

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.09.2018

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

S.A.No. 1686 of 2008
and
MP.No.1 of 2008

Ramu ... Appellant/Appellant/Defendant

Vs.

Kailsasam ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree of the A.S.No.41 of 2007 dated 23.01.2008 on the file of the Court of Principal Subordinate Judge, Mayiladuthurai confirming the judgment and Decree passed in O.S.No.206 of 2001 dated 12.02.2007 on the file of the Court of District Munsif, Sirkali.

For Appellant : Mr.A.Muthukumar

For Respondent : Mr.S.Sounthar

J U D G E M E N T

The defendant in OS No.206 of 2001 is the appellant. The suit was filed for ejectment. There is no dispute regarding the tenancy or the termination of the tenancy. Both the Courts have decreed the suit. Aggrieved, the defendant is on appeal.

2. Notice of admission was ordered.

3. I had heard Mr. A.Muthukumar, learned counsel appearing for the appellant and Mr.S.Sounthar, learned counsel appearing for the respondent.

4. The only contention urged by Mr. A.Muthukumar, learned counsel appearing for the appellant is that the property is situate in Aanaikaran Chattiram Village, which has been notified under the Tamil Nadu Buildings (Lease and Rent Control) Act. Hence the suit itself is not maintainable. This contention was not raised before the Courts below.

5. Mr.S.Sounthar, learned counsel appearing for the respondent would dispute the very fact that the Village is a notified Village. In any event, there is no express bar of suit, under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act. Section 10(1) of the Tamil Nadu Buildings (Lease and Rent Control) Act, which provides the grounds for eviction, reads as follows:

Section 10(1).--

A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provision of this section or sections 14 to 16.

6. A reading of this provision would show that the suit is not barred, what is barred is only the execution of decree and not the filing of the suit. This question was considered by this Court in S.Ramiah v. Ariyakudi Kalyana Krishna Hospital Trust, reported in 1988 (1) LW 409. Hon'ble Mr.Justice M.Srinivasan, had held that the suit is maintainable, even though the Act is applicable to the area thereunder, it is only the execution of the decree that is barred.

7. Mr.Muthukumar, would however rely upon the judgment of the Hon'ble Supreme Court in East India Corporation Ltd., v. Shree Meenakshi Mills Ltd., reported in AIR 1991 SCC 1094. Even in the said judgment the Hon'ble Supreme Court has clarified that a suit is not barred.

8. I am unable to agree with the contention of Mr.A.Muthukumar, since even in the Judgment cited by him, the Hon'ble Supreme Court has said that the implied bar created by Section 10, 14 and 16 of the Tamil Nadu Buildings (Lease and Rent Control) Act, is only to a limited extent as provided therein.

9. A reading of the above extracted provision of Section 10 (1) clearly shows that the legislative intent was not to bar a suit but to bar only execution of the decree. No other question was raised in the Appeal.

10. Hence the appeal is dismissed, finding that there is no

question of law. It is well open to the appellant to raise the question of jurisdiction as and when the decree is sought to be executed. It is also open to the landlord to raise the question of waiver in the execution proceedings. There will be no order as to costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

jv

To

1. The Principal Subordinate Judge,
Mayiladuthurai.

2. The District Munsif,
Sirkali.

+1cc to Mr.A.Muthukumar, Advocate SR.No.62385

+1cc to Mr.S.Sounthar, Advocate SR.No.62263

S.A.No. 1686 of 2008
and
MP.No.1 of 2008

GJ (CO)

GMV (01/11/2018)

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