

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2018

PRONOUNCED ON : 29.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1825 of 2004

R.Vasu

...
Vs.

Appellant

1. M.Ramakrishnan (Deceased)

2. M.Chamundeeswari

3. M.Vijayagopal

4. M.Varalakshmi @ Sathyabama ...

Respondents

(R2 to R4 brought on record as LRs of the deceased sole respondent vide order of court dated 22.12.2011 made in CMP.No.1031 to 1033 of 2011 in S.A.No.1825 of 2004)

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 27.06.2003 passed in A.S.No.165 of 2002 on the file of the VI Additional City Civil Court, Chennai, confirming the Judgment and Decree dated 20.02.2002 passed in O.S.No.4289 of 1995 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.E.J.Ayyappan

For Respondents : Mr.G.Kathirvelu

JUDGMENT

Challenge, in this second appeal, is made to the Judgement and Decree dated 27.06.2003 passed in A.S.No.165 of 2002 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 20.02.2002 passed in O.S.No.4289 of 1995 on the file of the VIII Assistant Judge, City Civil Court, Chennai.

2. The second appeal has been admitted on the following substantial questions of law:

" (i). Whether finding of default in payment of ground rent can be presumed without any documentary evidence?

(ii). Whether the landlord who has knowingly permitted the tenant to carry out the improvements in the superstructure be left out while offering the ground property for sale to others?

(iii). Whether the appellant's right to claim preferrance in purchase of the schedule mentioned property is governed by the provisions of the City Tenants Protection Act."

3. The parties are referred to as per their rankings in the trial Court.

4. The suit has been laid by the plaintiff seeking the possession of the suit property and for past damages and also future damages.

5. Inasmuch as the points involved in this second appeal lie, in a narrow compass, it is unnecessary to dwell into the facts involved in

6. The defendant is alleged to be the tenant in respect of the suit property by the plaintiff and inasmuch as the defendant had failed to pay the rent from 01.08.1990, it is the case of the plaintiff that he had determined the tenancy of the defendant ending with 31.08.1994 by way of the issuance of a notice dated 14.07.1994 and accordingly, inasmuch as the defendant had failed to comply with the directions of the abovesaid notice, it is stated that the plaintiff has been necessitated to lay the suit for appropriate reliefs.

7. Meanwhile, it is found that the defendant had paid the rent due from 01.08.1990 upto 31.08.1994 in one lumpsum, which had been acknowledged by the plaintiff on 19.07.1994.

8. The defendant has admitted the tenancy in respect of the suit property under the plaintiff and all that, he would state is that in continuation of the proceedings laid in the High Court in C.S.No.40 of 1981, he had been given the assurance by the advocate receiver appointed in that proceedings that the suit property would be sold to him. However, no further steps had been taken by the advocate receiver with reference to the same and further, according to the defendant, he had purchased the superstructure put up in the suit property and in addition to that, also disputed the title of the plaintiff in respect of the suit

property and also challenged the claim of the plaintiff that he has not paid the rent as alleged in the plaint, hence, the defendant prayed for dismissal of the plaintiff's suit.

9. The Courts below had accepted the plaintiff's case and decreed the suit. Materials placed on record go to show that particularly, from Exs.A1 to A3, we can easily come to the conclusion that the suit property belongs to the plaintiff. Even the defendant, during the course of his evidence, has admitted that the suit property belongs to the plaintiff and that the same had been allotted to the plaintiff. In addition to that, the defendant has also admitted that he is a tenant in respect of the suit property under the plaintiff and thus, it is found clearly that the landlord/tenant relationship exists between the plaintiff and the defendant in respect of the suit property.

10. Though the defendant would claim that the advocate receiver appointed in the high Court proceedings had assured him of selling the suit property, however, with reference to his abovesaid claim, there is no material forthcoming and therefore, the abovesaid defence projected by the defendant does not merit acceptance as such.

11. It is found that inasmuch as the defendant had failed to pay the rent in time, the plaintiff had chosen to determine the tenancy of the

defendant by issuing a notice marked as Ex.A6 and the same is found to be acknowledged by the defendant and no reply has been sent by the defendant to the same. It is found that only thereafter, the defendant has chosen to pay the rent for some period in one lumpsum, which had been acknowledged by the plaintiff. Accordingly, it is found that the defendant having failed to pay the agreed rent and the plaintiff having determined the tenancy of the defendant as per law and accordingly, it is found that as determined by the Courts below, the plaintiff is entitled to recover the possession of the suit property from the defendant as claimed in the plaint.

