

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2018

PRONOUNCED ON : 06.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1947 of 2003

M.Ramasamy

...

Appellant

Vs.

1. V.K.Ramanathan (Deceased)
2. V.P.Veerappan
3. Lakshmi
4. R.Ravi
5. R.Chandrasekaran

...

Respondents

(RR3 to 5 brought on record as LR's of the deceased R1 vide order of Court dated 26.02.2018 made in CMP.Nos.242 to 244/2015 in S.A.No.1947 of 2003)

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 27.08.2003 passed in A.S.No.156 of 2001 on the file of the Subordinate Court, Namakkal, confirming the Judgment and Decree dated 30.08.2001 passed in O.S.No.640 of 1998 on the file of the Additional District Munsif Court, Namakkal.

For Appellant : Mr.A.R.Nixon

For Respondent : Died
No.1

For Respondent : Mr.C.Jagdish
No.2

For Respondent : No appearance
Nos. 3 to 5 Set exparte
(vide order dt.20.03.2018)

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 27.08.2003 passed in A.S.No.156 of 2001 on the file of the Subordinate Court, Namakkal, confirming the Judgment and Decree dated 30.08.2001 passed in O.S.No.640 of 1998 on the file of the Additional District Munsif Court, Namakkal.

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

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that the site of the suit property belonged to the Strict Baptist Mission Society and the first defendant was managing the suit property and accordingly, the plaintiff took the suit property from the first defendant on lease during 1970 and raised a superstructure and running hotel industry and motor service station etc., and also residing in the suit property and obtained service connection and paying tax in respect of the superstructure raised by him and the lease deed had been extended and as per the lease deed dated 04.07.1980 entered into between the plaintiff and the first defendant, the plaintiff is entitled to remain the possession and enjoyment of the suit property till 30.12.1998 and while so, the defendants represented to the plaintiff that they are the owners of the suit property and directed the plaintiff to pay the rent to them, however, the defendants have no right,

title or interest in respect of the suit property and the second defendant has made a claim that he had purchased the site of the suit property and that apart, one Kannappan had also issued a notice, as if he has purchased the suit property and the plaintiff is entitled to obtain the benefits of the Madras City Tenants Protection Act in respect of the suit property and inasmuch as the defendants made attempt to trespass into the suit property by interfering with the possession and enjoyment of the plaintiff in respect of the same, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The suit site belonging to the Baptist Society and the plaintiff has taken the suit property on lease from the first defendant and as per the lease deed dated 04.07.1980, the plaintiff's tenure of lease ends on 31.12.1998 and as per the terms contained in the said lease deed, on the expiry of the lease period, the plaintiff should remove the superstructure put up on the suit property and hand over the same to the first defendant. The defendants have not interfered with the possession and enjoyment of the plaintiff during the period of the lease and the second defendant has purchased the suit property from the Baptist Society by way of a sale deed dated 15.03.1994 and the plaintiff is also aware of the same and the second defendant has also apprised his purchase of the suit property to the plaintiff and as the tenure of the plaintiff's lease had come to an end on 30.12.1998, the plaintiff, thereafter, cannot lay any claim to be in

the possession of the suit property, particularly, by denying the title of the defendants in respect of the suit property and when the plaintiff is admitting the first defendant's title and had entered into a lease in respect of the suit property, thereafter, the plaintiff is estopped from denying the title of the first defendant and from 01.01.1999, the plaintiff ceased to be the lessee of the suit property and as he has denied the title of the defendants, the plaintiff's possession and enjoyment of the suit property, thereafter, is only a wrongful possession and hence, the plaintiff is not entitled to seek the reliefs sought for in the plaint and the plaintiff is liable to pay damages to the defendants for his unlawful possession and enjoyment of the suit property from 01.01.1999 and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to A20 were marked. On the side of the defendants, DW1 was examined and Exs.B1 & B2 were examined. Exs.C1 & C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submission made, the Courts below were pleased to dismiss the plaintiff's suit. Aggrieved over the same, the present second appeal has been laid.

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

" (i). Whether both the Courts below failed to frame an issue and discuss whether that the Appellant is entitled to the benefits of Tamil Nadu City Tenants' Protection Act?

(ii). Whether both the Courts below failed to note that no legal steps were taken by the respondents to evict the Appellant from the suit property according to law?

(iii). Whether both the Courts below failed to note that the Appellant filed the suit for injunction and the Appellant is entitled to injunction since he continuous in possession of the suit property?

(iv). Whether both the Courts below erred in wrongly construing the pleadings of the appellant since the appellant denied the title of the respondents regarding the building and not regarding the land?

(v). Whether both the Courts below failed to note that the 2nd respondent did not examine the vendors or attestors to prove Ex.B1?

(vi). Whether both the Courts below failed to note that the appellant could not pay the rent since the dispute arose

regarding the site between the 2nd respondent and the Kannappan?

