

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04 .01.2019

CORAM

The Hon'ble Mr.Justice Krishnan Ramasamy

S.A.Nos.1319 & 1320 of 2013

and

M.P.No.1 of 2013

M.Selvaraj

...Appellant in both the
appeals/Appellant/Plaintiff

Vs.

1. P.Ammaniammal R- 1 in S.A. No. 1319 /
2013/Respondent/Defentans
2. G.Sathya R-2 in S.A.No.1319/2013 and
sole Respondent in S.A.No.1320/2013/Plaintiff/Respondent

Prayer in S.A.No.1319/2013: This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.07.2013 made in A.S.No.33 of 2011 on the file of the III Additional District and Sessions Court, Coimbatore, confirming the common judgment and decree dated 04.10.2010 made in O.S.No.63 of 2009 on the file of the Principal Subordinate Court, Coimbatore.

Prayer in S.A.No.1370/2013: This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.07.2013 made in A.S.No.35 of 2011 on the file of the III Additional District and Sessions Court, Coimbatore, confirming the common judgment and decree dated 04.10.2010 made in O.S.No.717 of 2007 on the file of the Principal Subordinate Court, Coimbatore.

For Appellants : Mr.P.Saravana Sowmiyan

For Respondent : Mr.M.Sriram

COMMON JUDGMENT

Both these Appeals arise out of a common judgment of the first Appellate Court in A.S.Nos.33 and 35 of 2011, dated 31.07.2013, which have been dismissed, confirming the common judgment of the Trial Court in O.S.No. 717 of 2007 and O.S.No. 63 of 2009.

2. The appellant herein is the tenant and the respondent, by name G.Sathya is the landowner. The appellant filed a suit in O.S.No.63 of 2009 for the relief of permanent injunction. The landowner G.Sathya filed a suit in O.S.No.717 of 2007 for delivery of possession, arrears of rent and damages.

3. The appellant's suit was dismissed, whereas, the respondent's suit was decreed. Challenging the same, the appellant herein had filed two appeals, in A.S.Nos.33 and 35 of 2011, both of which, has already indicated above, have been dismissed by the first Appellate Court.

4. For the sake of narrative convenience, the appellant would be referred to as 'tenant' and the respondent/G.Sathya would be referred to as 'landlady'. It may be added here as both the suits were jointly tried and evidence was recorded in the suit filed by the landlady.

5. The case of the tenant is that, he entered into a tenancy agreement in respect of the suit premises for a period of 11 months and the monthly rent was fixed as Rs.4,500/- and advance sum at Rs.75,000/-. In the said suit property, he is doing manufacturing activity under the name and style 'Mahalakshmi Foundry'. Apart from the same, he is also conducting the business of sale of pump and its accessories under the name and style of 'Sri Raghavendra Industries' in the suit premises ever since from the date of inception of tenancy from the year 2001 onwards and he is regularly paying the monthly rent. Initially, the monthly rent was fixed at Rs.4,500/- per month and the same has been periodically enhanced and the present monthly rent is Rs.6,000/-. He stated that he has paid an advance sum of Rs.75,000/- at the time of entering into the tenancy agreement and there is no arrears of rent. Though the tenancy period was fixed for 11 months under the lease deed, it was mutually agreed by the parties that it should get extended at the expiry of the lease period, i.e. every 11 month. Therefore, the lease period has been periodically extended by entering into a fresh lease deed between the parties. He further stated that on 14.07.2006, the plaintiff consented to continue the tenancy for 20 years and he invested Rs.5,00,000/- for installation of machineries and spent Rs.5,00,000/- for constructing room, purchasing equipments, water tank etc., in the tenancy premises. Whiles, landlady, all of a sudden, with an intention to evict the tenant issued a notice under Section 106 of the Transfer of Property Act, on 31.08.2007, calling upon him to vacate and handover the suit property together with the leasehold machineries by the end of September, 2007.

