

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2018

PRONOUNCED ON : 09.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1835 of 2003

Suseelammal ... Appellant/Plaintiff/Respondent

Vs.

Vellore Municipality
Rep.by its Commissioner ...Respondent/Defendant/Appellant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 02.12.2002 passed in A.S.No.32 of 2002 on the file of the Principal District Court, Vellore, reversing the Judgment and Decree dated 30.11.1998 passed in O.S.No.419 of 1994 on the file of the District Munsif Court, Vellore.

For Appellant : Mrs.Vanathi Srinivasan

For Respondents : Mr.S.Parthasarathy

JUDGMENT

This second appeal is directed against the Judgement and Decree dated 02.12.2002 passed in A.S.No.32 of 2002 on the file of the Principle District Court, Vellore, reversing the Judgment and Decree dated 30.11.1998 passed in O.S.No.419 of 1994 on the file of the District Munsif Court, Vellore.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that she was the highest bidder of the Municipal Sewage farm plot No.9 on 30.03.1977 and the annual rent is Rs.7,850/- and the extent of the land announced by the Municipality was 1.55 cents. The possession was given as per the auction notice dated 11.05.1977 and after taking possession, the plaintiff came to understand that the actual extent of land is only 1.25 acres and 30 cents of land was found to be short of the actual extent announced in the auction notice and the plaintiff had made several requests by way of letters to the defendant complaining about the

shortage of 30 cents, but the defendant did not take any action to entrust 30 cents of land to the plaintiff and hence, the plaintiff is entitled to reduce the annual rent proportionately and liable to pay the rent only for 1.25 acres of land, which comes to Rs.6,330/-. In this connection, the plaintiff has filed O.S.No.846 of 1982 against the defendant for permanent injunction restraining them from evicting her from the suit property and also for mandatory injunction directing them to hand over 30 cents of land to the plaintiff and in the said suit, an advocate commissioner was appointed and in the report filed by the advocate commissioner, he has clearly mentioned that only an extent of 1.25 acres of land in Plot No.9 is in the actual possession of the plaintiff and the plaintiff also gave a proposals to the defendant that if they reduce the rent for 30 cents of land, the plaintiff would withdraw the above said suit and pay the entire arrears to the Municipality. However, the defendant did not consider the same and ultimately, the above suit was decreed in favour of the plaintiff on 19.07.1989. In the meanwhile, the defendant filed a suit against the plaintiff in O.S.No.1803 of 1982 for evicting her from the property and after contest, the said suit was dismissed. Further, the plaintiff had vacated the property on 01.04.1994 and issued the legal notice to that effect to the defendant on 28.03.1994, which was received by the defendant and the plaintiff has been in possession of the suit property from 11.05.1977 to 31.03.1994 i.e. 16 years, 10 months and 20 days and the annual rent for 1.25 acres of land is Rs.1,06,906/- and the plaintiff has paid the entire amount to the defendant as per the details given and not in arrears of rent. While so, the defendant is attempting to collect the rent arrears from the plaintiff for the entire extent of 1.55 acres of land and the above claim of the defendant is illegal and hence, the plaintiff, left with no other alternative, has come forward with the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that the plaintiff was the highest bidder of Plot No.9 of Municipal Sewage Farm for Rs.7,850/- and took possession of the suit property and accordingly, the licence period was extended periodically in favour of the plaintiff in respect of the above said sewage farm and inasmuch as the plaintiff failed to pay the arrears of rent, the defendant levied the suit against the plaintiff in O.S.No.1803 of 1982 for eviction. The allegations that the plaintiff has vacated the property on 01.04.1994 is false and the plaintiff is liable to pay the amount for the remeasured extent of 1.44 acres in plot No.9 for Rs.1,16,216/- and the allegations that the plot No.9 was lesser in extent and measured only 1.25 acres is false and denied and the plaintiff was in actually possession of plot No.9 with an extent of 1.44 acres and hence, in order to avoid the

payment of the amount due to the defendant, the plaintiff has come forward with the false suit and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A42 were marked. On the side of the defendant, DW1 was examined and no document was marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for by the plaintiff. On appeal, the first appellate Court, on an appreciation of the materials placed, was pleased to set aside the judgement and decree of the trial Court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (i) Whether the Appellate Court is right in coming to the conclusion that the lands are auctioned as per their plot number not as per their extent?

(ii) Whether the Appellate Court is right for its reasoning that the lands irrespective of their extent can be auctioned?

(iii) Whether the appellate Court is right while considering the previous suits filed by both the parties which are in favour of the appellant herein?"

