principal District Munsif Court, Erode against Palaniappan and his son late. P. Balamurugan for a permanent injunction restraining them from evicting the first defendant from the suit property except by following the due process of law.

(iii) During the pendency of the suit in O.S. No. 467 of 2008, Mr. R. Palaniappan has filed R.C.O.P. No. 18 of 2008 before the learned Principal District Munsif Court, Erode for evicting the first defendant from the suit property on the ground that the suit property is required for his own use and occupation. The said Original Petition was dismissed on 16.12.2011 on the ground that the first defendant was inducted as a tenant by the son of the petitioner namely P. Balamurugan and therefore, there is no landlord-tenant relationship between the petitioner in the Original Petition and the said Palaniappan. It was further concluded that in the absence of landlord-tenant relationship between the parties, the Original

Petition cannot be maintained. According to the plaintiffs, after they came to know about the dismissal of R.C.O.P. No. 18 of 2008, on 20.06.2012, they have caused a legal notice to the first defendant calling upon him to vacate and handover the vacant possession of the suit property. The first defendant, on receipt of the notice dated 20.06.2012, met the plaintiffs in person and sought time to vacate the suit property within a period of six months. According to the plaintiffs, even after lapse of six months, the first defendant did not vacate the suit property and therefore, the plaintiffs sent another notice dated 20.11.2012 reiterating their demand to vacate the suit property. Even though the first defendant received the notice, he has neither vacated the suit property nor sent any reply notice. According to the plaintiffs, the first defendant is an influential and powerful person in the locality. The first defendant, without any valid reason, refused to budge from the suit property. In such circumstances, the plaintiffs have instituted the present suit.

4. The suit was resisted by the first defendant by filing a written statement contending inter alia that he deny the execution of the registered Settlement deed dated 21.11.2011 said to have been executed by R. Palaniappan in favour of the plaintiffs. He also denied the wherewithal and resourcefulness of the said Palaniappan to purchase the property through his textile business income. According to the first defendant, the said Palaniappan had executed the Will on 10.02.1993 in favour of his grandson B. Suresh and appointed his son Balamurugan as guardian for the minor and on the strength of the Will dated 10.02.1993, Mr. Balamurugan, son of Palaniappan had also taken possession of the suit property. Thereafter, the first defendant had entered into a lease agreement dated 03.03.2002 with Mr. Balamurugan and as per the lease agreement, the period of tenancy was for five years. The first defendant also paid a sum of Rs.25,000/- initially and thereafter, at the request of the said Balamurugan he paid another sum of Rs.25,000/- and Rs.50,000/- respectively to him on various dates. Further, at the time when he was inducted as a tenant in the suit property, the suit property was in a dilapidated condition and therefore, with the consent of the owner of the suit property namely Balamurugan, he had put up a new construction by incurring a sum of Rs.3 lakhs for the same since the said Balamurugan had expressed his inability to incur the expenses for a new construction. While so, the father of Balamurugan namely Palaniappan has filed RCOP No. 18 of 2018 and it was dismissed on 16.12.2011 and the order passed in RCOP No. 18 of 2018 has become final.

5. According to the first defendant, from the year 2002 till the date of filing the written statement, he is paying the rent only to the second defendant, who is the wife of deceased Balamurugan and presently he is paying the rent to the third defendant namely Suresh. It was further contended that the plaintiffs as well as Palaniappan very often attempted to disturb his possession without any right. The said Mr. Palaniappan had already filed RCOP No. 18 of 2008 against the first defendant and it was dismissed on 16.12.2011, which was not challenged, while so, the order of dismissal will bind the said Palaniappan as well as the plaintiffs herein. Therefore, the present suit filed by the plaintiffs is hit by the principles of res judicata and it is not maintainable and he prayed for dismissal of the suit.

6. The defendants 2 and 3 have filed a separate written statement supporting the case projected by the plaintiffs in the suit and they prayed for decreeing the suit as prayed for by the plaintiffs. It was specifically stated in the written statement that after the death of Balamurugan, on 24.09.2009, the first defendant failed and neglected to pay the admitted rent and he is squatting on the suit property without even paying rent.

