

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 27.11.2018

Judgment Pronounced on : 30.11.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.280 of 2008
and M.P.Nos.1 & 2 of 2008

1.M.Kumar

2.M.Narasimhan

... Appellants/Appellants/Defendants

Vs

C.Raju

... Respondent/Respondent/Plaintiff

Prayer :- Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree passed in A.S.No.340 of 2007 on the file of VII Additional City Civil Court, Chennai, dated 07.12.2007, confirming the judgment and decree passed in O.S.No.443 of 2001 on the file of II Assistant City Civil Court, Chennai, dated 26.04.2007

For Appellants : Mr. V.Vijay Shankar

For Respondent : Mr. V.Bhiman
for Mr.Hanumantha Rao

JUDGMENT

The question required to be considered in this appeal roams around a narrow space. Parties would be referred to by their rank before the trial Court.

2. The suit property is a non-residential building. To start with, Chandramohan, the father of the plaintiff owned it. Sometime in July 1966, defendants'/appellants' father Muthu became a lessee of the said building, wherein he began to run a flour mill. The building had a tiled roof. While so, Chandramohan died and the property devolved on the plaintiff. With Muthu, the tenant of the building dying subsequently, his right was inherited by the defendants, and they became tenants under the plaintiff. Be that as it may, sometime in August 1997, the plaintiff had applied to CMDA for putting up a new construction, which included replacing the roof of the suit property with RCC roof and construction of few shops in front of the suit property. After the said construction, the plaintiff laid a suit for eviction.

3. The question that arises for consideration is whether the suit is maintainable or should the plaintiff have moved the Rent Controller for evicting the appellants/defendants. According to the plaintiff, the present building is a new building and that under Section 30 of the Tamil Nadu Buildings (Lease and Rent Control) Act, the said Act will not apply within the first five years since the date of construction, and since the suit is laid within five years, the suit is maintainable.

4. In order to appreciate the question involved, few more facts as disclosed by the plaint required to be stated :

(a) Even while a new construction was being made, Muthu was running the flour mill except for some ten days when RCC roof was laid, and that he also put up some additional construction in the vacant land of the property.

(b) In this scenario, Muthu, the tenant, had filed O.S.No.5850 of 1997 on the file of XIII Assistant Judge, City Civil Court, Chennai for a declaration to declare that the construction put up by the defendants 1 and 3 therein (in O.S.No.5850 of 1997) is illegal, unauthorised and to direct the Corporation of Chennai/second defendant in O.S.No.5850 of 1997 to demolish the building and for a permanent injunction and also for other consequential reliefs.

(c) During the pendency of the suit, Muthu died 25.8.1998 and that was how the defendants/appellants came to be the tenant of the property. The defendants continue to run the flour mill that his father had commenced.

(d) While the construction of the suit building was completed in August 1997, the remaining two shops in the ground floor, the three shops in the first floor were completed in December 1997. The Corporation of Chennai revised the assessment of property tax from 1998-1999 (II half year). On 14.09.2000, plaintiff issued a suit notice terminating the lease and required the tenant to surrender the possession. This was replied to by the defendants Vide his reply notice dated 25.09.2000.

5. In the written statement, it is pleaded :

- No new building was constructed in the suit property and that roof alone was changed. Except the roof, the remaining old structure continued to stay. Here it is necessary to emphasise that all along the defendants had been running the flour mill and no new structure can be constructed without the demolition of the existing structure.

- In the process of such construction, the plaintiff had put up certain additional constructions in front of the plaintiff shop blocking the public visibility to the suit building. This was done without the consent of the defendants which has led to considerable loss to the defendants. Hence, instituting O.S.No.5850 of 1997 became necessary to safeguard his interest.
- The suit property is an old property and it is not exempted under Section 30 of the Rent Control Act. So far as the criteria contemplated under Section 30 is concerned, in order, the said Section might be invoked, notifying the construction to the local authority is mandatory and mere revision of property tax will not satisfy the statutory requirement of making the said notification. The provisions of Rent Control Act alone is applicable and the suit is not maintainable.

6.1 The suit went for trial and while the plaintiff examined himself as P.W.1, the first defendant had examined himself as D.W.1. Both the parties have examined an independent witness each on their side. The plaintiff had produced as many as 21 documents which are marked as Ext.A1 to Ext.A21. Defendants have produced Exts. B-1 to B-9.

6.2 Of the documents that the plaintiff has filed, Ext.A-3 to Ext.A11 are those commencing from the receipt for payment of requisite charges to the Corporation for obtaining approval for the construction plan to the payment of revised tax. Ext.A-8 is the certified copy of the application for assessing the property tax of the building. Taking into account the overwhelming documentary evidence from Ext.A-3 to Ext.A-11, the trial Court came to the conclusion that the building constructed by the plaintiff is a new building and accordingly has held that the suit is maintainable before decreeing the same.