9. Materials placed go to disclose that the plaintiff was declared as the highest bidder by the defendant Municipality in respect of the Municipal Sewage Farm Plot No.9 measuring an extent of 1.55 acres of land for an annual rent at Rs.7,850/-. There is no quarrel as regards the above position between the parties. The case of the plaintiff is that on taking possession of the above said farm, she had noticed that the farm comprised of an extent of only 1.25 acres of land and not 1.55 acres as put forth in the auction notice and as there was a shortage of 30 cents of land, according to the plaintiff, she had made several requests to the defendant to hand over the extent of 30 cents of land and also further according to the plaintiff, she is liable to pay the rent only for the extent of 1.25 acres of land entrusted to her by the defendant, which comes to

Rs.6,330/- according to the plaintiff and inasmuch as the defendant attempted to evict her from the property, according to the plaintiff, she has been constrained to lay the suit against the defendant in O.S.No.846 of 1982 restraining them from evicting her from the suit property and also directing them to hand over the 30 cents of land to the plaintiff as per the auction terms. It is found that the said suit ended in favour of the plaintiff and the copy of the decree has been marked as Ex.A1. Despite the above fact, it is found that the defendant has not thrown any challenge against the same and not also entrusted the 30 cents of land to the plaintiff as per the auction terms. It is further found that the suit laid by the defendant in O.S.No.1803 of 1982 for evicting the plaintiff from the property came to be dismissed, which could be evidenced from the decree copy marked as Ex.A2 and it is thus found that the Courts had already discountenanced the plea of the defendant seeking eviction of the plaintiff from the suit property.

10. Now, according to the plaintiff, inasmuch as she had been entrusted only 1.25 cents of land and on account of the continuous tussle between her and the defendant, it is her case that she had vacated the property on 01.04.1994 by informing the same to the defendant vide letter dated 28.03.1994 and the copy of the said letter has been marked as Ex.A3. The recitals of the letter had not been controverted by the defendant. Further, according to the plaintiff, calculating the rent of an extent of 1.25 acres and the period of occupation of the above said property by her from 11.05.1977 to 31.03.1994, it is stated that she had paid the rent with reference to the same amounting to Rs.1,06,906/- and the challans, with reference to the same, have come to be marked as Exs.A5 to 42. There is no quarrel about the challans marked as Exs.A5 to A42 and from the same, as determined by the trial Court, it is seen that the plaintiff has remitted the rent in respect of 1.25 acres of land for the period of occupation of the plot No.9 till 31.03.1994.

11. Now, according to the defendant, the plaintiff has not complained about any shortage of land that had been auctioned to her. However, the materials placed on record go to show that there had been complaint of shortage of land by the plaintiff from the inception and inasmuch as the defendant had failed to consider her repeated requests, it is found that the plaintiff had been forced to institute the suit in O.S.No.846 of 1982 as above mentioned and as already seen, the said suit ended in favour of the plaintiff. Despite the same, it is found that the defendant has not entrusted the 30 cents of land as per the auction terms. It is further seen that no appeal seems to have been levied, challenging the decree passed in favour of the plaintiff in O.S.No.846 of 1982 and the eviction process initiated by the defendant to evict the plaintiff from the property also ended in vein, which fact could be seen from the

decree copy passed in O.S.No.1803 of 1982 marked as Ex.A2. Even as against the same, no appeal has been preferred by the defendant.

12. Be that as it may, as per the auction terms, the plaintiff has to be handed over an extent of 1.55 acres of land and when the plaintiff had been complaining about the shortage of 30 cents from the inception and when it is found that the commissioner appointed in O.S.No.846 of 1982 has clearly mentioned about the shortage of 30 cents of land in Municipal Sewage Farm Plot No.9 auctioned to the plaintiff, the case of the defendant that there is no shortage of land in farm No.9 as given to the plaintiff as such cannot be countenanced in any manner. However, the defendant would contend that the farm No.9 given to the plaintiff measured 1.44 acres of land and accordingly, it is their case that the plaintiff should pay the rent with reference to the above said extent. So even, as per the case of the defendant, it is found that the extent of land entrusted to the plaintiff by way of auction is not 1.55 acres of land and according to them, it is 1.44 acres of land. However, when the plaintiff's case has also already been accepted by the civil Court that she has been entrusted only 1.25 acres of land and accordingly, there is decree of mandatory injunction granted in favour of the plaintiff directing the defendant to entrust the 30 cents of land to the plaintiff, it is found that the case of the defendant that the property entrusted to the plaintiff measures 1.44 acres of land as such cannot be accepted. With reference to the above case of the defendant, there is no material forthcoming. It is thus seen that the defendant having promised the plaintiff that the Municipal Sewage Farm comprised in Plot No.9 measures 1.55 acres at the time of auction and when only an extent of 1.25 acres of land had been entrusted to the plaintiff and despite the repeated complaints lodged by the plaintiff with reference to the same, the defendant having failed to entrust the 30 cents of land to the plaintiff and also failed to entrust the same, despite the decree in favour of the plaintiff as above noted and when there is no material to hold that the property entrusted to the plaintiff measured 1.44 acres of land, as rightly contended by the plaintiff's counsel, it is found that the defendant, without any basis, has been contesting the plaintiff's case with a view to extract more money from the plaintiff without any justification.

