

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.803 of 2017
and
C.M.P.No.20126 of 2017

Malar Alagan ... Appellant/Plaintiff

...vs...

1. Velusamy
2. Jeyaraj Kumar
3. Senthil Kumar ... Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree dated 19.08.2017 of the Principal Subordinate Judge, Mayiladuthurai made in A.S.No.53 of 2016 confirming the judgment and decree dated 03.10.2016 made in O.S.No.269 of 2014 on the file of the Principal District Munsif, Mayiladuthurai.

For Appellant : Mr.V. Anil Kumar

For Respondents : Mr.S.Rajasekar

J U D G M E N T

The unsuccessful plaintiff, being aggrieved by the unanimous decisions of the Courts below, has preferred the above Second Appeal.

2. The suit was filed by the plaintiff seeking a decree for permanent injunction against the respondents from unlawfully evicting the appellant from the suit property. The appellant is a tenant in respect of two rooms in the first floor of the building known as 'S.V.Complex' bearing Door No.16-A in T.S.No.115, situated at No.2, Mayiladurai since 2008. It is stated that later, the appellant also became a tenant with respect to the ground floor portion of the same building bearing

Door Nos.17/1 and 17/2 for interest free advance of Rs.2 lakhs, apart from payment of lease on monthly basis. It is stated that the respondents herein demanded revision of rents double the existing rents. While the plaintiff was pleading for a reasonable revision, as the respondents threatened to evict the appellant by force, the suit was filed by the plaintiff / tenant for permanent injunction restraining the respondents/defendants from interfering with the peaceful possession of the suit property unless by due process of law.

3. The suit was resisted by the defendants by filing the written statement together with the counter claim seeking a decree for mandatory injunction directing the appellant herein to remove his articles from the ground floor portion and deliver vacant possession of the suit property.

4. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as PW-1 and one Mr.Ashokumar, who is the Assistant Electrical Engineer, was examined as P.W.2 and marked Exs-A1 to A10. On the side of the defendants, the first defendant was examined himself as D.W.1 and one Pandian was examined as D.W.2 and Exs.B1 to B7 were marked.

5. After an elaborate trial, the trial Court dismissed the suit and partly allowed the counter claim by decreeing only for recovery of possession and rejecting the claim of mandatory injunction. Challenging the said decree, an appeal was preferred by the plaintiff in A.S.No.53 of 2016. The lower Appellate Court confirmed the decree of the trial Court with the modification directing the refund of Court fees paid in excess by the respondents pursuant to the trial Court decree. Aggrieved by the same, the above Second Appeal has been preferred by the appellant.

6. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

7. The suit property consists of two portions. The first floor is a portion bearing Door No.16/A and the ground floor is a portion bearing Door Nos.17/1 and 17/2. Originally, the plaintiff was inducted as a tenant only on the first floor and after an year, the plaintiff also occupied the ground floor portion. The appellant is running a textile business under the name and style of "Jeans World". According to the respondents, when the higher rent was demanded by them during October 2014 on account of increased sales during Deepavali festival, the trouble arose. When the appellant refused to agree for the enhanced rent, the respondents tried to evict the appellant from

the suit property forcefully. Thus apprehending the unlawful eviction, the suit came to be filed.

8. In support of his contentions, the appellant had filed Exs.A1 to A10. Exs.A5 and A6 are the Certificates of Registration under the Tamil Nadu Value Added Tax Act, 2006 and Certification of Registration under the Central Sales Tax Act, 1956 respectively. Ex.A-10 is the copy of the affidavit filed by the first respondent before this Court in W.P.No.16506 of 2016.

9. Now the dispute is only with respect to ground floor in occupation of the appellant

10. So far as the first floor is concerned, already eviction was sought by filing R.C.O.P proceedings and eviction was also ordered. Therefore, the learned counsel for the appellant restricted his argument only with respect to the ground floor portion, which is approximately an extent of 1770 sq.ft. Though the appellant contended that the said portion was also leased out to him, it is the specific case of the respondents that it is only a licence and placed their reliance on Ex.B-3. Ex.B-3 itself is styled as "லைசன்ஸ் உரிமை கட்டிட ஒப்பந்த பத்திரம் ;" dated 01.06.2013. As per Ex.B-3, the period of licence is between 01.06.2013 and 15.11.2013 at the rate of Rs.2,500/- per day. The same was extended from time to time and the last extension was from 01.05.2014 to 15.10.2014. Thus, with expiry of licence from 16.10.2014, the appellant cannot be in lawful possession of the suit property. The occupation of the appellant beyond the period of licence, is unlawful. Hence, the respondents herein sought for the

counter claim seeking a decree for mandatory injunction directing the appellant herein to remove his articles from the portion in ground floor of the suit property i.e. Door Nos.17/1 and 17/2.