6.3 Challenging the said decree, the defendants have preferred A.S.No.340 of 2007 before VII Additional Judge, City Civil Court, Chennai. The first Appellate Court vide its judgment dated 07.12.2007, dismissed the appeal, confirmed the decree of the Court below, and in the process it adopted the same line of reasoning as the trial Court.

7. Having lost to the plaintiff successively before the Courts below, the defendants have come forward in the present appeal. The appeal was admitted for considering the following substantial questions of law :

- 1) Whether the findings of the Courts below that the suit for recovery of possession is maintainable is correct in the light of the provisions of the Tamil Nadu Building (Lease and Rent Controls) Act as per which

only an RCOP under the specified sections would lie?

- 2) Whether the Courts below are correct in stating that even minor repairs carried out to a building would constitute new construction in order to avail of the exemption under Section 30 of the Tamil Nadu Building (Lease and Rent Control) Act?

Arguments:

8. The critical question on which the decision to the present appeal rests is the second of the two questions above. Here, the learned counsel for the appellants would argue :

- Only the roof of the building was converted from tiled roof to a RCC roof. No walls have been disturbed and whatever new constructions that were made are either in front of the building involved in the suit, or in the first floor. This therefore, would imply that there is no construction of a new building and in the context of the Tamil Nadu Building (Lease & Rent Control) Act (henceforth Rent Control Act).
- It is not the case of the plaintiff that the defendants had vacated the premises to enable the plaintiff to change the roof the building. And, inasmuch as the defendants have been running a flour mill, it is inconceivable that the entire building could have been pulled down without the defendants surrendering possession to the plaintiff. Since, the latter has not taken place, the former could not have been possible. And if there is no complete demolition and reconstruction of a new building in its place, then a mere change of roof could only amount to repair within the meaning of Sec.16(1)(a) of the Rent Control Act.
- If only repair has been carried out, then the plaintiff ought to have issued a notice and initiated a proceedings under Sec.14(1)(a) of the Act, but that has not taken place. And where the building is one subject to tenancy, then if at all any, only Sec.16 and not Sec.30 of the Act will apply. And, for Sec.16 to apply, there must be a total demolition and reconstruction in terms of Sec.14(1)(b) of the Act, as is stipulated in Sec.16(2) of the Act. Under Section 16(2) of the said Act, an exemption from the application of the Rent Control Act for the existing tenanted building is provided only if the entire building is totally demolished and new building is constructed.
- Since in the present case, the entire building is not demolished and only a roof is changed, no total demolition of the property is involved and

consequently, what is constructed cannot be termed as a new construction. Therefore, Sec. 30 will not come to play and if at all any, only Sec. 16(2) may have to be read into Sec.30 in all cases where a previously existing leased out building is reconstructed.

Reliance was placed on the authorities in Murugan Finance, Arni Vs. Senthilnathan [(2000) II MLJ 339]; Namagiri Lakshmi.S Vs. Pravin Harilal Mehta [1998 (I) CTC 595]; T.Thiruppathi Vs. Maimoon Bibi & Others [(1982) 1 MLJ 154].

9. Per contra, the counsel for the respondent submitted:

- The plaintiff has pleaded that the old building was demolished and new building was constructed in August, 1997 and that the entire construction that includes shops in front of the suit building on the ground floor and those in the first floor was completed in December, 1999. Ext.A-8 indicates that the plaintiff has applied to the Corporation for assessing the new property tax for the newly constructed building. The Rent Control Act does not prescribe the precise manner by which construction of the building must be notified to the local authority. Therefore, assessment of the property tax and the application made prior to that would all amount to due notification to the authority. Reliance was placed on the ratio in Rajendran and Ors. VS. Vallimayil and Ors. [2017 (II) CTC 365].
- Is the building, a new building? The contentions of the defendants that no new construction has been made is belied by the stands he had adopted while deposing as P.W.1. in O.S.5850 of 1997. The relevant passage of his testimony in that suit, confronted and marked in this case as Ext.A-21 would indicate that he had admitted the construction of a new wall about 6 feet away from the existing wall. And, in paragraph 6 of the Ext.A-1 judgement in O.S.5850 of 1997, the trial Court has referred to the present defendants' contention that new walls have been constructed about 4 feet around the existing wall. This would mean that a new RCC roof has been constructed on new walls, and it does not rest on the old walls. This is further corroborated by the uncontroverted evidence of P.W.2, the Engineer who the plaintiff has examined and Ext.A-15, the report prepared by P.W.2. It is because a new roof was put up on new walls without disturbing the existing walls, the defendants continued be in possession, except for a short period of about ten days, when the roof alone was constructed. It therefore did not require that the defendants surrendered possession in terms of Sec.14(1)(b), but that does not mean that no new construction has been

made. And, even if it is were to be construed that only roof has been changed, yet it would constitute a new building as has been held by this Court in Abdul Azeez & Sons Vs. Mavalirajan [1977 TNLJ 69].