6. According to the tenant, the suit property is situated within the limits of Coimbatore Municipal Corporation and Section 2 of the Tamil Nadu Buildings (Lease and Rent Control) Act is only applicable to the suit property, and therefore, the notice issued under Section 106 of the Transfer of Property Act is not valid. Accordingly, the suit is not maintainable in law. Further, he stated that the landlady is not the owner of the suit premises and Ammaniammal, is the actual owner and it was with her, the tenancy agreement was entered into by him and it is only based on her direction, monthly rents have been paid to G.Sathya, present landlady. Therefore, he stated that suit is liable to be dismissed for non-joinder of necessary party as the suit property originally belongs to the Ammaniammal.

7. The landlady filed the suit for delivery of possession and for arrears of rent and damages by contending that she is the owner of the suit property, situated at Door No.1260 of Hari Foundry Campus, Avinashi Road, Coimbatore and the tenant has been in occupation of the same since 2001 as a lessee under her. She further stated that the lease is for land with structures and machineries to manufacture rough castings, pumps, and other accessories together with electric service connection on monthly tenancy basis. She further stated that the tenant entered into a lease agreement in respect of the said property on 14.07.2006, for a period of 11 months at a monthly rent of Rs.6,000/- and for an advance sum of Rs.75,000/- But the tenant has paid only a sum of Rs.50,000/- towards advance and so far as the monthly rent is concerned, he committed default from January 2007 onwards. Therefore, on expiry of lease period in June, 2007, she demanded possession and arrears of rent. Though the tenant promised to vacate the premises, under the pretext of vacating the premises, he has been evading from paying monthly rent and behind her back, he also filed a suit in O.S.No.63 of 2009 and obtained stay in his favour. Therefore, she issued a notice terminating the tenancy agreement and called upon the tenant to deliver possession by the end of tenancy period, i.e. September, 2007. The tenant despite receipt of notice, did not bother to vacate the suit premises, and, replied to the said notice by raising vague allegations. Hence, the present suit.

8. As indicated above, both the suits were jointly tried and evidence was recorded in the suit filed by the landlady in O.S.No.717 of 2007. The trial Court based on the pleadings and evidence, decreed the suit filed by the landlady and directed the tenant to vacate and handover possession, and pay damages at the rate of Rs.12,000/- per month for the use and occupation of

the suit premises from October, 2007 till the date of delivery of possession. So far as the tenant's suit is concerned, the same was dismissed. The appeals preferred against said common judgment of the trial Court were also dismissed by the first Appellate Court. Against which, the present Second Appeals have been preferred by the tenant.

9. It is seen that when the Appeals came up for admission, this Court pleased to order notice of motion returnable in six weeks and granted a conditional stay order, directing the tenant to deposit a sum of Rs.2,00,000/- to the credit of O.S.No.717 of 2007 (viz., the suit filed by the landlady) within a specified time, making it clear that the stay shall stand automatically vacated in case of non compliance of the said interim order within the stipulated time. Despite such conditional stay order, the tenant has not effected such payment. In the said circumstances, the matter came for final hearing before this Court.

10. The learned counsel appearing for the tenant argued that the suit for delivery of possession came to be filed by the landlady only by issuance of notice under Section 106 of the Transfer of Property Act and not under the provision of the Tamil Nadu Buildings (Lease and Rent Control) Act and since the landlady seeks exemption under Section 30 (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, (henceforth, referred to as 'Act') which will be not applicable for the subject matter under lis, he sought for framing a substantial question of law on the applicability of Section 30 (iii) of the Act.

11. In view of the above submission, the following substantial question of law is framed:-

Whether the exemption granted under Section 30 (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act is applicable to the subject matter under lis when the suit premises was leased out without the provisions of machineries, furnitures, or other articles?

12. The learned counsel appearing for the tenant contended that the suit property was leased out with the building to the tenant originally during the year 2001. Such lease agreement was entered into between the tenant and one Mrs.Ammaniammal, the owner of the suit premises and it was based on her directions rents were paid to the present landlady. Though subsequently, one more lease deed was entered between the tenant and the

present landlady during the year 2006, the suit filed by the present landlady, claiming herself to be landowner, without impleading the original owner, viz., Mrs.Ammamiammal is bad and not maintainable.