7. Before the trial Court, on behalf of the Plaintiffs, the first plaintiff examined herself as PW1 and Exs. A1 to A15 were marked. On behalf of the defendants, the first defendant examined himself as DW1 but he has not marked any document. The trial Court, after framing necessary issues, had concluded that the suit property belongs to the plaintiffs as per Ex.A2, Gift deed dated 21.11.2011 and therefore, they have every right to institute the present suit against the first defendant. The trial court also given a specific finding that without any right, the first defendant had occupied the property in question and he did not also pay the rent to the owners of the suit property. Therefore, the trial court accepted the case put forward by the plaintiffs and decreed the suit.

8. The learned counsel for the appellant/first defendant would contend that earlier, the husband of the first plaintiff and father of the plaintiffs 2 to 5 had filed RCOP No. 18 of 2008 against the first defendant to evict him from the said property. The said Original Petition was dismissed on the ground that there is no relationship between the petitioner and the respondent as landlord and tenant. However, the husband of the first plaintiff and father of the plaintiffs 2 to 5 did not challenge the order passed in RCOP No. 18 of 2008 and it had become final. While so, the plaintiffs have no right to file the present suit and it is hit by the principles of res judicata. Further, in the earlier suit filed by the appellant in O.S. No.

467 of 2008, a specific direction was issued that he should not be evicted from the suit property without following the due process of law. According to the counsel for the appellant, the decree passed in O.S. No. 467 of 2008 will bind the plaintiffs and they are not entitled to file the present suit. The trial court failed to take note of the fact that the appellant was inducted as a tenant only by late. Palaniappan by virtue of an agreement dated 03.03.2002, while so, the appellant is a statutory tenant and he is entitled for protection from being evicted from the suit property. If at all, the defendants 2 and 3, who are the legal heirs of Balamurugan ought to have instituted the suit against the appellant and the plaintiffs have no locus standi to file the present suit. The trial court did not properly consider the above factors while decreeing the suit and therefore, he prayed for setting aside the decree and judgment passed by the trial court.

9. Per contra, the learned counsel appearing for the plaintiffs/ respondents 1 to 5 herein would vehemently contend that the appellant is squatting in the suit property without even paying the statutory rent, either to the plaintiffs or to the legal heirs of Balamurugan. Even otherwise, the agreement dated 03.03.2002 entered into between the appellant and the deceased Balamurugan expired on 02.03.2007 and thereafter, the appellant has no locus standi to remain in occupation of the suit property and his occupation can be construed as a trespass. The first defendant/appellant herein is fully aware of the right of the plaintiffs over the suit property by virtue of the registered settlement deed dated 21.11.2011 which was also intimated to him by the plaintiffs through notices dated 20.06.2012 and 20.12.2012. While so, the contention of the first defendant/ appellant that the plaintiffs have no right over the suit property was rightly rejected by the trial court while decreeing the suit. The learned counsel for the respondents/plaintiffs 1 to 5 also would contend that the legal heirs of the deceased Balamurugan were also subsequently impleaded in the suit as defendants 2 and 3 and they have also filed written statement stating that the first defendant did not pay rent to them and is squatting on the suit property illegally. Further, after the suit was decreed, the plaintiffs have filed E.P. No. 20 of 2015 in which the first defendant/appellant herein had obtained interim stay in E.A. No. 66 of 2015. In any event, the trial court has considered the right and ownership of the plaintiffs over the suit property and rightly decreed the suit and it does not warrant any interference by this Court. The learned counsel for the respondents/plaintiffs 1 to 5 therefore prayed for dismissal of this appeal.

10. We have heard the submission of counsel for both sides and perused the materials placed on record. The only point that falls for our consideration in this appeal is whether the plaintiffs have proved that they are the owners of the suit property and consequently, the first defendant/appellant has to be evicted from the suit property.