- Section 30 of the Rent Control Act does not employ any expression such as old building or new building, but on the contrary uses the expression 'any building'. At any rate, the Courts below have entered a concurrent finding that the building is a new building and unless any perversity is demonstrated in the reasoning of the Courts below, this Court may not revisit the said finding on the fact. No such perversity is demonstrated before the Court.

Reliance was placed on the authorities in ; Sanjaykumar Chordia and Anothers Vs. Mahaveer & Company HUF [(2011) 5 MLJ 535]; P.S.Venkatajan Vs. C.Devan [2010-1-LW-415] A.K.S.Thiyagarajan and Others Vs. M.Gopal [(2001) 3 MLJ 785]; Sankarlal Jain Vs. R.Kalavathi Ammal [1990-I-L.W.25]; Rangathan Vs. Venkatesan [1995 (1) MLJ 159]; Abdul Azeez & Sons Vs. Mavalirajan [1977 TNLJ 69].

Discussion & Decision

10. There is no denying the fact that the Courts below entered an identical finding founded on identical set of documents that the suit building is a new construction within the meaning of Section 30. In this regard, the first Appellate Court in its judgment has indicated that the new assessment is made for building No.55, which admittedly is the door number of the suit building. Have the Courts below misconstrued the evidence to enter a finding that evidence cannot support?

11. Relying on the authority in K.Krishnan V Munisamy [91 LW 454 (DB)], and distinguishing the authority of Ismail J in Abdul Azeez & Sons Vs. Mavalirajan [1977 TNLJ 69], this Court S. Namagiri Lakshmi Vs Pravin Harilal Mehta and four others [1998 (I) CTC 595] has held that mere change of roof would not amount to new construction.

12. To start with, the learned counsel for the appellants could not pinpoint how and where the Courts below have faltered into misconstruing or misconstruing the evidence on record. To this may be added another piece of evidence available on record. This is Ext.A-15. It is a plan which P.W.2, the Engineer, has deposed that he had inspected the building (the suit property) and had prepared A-15 plan. To start with, there is no denial that P.W.2 has not visited the property at all. Secondly, if Ext.A-15 is turned to P.W.2 has indicated that the RCC roof of the suit building rests on new walls, and that one old partly demolished wall standing to a height of about 5 feet remained separately wherein was fixed the electricity

Consumer meter. This would mean that the walls on the remaining three sides have already been removed, and the fourth new wall stands separately from the old wall of 5ft high referred to above. And the report further goes to state that the entire wall rests on the new wall. Therefore, all that remains is one small wall, partly demolished, stands to a height of 5 feet, and seems to stand there as a relic to remind the past.

13. The defendants contend that they have not surrendered possession, and this the plaintiff does not go to dispute. How then the construction should have been made without the defendants ever surrendering possession? Here, Ext.A-21 and Ext.A-1 judgement in O.S.5850 of 1997 throws some light. The inference they suggest is that new walls should have been built around the existing old wall and the roof was built thereafter. It requires to be emphasised that Muthu had filed O.S.5850 of 1997 not before the new roof was constructed, but after the same was completed. This is evident from Ext.A-1 itself. And, the controversy that the suit had raised was not about the construction of the roof, but about the loss of visibility to the suit property due to the construction of new shops in front of the suit building. The fact that could now be deduced is that instead of vacating the tenant of the suit property for demolishing and reconstructing it, a new building on new walls has been constructed without disturbing the existing old walls, and once constructed, the old walls were removed. This is the only plausible, if not the possible conclusion that can be arrived if this aspect is taken along with the reasoning of the Courts below founded on an understanding of Ext.A-3 to A-8. This mode of reconstruction does not require a tenant to surrender possession under Sec.14(1)(b) of the Rent Control Act. An action under Sec.14(1)(b) is required only when the tenant resists a landlord's intention to demolish and reconstruct his building. Here, it may be stated that in Ext.A-15, P.W.2 states that the floor of the new building continues to be old, but then the differences between the parties had commenced by then.

14. Therefore, on facts this court finds sufficient materials to conclude that what is constructed is a new building replacing a old building in its entirety, and not a mere repair involving change of roof on the old wall. Consequently, this Court holds that no substantial questions of law are actually required to be considered in the face of these findings on facts.

15. In the result, the appeal is dismissed and the judgment and decree passed in A.S.No.340 of 2007 on the file of VII Additional City Civil Court, Chennai, dated 07.12.2007, confirming the judgment and decree passed in O.S.No.443 of 2001 on the file of II Assistant City Civil Court, Chennai,

dated 26.04.2007, is hereby confirmed. The defendants are directed to deliver the property within three months time from today. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

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To:

1. The VII Additional Judge, City Civil Court, Chennai.
- 2.The II Assistant Judge, City Civil Court, Chennai.
- 3.The Section Officer, VR Section, High Court, Madras.

+1cc to Mr. V.Vijay Shankar, Advocate SR.No. 82183

S.A.No.280 of 2008

A.SK(01/03/2019)



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