(vii). Whether the Courts below erred in dismissing the suit since the appellant filed the suit for injunction and he is in possession and enjoyment of the suit property?"

9. Materials placed on record go to show that the suit property, particularly, the site belonged to the Baptist Society. It is also found that accepting the first defendant's title in respect of the suit property, the plaintiff had entered into a lease arrangement with the first defendant and it is seen that as per the lease deed dated 04.07.1980, the plaintiff is entitled to be in possession and enjoyment of the suit property till 31.12.1998. The plaintiff examined as PW1 has admitted that the above said lease deed expires on 31.12.1998 and further also admitted that on the expiry of the lease period, he has to remove the superstructure put up thereon and hand over the same to the lessor. Further, according to the plaintiff, after 31.12.1998, he has not paid the rent nor endeavoured to deposit the rent in the Court and it is thus found that from 01.01.1999, the plaintiff has been squatting on the suit property without paying any rent.

10. The plaintiff has come forward with the suit on the footing that the defendants made independent claims as if they are the owners of the suit property and directed him to pay the rent to them and accordingly,

attempted to interfere with his possession and enjoyment and hence, it is stated that he has been necessitated to lay the suit. However, it is the specific case of the defendants that they had not endeavoured to disturb the plaintiff's possession and enjoyment of the suit property during the period of lease. As such it is found that the plaintiff's lease arrangement comes to an end on 31.12.1998. Though the plaintiff would claim that the defendants were making independent claims as if they are the owners of the suit property, the plaintiff examined as PW1 has admitted that the second defendant has right over the suit property and that, he is aware of the purchase of the suit property by the second defendant even six months prior to the institution of the suit. In such view of the matter, the claim of the plaintiff that the defendants made independent claims in respect of the suit property and demanded the rent to be paid to them as such cannot be accepted. When the plaintiff is fully aware that the second defendant has purchased the suit property, it is found that accordingly, as rightly argued, the plaintiff should have endeavoured to attorn the tenancy in favour of the second defendant and continued to pay the rent to the second defendant and also endeavoured to renew the lease arrangement in respect of the suit property from the second defendant from 01.01.1999. However, the plaintiff, without resorting the abovesaid course of action, instead denying the title of the defendants totally, has come forward with the case as if the defendants are attempting to interfere with the possession and enjoyment of the suit property during the period of lease. However, no material as such has been placed by the plaintiff to show that the defendants made any

attempts to disturb his possession and enjoyment of the suit property during the subsistence of the lease period. Admittedly, when the lease period had come to an end on 31.12.1998 and when it is further seen that the plaintiff's tenancy has not been extended or acknowledged by the defendants thereafter and when it is also seen that the plaintiff has not paid the rent in respect of the suit property to the defendants nor endeavoured to deposit the rent in the Court, as rightly argued, the plaintiff's possession in respect of the suit property from 01.01.1999 is unlawful and hence, thereafter, the plaintiff could only be termed as a trespasser in respect of the suit property and cannot be given any legal approval to remain in the possession and enjoyment of the suit property as the lessee thereof.

11. As rightly determined by the Courts below, the plaintiff, knowing about the purchase of the suit property by the second defendant, still proceeded to dispute his title deliberately and this would only go to show that the plaintiff is attempting to squat on the suit property endlessly without paying the rent etc., accordingly, when it is also admitted by the plaintiff that on the expiry of the lease period, he is bound to remove the superstructure put up thereon and hand over the vacant site to the owner of the suit property, particularly, when the plaintiff is found to have deliberately and wilfully disputed the title of the second defendant in respect of the suit property, knowing fully well that the second defendant has purchased the same much prior to the institution of the suit, as rightly determined by the Courts below, the

plaintiff cannot be allowed to seek the benefits of the Madras City Tenants Protection Act. Further, as above seen, there is no material placed on record worth acceptance that the defendants had made attempt to disturb the plaintiff's possession and enjoyment of the suit property during the currency of the lease period. In such view of the matter, merely because, the plaintiff has levied the suit during the period of lease that by itself would not be construed as if the defendants had made attempts to disturb his possession and enjoyment of the suit property during the tenancy of the lease period. As above seen, the case of the defendants, in specific, is that they had not made any attempt to disturb the plaintiff's possession and enjoyment of the suit property during the tenure of the lease period.

12. The lease period comes to an end on 31.12.1998, therefore, due to efflux of time, particularly, when the lease in favour of the plaintiff has not been extended by the defendants and when it is also noted that the plaintiff has not endeavoured to pay the lease to the defendants, it is found that the plaintiff's possession and enjoyment of the suit property, after 31.12.1998 is only wrongful possession and he could only be characterised as a trespasser of the suit property and nothing more than that. When it is admitted and also found that the second defendant has acquired title to the suit property and when there is no material placed on record to show that the defendants have made any attempt to disturb the plaintiff's possession and enjoyment of the suit property during the period of lease, it is found that the plaintiff cannot be allowed to squat on the

suit property after 31.12.1998 and also cannot be allowed to seek the relief of permanent injunction as against the true owner of the suit property, particularly, when there is no material placed by the plaintiff to show that the defendants had made any attempts to disturb his possession and enjoyment of the suit property during the period of lease.