11. As we have narrated the factual matrix of the case in detail, we refrain from repeating the same any further. During the course of trial, the first defendant examined himself as DW1 and he admitted that he knew that the husband of the first plaintiff and father of the plaintiffs 2 to 5 had executed a Gift deed dated 22.11.2011 in favour of the plaintiffs which was also marked as Ex.A2. Even though the first defendant deposed during the course of his chief examination that he was paying the rental amount till date, he did not produce any document to substantiate the same. On the other hand, the defendants 2 and 3, who are the legal heirs of Balamurugan, have filed their written statement contending that after the death of Balamurugan, the first defendant neither paid the rent nor vacated the demised premises and he is illegally squatting on the property. Further, the first defendant/appellant himself has filed a suit in O.S. No. 467 of 2008 against Palaniappan, husband of the first plaintiff and father of the plaintiffs 2 to 5 and as against the deceased Balamurugan with a prayer to restrain the defendants not to forcibly evict him from the suit property without following the due process of law. Even in the said suit, a decree was passed with a direction to the defendants not to evict the first defendant herein without following the due process of law. Thereafter, the present suit was instituted by the plaintiffs to evict the first defendant. Before instituting the present suit, the first defendant was intimated about the execution of the settlement deed dated 22.11.2011 in their favour and their right over the suit property through a legal notice dated 20.06.2012, Ex.A3 and another notice dated 20.12.2012 marked as Ex.A4. The postal acknowledgment card for having received the legal notice dated 20.12.2012 by the first defendant was marked as Ex.A5. Admittedly, having received the notice dated 20.12.2012, Ex.A4, the first defendant has neither sent a reply nor vacated the property in question. Therefore, it is futile on the part of the first defendant to contend the plaintiffs have no ownership over the property in question. The trial Court, having considered the above facts, especially Ex.A2, registered Settlement deed dated 21.11.2011 executed by R. Palaniappan, husband of the first plaintiff and father of the plaintiffs 2 to 5 in favour of the plaintiffs has rightly decreed the suit and we see no error or infirmity in the judgment and decree passed by the trial Court.

12. In the result, we confirm the Judgment and Decree dated 19.03.2015 made in O.S. No. 34 of 2013 on the file of I Additional District Judge at Erode. The Appeal Suit is therefore dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District Judge
Erode

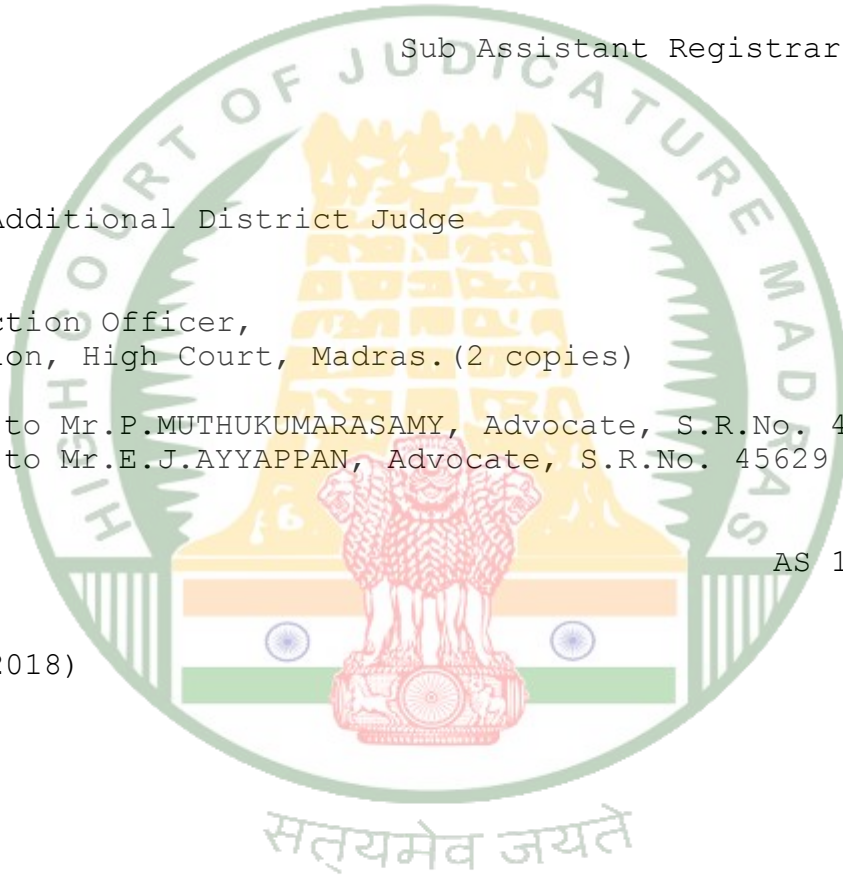
2. The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.P.MUTHUKUMARASAMY, Advocate, S.R.No. 45821

+1cc to Mr.E.J.AYYAPPAN, Advocate, S.R.No. 45629

Judgment in
AS 1212 of 2015

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