

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.257 of 2002

Veerasamy

...Appellant/Defendant

/Vs/

Jayathilagan

... Respondent/Plaintiff

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and Judgment dated 21.08.2001 in A.S.No.44 of 2001 on the file of the Principal District Judge, Nagapattinam, confirming the decree and judgment dated 01.02.2001 in O.S.No.252 of 1999 on the file of the District Munsif Court, Nagapattinam.

For Appellant : Mr.C.Selvaraju

For Respondent : (No appearance)

JUDGMENT

No representation for the respondent.

2. The appellant is the defendant in O.S.No.252 of 1999 on the file of the District Munsif, Nagapattinam. The respondent/Plaintiff filed the above said suit for recovery of possession of the suit property which is a shop bearing door No.23, Thittachery from the appellant/defendant.

3. The case of the respondent/plaintiff is that the appellant/defendant took the suit property on rent from one Mr.Rajesh, previous owner of the suit property for a period of 11 months from 01.03.1995 and that the monthly rent was fixed at Rs.100/-.

4. According to the respondent/plaintiff, he purchased the suit property from the said Rajesh, through a sale deed dated 04.01.1996 (Ex.A.1) and that the appellant/defendant failed to pay monthly rents to him. He therefore, issued a notice (Ex.A.2) dated 21.05.1999, calling upon the appellant/defendant to vacate the suit premises. The appellant/defendant after receiving the said notice, sent a reply (Ex.A3), which according to the respondent/plaintiff, contained false allegations. He therefore, filed a suit for recovery of possession from the

appellant/defendant.

5. The appellant/defendant filed a written statement contending that though the previous owner of the suit property had given an oral undertaking to him, to sell the suit property in his favour, he did not honour his commitment and on the contrary had sold the suit property in favour of the plaintiff. According to him, the sale deed (Ex.A.2) executed in favour of the respondent/plaintiff is not valid. He therefore, prayed for dismissal of the suit.

6. In the trial Court the following issues were framed:

1. Whether the plaintiff is entitled to recovery of possession as prayed by him?
2. Whether the plaintiff is entitled for future mense profits as prayed by him?
3. What relief the plaintiff is entitled to?

7. In the trial Court, the respondent/plaintiff examined himself and two other witnesses and marked Exs.A1 to Ex.A4. The appellant/defendant examined himself and marked Ex.B.1 and Ex.B.2. After full contest, the learned District Munsif, Nagapattinam decreed the suit and directed the appellant/defendant to vacate the suit premises, within a period of three months from the date of the decree.

8. Aggrieved over the same, the appellant/defendant filed an appeal in A.S.No.44 of 2001 before the Principal District Judge, Nagapattinam. The learned Principal District Judge, after analysing the evidence on record upheld the findings of the learned District Munsif, Nagapattinam.

9. Now, the defendant has filed the present second appeal. The following substantial questions of law arise for consideration:-

- i) Whether the judgment of the Courts below are valid in the absence of any valid attornment of tenancy in favour of the respondent?
- ii) Whether the undated termination notice terminating the tenancy is valid under Section 106 of the Transfer of Property Act?
- iii) In the absence of any valid notice, when there is dispute over the nature of tenancy as to whether it is monthly or annual, whether the plaintiff is entitled to recover the possession without seeking ejectment or eviction from the premises?

10. At the outset, it may be observed that the appellant admitted that he is a tenant in the suit premises. He in fact entered into a tenancy agreement with one Rajesh, the previous owner of the suit premises on a monthly rent of Rs.100/-. The appellant was running a tea stall in the suit property. The specific contention of the appellant/defendant is that though Mr.Rajesh promised to sell the suit property in his favour, he did not keep up the promise and sold the suit property in favour of the respondent/plaintiff. He had therefore, contended that the sale deed executed by Mr.Rajesh in favour of the plaintiff is not valid.

11. Mr.C.Selvaraju, the learned counsel appearing for the appellant would contend that the undertaking given by the previous owner Mr.Rajesh was not in writing and it was an oral agreement.

12. The questions of law raised at the time of admitting the second appeal are in fact questions of fact. When the PW1 himself admitted in his evidence that he was paying monthly rent of Rs.100/-, there is no dispute whether the tenancy is monthly or annual. A perusal of the notice (Ex.A2) dated 21.05.1999 also clearly shows that it is a valid notice of termination and in fact, the date of termination is clearly indicated as 30.06.1999. Thus, 15 days time is clearly given through Ex.A2. The first appellate court has also observed thus.

"Now, this court has to decide whether Ex.A1 is valid?. It is admitted by both sides that the suit property was originally owned by Rajesh's grandfather and Subbiah Mudaliar. After the death of Subbaiah Mudaliar, his son Dr.Srinivasan succeeded the property. After that, PW2 succeeded the property. The defendant is a tenant and paid the rent to his grandfather Subbiah Mudaliar. In the circumstances, the learned respondent's counsel has stated that Rajesh has every right to sell and alienate the property. There is no undertaking. While considering the evidence of PW2 and DW1, this court concludes that the appellant has no right to question Ex.A1. He is not party to the document. He has no interest in the property. In the circumstances, this court concludes that Ex.A1 is true and genuine document. Plaint No.2 is answered accordingly."

This observation of the first appellate court is based on well established principles of law.

13. As far as attornment of tenancy is concerned, it is not the case of the appellant/defendant that he has been paying rents to the previous owner. In fact, the trial court after

scrutinizing the oral evidence adduced on both sides, has come to the conclusion that the appellant/defendant is squatting over the suit property without paying rents. The appellant has not also approached this court with clean hands.

14. Both the Courts below have concurrently held that the sale executed by Mr.Rajesh in favour of the plaintiff is valid and that the appellant/defendant is only a tenant and he cannot attack the sale deed (Ex.A.1). The observation made by both the Courts below, cannot be faulted with.

15. A perusal of the records shows that the respondent/plaintiff had issued a notice dated 21.05.1999 (Ex.A2) terminating the tenancy and both the Courts below have concurrently held that Ex.A.2 is a valid notice. All the observations made by the Courts below are based on facts and I therefore, do not see any reason to interfere with the findings of both the Courts below and hence, the Second Appeal is dismissed.

16. In the result,

i) The Second Appeal is dismissed. No costs.

ii) The decree and Judgment dated 21.08.2001 in A.S.No.44 of 2001 on the file of the Principal District Judge, Nagapattinam, confirming the decree and judgment dated 01.02.2001 in O.S.No.252 of 1999 on the file of the District Munsif Court, Nagapattinam, is upheld.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vkr/dna
To

1. The Principal District Judge, Nagapattinam.

2. The District Munsif Court, Nagapattinam.

3. The Section officer
VR Section, High Court, Madras 104.

+1 CC to M/s.C.S. Associates sr 63990.

S.A.No.257 of 2002

SJ(CO)
SP(02/11/2018)