12. In the light of the abovesaid position, it is found that the defendant cannot be allowed to plead without any substance or material that he is not liable to pay any rent to the plaintiff as claimed in the plaint. The only point urged by the defendant's counsel is that the defendant is entitled to the benefits of the Madras City Tenants Protection Act and therefore, the suit property should have been sold to the defendant, considering the fact that the defendant had purchased the superstructure put up in the suit property, which fact has not been controverted by the plaintiff. However, as rightly contended by the plaintiff's counsel, the defendant has not taken the plea in the written statement that he is entitled to the benefits of the Madras City Tenants Protection Act and that, he had claimed the benefits as per the guidelines

provided under the Act and within the time allowed by the said Act. On the other hand, when the defendant has not made the plea of his entitlement to the benefits of the Madras City Tenants Protection Act in the written statement and also has not adduced any reliable evidence on the abovelines and also not established that he is entitled to seek the benefits under the abovesaid said Act as stipulated therein and also sought the entitlement with reference to the same within the time allowed by law, it is seen that the contention of the defendant's counsel that the Courts below had erred in not going into the above aspects of the matter, as such, cannot be accepted. Moreover, as seen from the judgement of the first appellate Court, the first appellate Court has determined that the defendant is not entitled to seek the benefits of the Madras City Tenants Protection Act as no endeavour had been initiated by the defendant with reference to the same as provided under Section 9 of the abovesaid Act. Such being the position, it is found that the defendant cannot be allowed to raise the plea that he is entitled to the benefits of the Madras City Tenants Protection Act without making the plea with reference to the same in the written statement and also without making any endeavour to avail the said benefits within the time allowed by law and in such view of the matter, no interference is called for in the judgement and decree of the Courts below. The substantial questions of law formulated in the second appeal are, accordingly, answered against the defendant and in favour of the plaintiff.

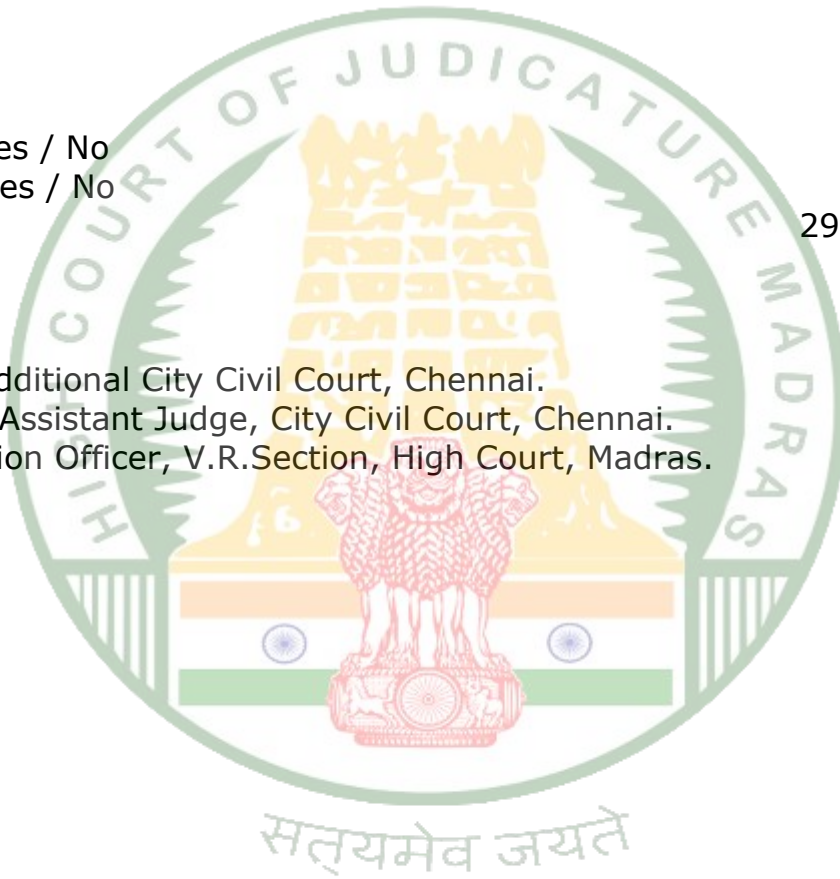
In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
sms

29.06.2018

To

1. The VI Additional City Civil Court, Chennai.
2. The VIII Assistant Judge, City Civil Court, Chennai.
3. The Section Officer, V.R.Section, High Court, Madras.



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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1825 of 2004**

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