13. The learned counsel further contended that lease deed was entered into only for the purpose of leasing out the land and building and not for machineries, and that machineries and other equipments in the suit premises were simply left out by the landlady without the consent of the tenant. Further, the tenant, for the purpose of running his business, installed new machineries in the place of old ones at his own costs and the machineries left out by the landlady is of no use to him. Therefore, as long as the landlady did not provide machineries and the machineries and structures already lying in the suit property were the machineries simply left out by the landlady, the landlady is not entitled to be exempted under Section 30 (iii) of the Act and Section 30 (iii) is applicable only if the landowner/landlady leased out the immovable property with building along with machineries.

14. Therefore, the learned counsel strongly contended that the suit instituted by the landlady under the Transfer of Property Act for delivery of possession is liable to be dismissed and she is not entitled to be exempted from the provisions of the Rent Control Act by taking shelter under Section 30 (iii) and all these aspects were not considered by the Courts below. Hence, he prayed that the present Second Appeals may be allowed dismissing the suit in O.S.No.717 of 20007 and allowing O.S.No.63 of 2009. Further, the learned counsel fairly admitted that though the tenant was not using the machineries, which were left out by the landlady, all the machineries are form and part of 'B' schedule property of the lease deed.

15. On the other hand, the learned counsel for the landlady by referring to Section 30 (iii) of the Act, submitted that, exemption under Section 30 (iii) is applicable in case of any lease of a building, under which, the objection of the tenant is to run the business or industry with the fixtures, machinery, furniture or other articles belonging to the landlord and situated in such building. In the present case, admittedly, the land and building was leased out to the tenant for the purpose of running the business of sale of pump and its accessories, for which purpose, machineries are required and it is an admitted fact that the tenant has been carrying out such business activities with the machineries and equipments. Though Section 30 (iii) does not specifically mention that machineries should

have been supplied by the landowner, the following highlighted words contained in section 30 (iii) 'with the fixtures, machinery, furniture or other articles belonging to the landlord and situated' in such building makes it clear that the tenant has to run the business with the fixtures, machinery, furniture or other articles belonging to the landlord. Therefore, he pleaded that both the Courts below has rightly decreed the suit filed by the landlady and dismissed the suit filed by the tenant. Therefore, prays for dismissal of the Second Appeals.

16. Heard the submissions made on either sides and perused the materials on record. For the purpose of deciding the substantial question of law involved herein viz. as regards the applicability of Section 30 (iii) of the Act and for effective disposal of the Appeals, it would be beneficial to refer to the provision of Section 30 (iii), which reads as follows:-

"any lease of a building, under which, the objection of the tenant is to run the business or industry with the fixtures, machinery, furniture or other articles belonging to the landlord and situated in such building."

17. On perusal of the said Section, it is clear that said provision is applicable in case, where, the tenant is to run the business or industry with the fixtures, machinery, furniture or other articles belonging to the landlord and situated in such building. In the present case, it is an admitted fact that the suit premises was leased out to the tenant for the purpose of doing the business of sale of pump and other accessories, for which purpose, machineries are required. Admittedly, the tenant has been carrying on business activities on the land along with the machineries and though he claims that the machineries and structures were already found lying in the suit premises and they were of no use to him, by admitting so, it is clear that the tenant has been inducted into the suit property along with machineries. Further, 'B' schedule property of the lease deed shows that items of machineries, fixtures, etc., were leased out to the lessee. Therefore, the tenant cannot take a plea that Section 30 (iii) has not mentioned about the supply of machineries by the landowner and the landlady did not provide machineries in order to apply Section 30 (iii).

18. Further, the learned counsel without prejudice to his contention, further argued that it is even fairly admitted by the learned counsel for the tenant the machineries and structures provided by the landlady forms part of 'B' schedule property. Therefore, the learned counsel submitted that

exemption granted under Section 30 (iii) is applicable to the subject matter of lis, and accordingly, the landlady is entitled to seek exemption under Section 30 (iii) of the Act. Accordingly, Section 30 (iii) is applicable to the case on hand. Therefore, the suit filed by the landlady in O.S.No.717 of 2007 is proper and the Courts below have rightly appreciated all these aspects and allowed the suit filed by the landlady and dismissed the suit filed by the tenant. This Court does not find any error in the concurrent judgments and decrees of the Courts below.