11. It is contended by the learned counsel for the appellant that the Courts below failed to appreciate the materials on record in its right and proper perspective and had erroneously shifted the burden on the appellant herein while dismissing the suit and allowing the counter claim. According to the appellant, the counter claim seeking the relief of mandatory injunction directing the licensee to vacate the suit property, is not maintainable, as only the relief of recovery of possession, is maintainable.

12. As stated earlier, with respect to the first floor portion of the suit property, already eviction proceedings were initiated and order of eviction was obtained. Therefore, the

trial Court had already found that the prayer in the suit relating to the first floor portion had become infructuous.

13. Now, the only point that has arisen for consideration is as to whether the appellant is a lessee or licensee, insofar as the ground floor portion is concerned.

14. The term 'lease' and 'licence' are defined under Section 105 of the Transfer of Property Act and Section 52 of the Indian Easements Act, 1882 respectively.

Section 105 of Transfer of Property Act: "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 of the Indian Easements Act, 1882: "Licence" 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."

15. A lease is a transaction with respect to immovable property and creates a right to enjoy such property for a certain term and for consideration on the conditions mentioned in it. The right to possess

and enjoy the property is transferred in favour of the lessee and he acquires his right and interest through the conveyance of the lease. The relationship of landlord and tenant can come into existence only after the transfer of interest in the immovable property pursuant to the contract and creates a 'right in rem'. When there is no transfer of interest, there is no lease. On the other hand, a licence is a privilege to do something in a property, otherwise not permissible. A licence is 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. Thus, the primary distinction between a lease and a licence is that the lease is a transfer of right in a specific immovable property, whereas, licence is a bare term and a licensee is not entitled to notice to quit before eviction.

16. To ascertain, if a document creates a lease or a licence, the substance of the document should be preferred to its form. Where it creates an interest in the property, it is called as lease, but, if it only permits a person to make use of the property, of which legal possession and continuous with the owner, it is a licence. Thus, the licence does not create any interest in the property to which it relates. However, the real test is the intention of the parties whether they intended to create a lease or licence.

17. So far as the case on hand is concerned, it is the case of the appellant that he is in lawful possession of the ground floor of the suit property bearing Door Nos.17/1 and 17/2 as lessee. However, in support of the said contention, no documents were produced by the appellant. Exs.A5 and A6 are only the Certificate of Registration under the Value Added Tax Act, 2006 and Certificate of Registration under the Central Sales Tax Act, 1956 respectively. The above said documents do not relate to the suit property. The specific case of the respondents is that the appellant was only a licensee and the continued occupation of the said portion of the suit property, is illegal after the expiry of the said licence. Learned counsel for the respondents placed his reliance on Ex.B-3 dated 01.06.2013. A look into the contents of the terms of the document would go to show that it is only a licence. Though the appellant had challenged the validity of Ex.B-3, he had miserably failed to prove the said contention in the manner known to law. The appellant though admitted the signing of the document, only contended that the same is incomplete. The respondents also had examined one Pandiyan as D.W.2, who had clearly deposed about the execution of the document, thus enabling the document to discharge their burden of proving the execution of Ex.B3.

18. The ground floor which is now in dispute is an extent of 1770 sq.ft hall. It is said to be a reception hall taken on licence on a daily basis. Admittedly, the appellant took in possession of the same during Deepavali season to augment his sale. A perusal of the terms of Ex.B-3 would go to show that:-

- i) The period of licence was agreed to be short (i.e) a definite 5-1/2 months.
- ii) Payment of licence fees was on a daily basis.
- iii) Licensee agreed to vacate the property without any further notice and above all
- iv) The parties in clear and expressed terms agreed that the licensee shall have no lease hold rights in the property.

