

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:02.03.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.644 of 2015
and M.P.Nos.1 & 2 of 2015

Sekar ... Appellant/Appellant/
Defendant

vs.
B.Murugavel ... Respondent/Respondent/
Plaintiff

Prayer: This second appeal is filed under Section 100 of C.P.C. prays to set aside the Judgment and Decree dated 17.03.2015 in A.S.No.70 of 2014 on the file of the II Additional Subordinate Judge, Cuddalore, confirming the Judgment and Decree dated 02.09.2014 in O.S.No.37 of 2013 on the file of the Principal District Munsif at Cuddalore and consequently dismiss the suit in O.S.No.37 of 2013 on the file of the Principal District Munsif, Cuddalore.

For Appellant : Mr.T.Sai Krishnan
For M/s.Sai Bharah & Ilan

For Respondent : Mr.P.Mani

JUDGMENT

Aggrieved by the unanimous decisions of the Courts below, the defendant has preferred the above second appeal.

2. The suit is filed by the plaintiff seeking an order of eviction directing the defendant to vacate the suit property and hand over the same to the plaintiff. It is the specific case of the plaintiff that he is the owner of the property and the same being allotted to him by the Kurinjipadi Vizhapallam Singapuri Weavers Co-operative Society. The plaintiff had been in possession and enjoyment of the property, when the sale deed was executed in his favour on 30.12.2004. The defendant, who is the brother-in-law of the plaintiff, requested the plaintiff to let out the property. Considering the relationship, the property was let out to the defendant on a monthly rent of Rs.500/-. The defendant also had been paying the property tax, water charges for the property on his behalf. While so, the defendant stopped paying the rent and defaulted. Hence, the plaintiff wanted to evict the defendant from the premises and filed the suit.

3. The suit was resisted by the defendant stating that he had extended his financial help by giving the sale consideration to the plaintiff. As the defendant had been

paying the water tax and property tax, he hold the property as that of his own. Hence, the plaintiff is not entitled to the said claim.

4. Before the Trial Court, on the side of the plaintiff P.W.1 and P.W.2 were examined and Exs.A1 to A6 were marked. On the side of the defendant D.Ws.1 to 3 were examined and Exs.B1 to B11 were marked.

5. On considering the oral and documentary evidence, the Courts below have concurrently held that the plaintiff is the owner of the property and the defendant continued to remain in possession of the suit property only as a tenant.

6. The learned counsel appearing for the appellant contended that the plaintiff had not established the jural relationship of landlord and tenant. It is further contended that the Lower Appellate Court had substituted its own view by stating that the defendant/appellant is the permissive occupier. It is also contended that the Lower Appellate Court had exceeded its jurisdiction by giving a finding that the tenant was in permissive occupation, which is beyond the scope of the pleadings of the parties.

7. Admittedly, Ex.A1 is in the name of the plaintiff, which goes to prove the ownership of the plaintiff. His specific case is that the defendant was inducted only as a tenant. The defendant/appellant had not only admitted the tenancy, but also denied the ownership of the plaintiff. When the findings of both the Courts is that the plaintiff is the owner of the suit property, the defendant cannot deny the title or even default in payment of rent. The appellant, having denied the title and defaulted in paying the rent to the plaintiff, is liable to be evicted on the above said grounds under the Rent Control Act. However, the Kurinjipadi Village, where the property situated, is not within the municipal limitation and the provisions of the Rent Control Act do not extent to the suit property. Hence, the suit has been filed before the Civil Court for eviction.

8. The Appellate Court has also held that the notice under Section 106 of Transfer of Property Act has been issued within the ambit and scope of the section. In spite of notice of termination of the tenancy, the defendant has been holding over the property without surrendering possession and he is liable to be evicted. Accordingly, the Courts below have concurrently held that the plaintiff is entitled to the decree as prayed for. As there is no infirmity in the said findings of the Courts below, no interference is called for. Besides, in the absence of any question of law arising for consideration in the above said facts, the Second Appeal deserves to be rejected.

9. In the result, the second appeal is dismissed, confirming the Judgment and Decree dated 17.03.2015 passed by the learned II Additional Subordinate Judge, Cuddalore in A.S.No.70 of 2014 and the Judgment and Decree dated 09.02.2014 passed by the learned Principal District Munsif, Cuddalore, in O.S.No.37 of 2013. No Costs. Consequently, connected miscellaneous petitions are closed.

10. The learned counsel for the appellant made a request for grant of time for vacating the premises. With the consent of plaintiff, a period of six months from the date of receipt of a copy of this order is granted for vacating the premises. The affidavit of undertaking may be filed by the appellant in this regard within a period of two weeks.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rsi

To

1. The II Additional Subordinate Judge,
Cuddalore.
2. The Principal District Munsif,
Cuddalore.
3. The Section Officer,
VR Section, High Court, Madras

+1cc to M/s.Sai Bharath & Ilan, Advocate Sr.No.16192
+1cc to Mr.P.Mani, Advocate Sr.No.16930

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