13. The first appellate Court, without assigning any reasons whatsoever and without considering the materials placed on record in the proper perspective, on the basis of the evidence of the plaintiff that she had taken possession of the auctioned property and therefore, proceeded to hold that she would have taken the possession of the entire extent of 1.55 acres of land comprised in the said plot. However, the above reasonings of

the first appellate Court for dismissing the plaintiff's action is found to be untenable and unacceptable. No doubt, the plaintiff has admitted that she had taken the auction of plot No.9, on the representation that the said plot measures an extent of 1.55 acres of land. However, on taking possession, when it is found that the said plot is short of an extent of 30 cents of land and when the same had been brought to the notice of the defendant as above discussed, it is found that the first appellate Court had, erroneously on an in proper appreciation of the materials placed on record, set aside the judgment and decree of the trial Court without assigning proper and valid reasons and in such view of the matter, in my considered opinion, the judgment and decree of the first appellate Court cannot be allowed to sustain any further.

14. The reasonings and conclusions of the first appellate Court that the lands are auctioned as per Plot numbers and not as per extent is found to be perverse and illogical and the first appellate Court has failed to take into consideration the previous litigations laid between the parties as placed on record in the proper perspective and accordingly, it is seen that without any basis and in the absence of any materials in support of the defence version and closing its eyes to the materials projected by the plaintiff deliberately, it is found that the first appellate Court has entertained the appeal preferred by the defendant and thereby, dismissed the plaintiff's suit. The reasonings and conclusions of the first appellate Court in non suiting the plaintiff are thus found to be perverse and illogical and liable to be set aside in toto. The substantial questions of law formulated in the second appeal are accordingly, answered in favour of the plaintiff and against the defendant.

In conclusion, the Judgement and Decree dated 02.12.2002 passed in A.S.No.32 of 2002 on the file of the Principal District Court, Vellore, are set aside and the Judgment and Decree dated 30.11.1998 passed in O.S.No.419 of 1994 on the file of the District Munsif Court, Vellore, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

- 1.The Principal District Judge, Vellore.
- 2.The District Munsif, Vellore.

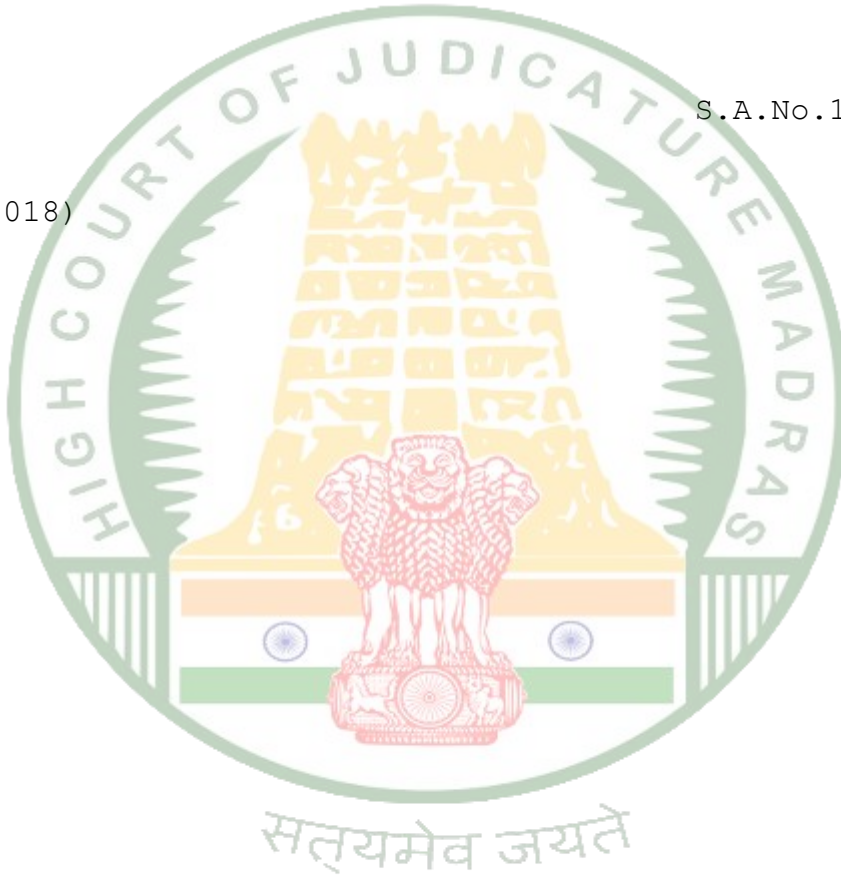
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The Section Officer, V.R.Section,
Court, Madras.(2 copies)

+1 CC to Mr.S. Parthasarathy, Advocate sr 18020.

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SP(10/04/2018)



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