19. The said recitals obviously support the contention of the respondents that the ground floor portion of the suit property bearing Door Nos.17/1 and 17/2, was let out to the appellant as a licensee only. Only on the strength of the above terms in Ex.B-3, the Courts below had held that the possession of the appellant is that of a licensee and not a lessee. Therefore, on revocation of the licence, the possession immediately reverts to the licensor and he has the right to enter upon without recourse to law. The licensee after revocation of the licence will have no right to seek temporary or permanent injunction against a licensor restraining him from entering the property. The appellant had taken the portion of the first floor taken on lease and eviction proceedings in the manner known to law is initiated. If the ground floor portion also was in occupation of the appellant as lessee, appropriate eviction proceedings would have been initiated by the respondent for eviction. Therefore, the appellant can be termed only as a licensee and he has to be evicted.

20. It is a settled principle that on termination of lease, the institution of the suit for mandatory injunction without delay seeking direction to the licensee to evict the suit property, is maintainable. Thus the contention of the appellant that the relief of mandatory injunction directing the licensee to vacate the suit property, is not maintainable, does not merit any consideration.

21. In fine, the Second Appeal does not involve any substantial question of law warranting any interference by this Court. Hence, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

The above Second Appeal is posted today for pronouncing judgment.

2. After pronouncing the judgment, learned counsel for the appellant seeks time to vacate the suit property by the end of February 2018. Learned counsel for the respondents also agrees for the same. Accordingly, time is granted till 28.02.2018 to vacate and handover the possession of the suit property.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

srn

To

1.The Principal Subordinate Judge,
Mayiladurai

2.The Principal District Munsif,
Mayiladurai

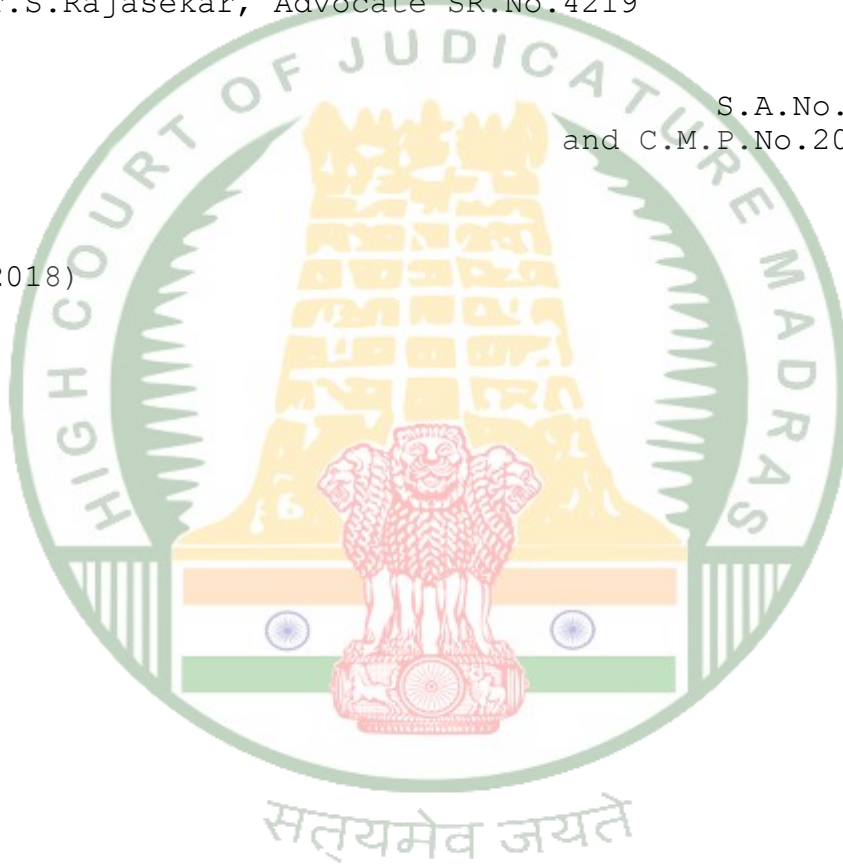
3. The Section Officer, V.R.Section,
High Court, Madras(2 Copies)

+1cc to Mr.V.Anil Kumar, Advocate SR.No.4291

+1cc to Mr.S.Rajasekar, Advocate SR.No.4219

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