19. So far as the other contention raised by the tenant that the suit is bad for non-joinder of necessary party, as the real owner of the suit premises, viz., Ammaniammal was not impleaded as party to the suit proceedings, the same does not hold water, for the reason that, the subsequent lease deed stated to have been entered into during the year 2006 was between the present landlady and the tenant, which was marked as Ex.B.3, and only the earlier lease deed was between the tenant and the said Ammaniammal, which was during the year 2001. Hence, the tenant cannot rely upon the earlier lease deed, when he has subsequently entered into another lease deed with the present landlady. Therefore, the findings rendered by the Courts below on this aspect is correct and the same does not warrant interference of this Court. Accordingly, the substantial question of law is answered in favour of the landlady and against the tenant.

20. In the result, the Second Appeal stands dismissed confirming the judgements and decrees passed by the Courts below. Therefore, as directed by the Courts below, the tenant is hereby directed to vacate and handover possession of the suit premises and he is granted three months from the date on which the judgment made ready to vacate the suit premises and he is further directed to pay a sum of Rs.12,000/- per month towards damages for the use and occupation of the suit premises for the period October, 2007 till the date of handing over of possession, after deducting the amount already paid, if any. No costs. Consequently connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District and Sessions Court,
Coimbatore.

2. The Principal Subordinate Court, Coimbatore.

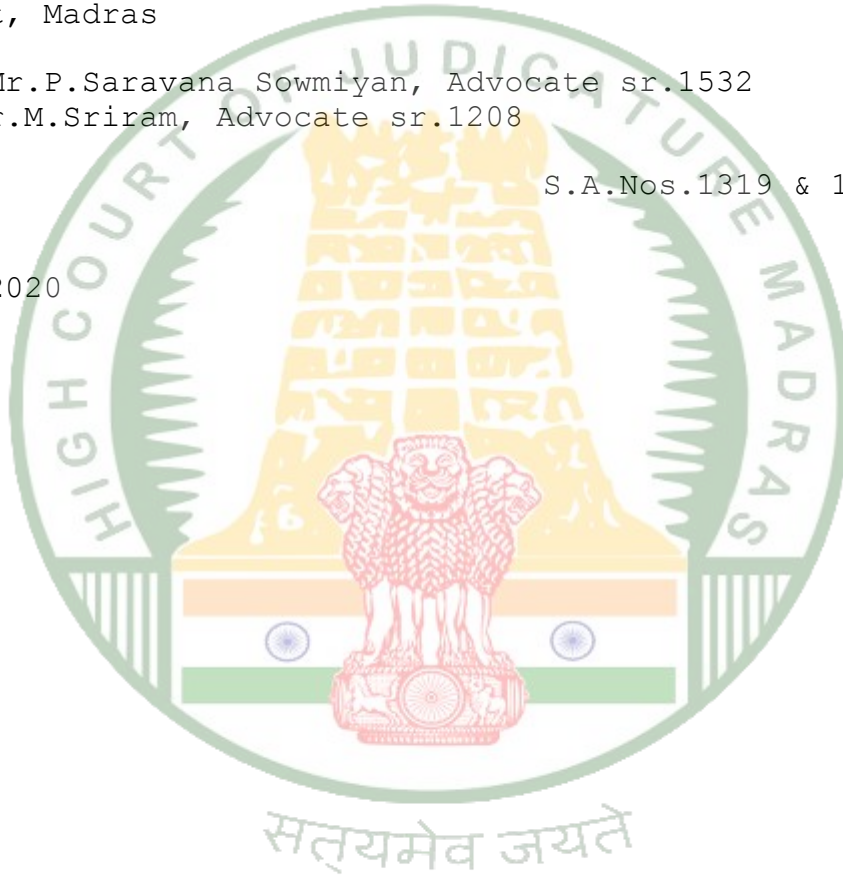
3. The Section Officer,
V.R Section,
High Court, Madras

+1cc to Mr.P.Saravana Sowmiyan, Advocate sr.1532

+2cc to Mr.M.Sriram, Advocate sr.1208

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