13. In the light of the above position, it is found that the second defendant has become the owner of the suit property. The above fact having been admitted by the plaintiff himself and also could be evidenced from the sale deed marked as Ex.B1 and when the plaintiff has not endeavoured to pay the rent to the second defendant, despite knowing about the title of the second defendant in respect of the suit property prior to the institution of the suit and when the plaintiff has failed to establish that the defendants had made any attempt to disturb his possession during the period of lease and when it is found that the plaintiff has wilfully denied the title of the defendants, particularly, the second defendant in respect of the suit property, as rightly determined by the Courts below, the plaintiff is not entitled to obtain the benefits of the Madras City Tenants Protection Act, and also the entitlement to remain in the suit property endlessly and seek the relief of permanent injunction as against the true owner. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

14. The principles of law outlined in the decisions relied upon by the

plaintiff's counsel reported in **2000 (2) T.L.N.J.138 (Kanyakumari District Consumers Co-operative Wholesales Stores Limited NO.Y-26, Bagavathi Co-operative Super Market Buildings rep.by its President Vs. S.Parameswari), AIR 1996 BOMBAY 98 (Smt.Sarladevi Vs.Shailesh), AIR 1998 ORISSA 95 (Nabekishore Sahu and another V. M/s.East India Arms Co.,), 2010 (4) TLNJ 201 (Civil) Vijayalakshmi Vs. Raja)** as well as the decision relied upon by the defendants counsel reported in **(2009) 156 DLT 666 (Vijay Gupta Vs. Manoj Mehta)**, are taken into consideration and followed as applicable to the case at hand.

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

सत्यमेव जयते

06.04.2018

Index : Yes / No

Internet : Yes / No

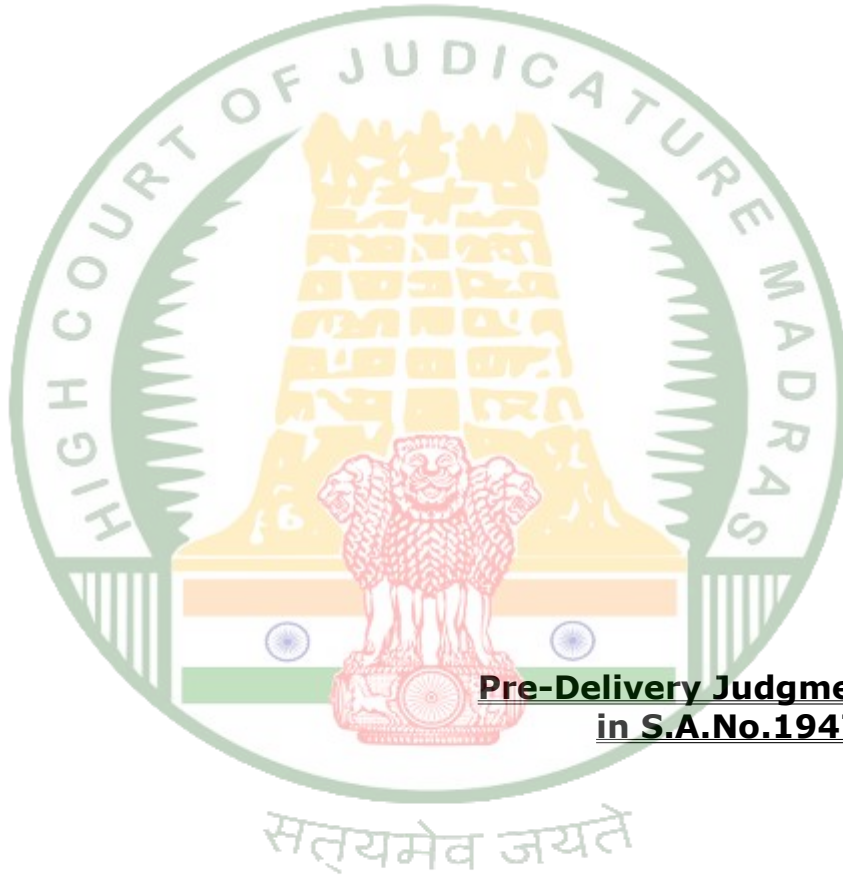
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To

1. The Subordinate Court, Namakkal.
2. The Additional District Munsif Court, Namakkal.
- 3.The Section Officer, V.R.Section, High Court, Madras.

T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1947 of 2003**

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