

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.862 of 2002

- 1.Rajavel
- 2.Palanikumar

... Appellants/defendants 2& 3

Vs.

1. Ramakrishnan(Died)
2. R.Sekar ...2nd Respondent/1st Defendant
3. M.Chamundeswari
4. Varalakshmi @ Sathyabama
5. Vijayagopal ...Respondents 3 to 5/
Lrs of Plaintiff

(RR3 to 5 are brought on record as legal heirs of the deceased first respondent vide order of Court dated 24.03.2009 made in C.M.P.No1480 of 2008 in S.A.No.862 of 2002) ...Respondents

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C. to set aside the Judgment and Decree dated 21.02.2002 in A.S.No.148/2000 on the file of VI Addl. City Civil Court, Madras and confirm the Judgment and Decree of the trial Court dated 22.03.1995 in O.S.No.3946/91 on the file of III Asst. City Civil Court, Madras.

For Appellants : Mr.M.V.Balakrishnan
For Respondents: Mr.P.Sankaranarayanan

J U D G M E N T

The unauthorised tenant has filed this appeal who had lost the case before the Lower Appellate Court. For better appreciation, the case of the plaintiff, who arrayed as a first respondent herein is as follows:

The plaintiff/first respondent, the owner of eastern half of Plot No.89, (Door No.33), Rettai Kulli Street, Appaswamy Pillai Garden, Madras 600 021. The aforesaid land is one of the items, which was about four grounds allotted to his share in partition suit C.S.No.40 of 1981 on the file of this Court.

2.The first defendant was a tenant in respect of the schedule mentioned land on a monthly rent of Rs.100/-per month, the tenancy being monthly one according to English Calender commencing from the first of every month.

3.The first defendant paid the rents for the schedule mentioned lands upto October, 1989 and thereafter failed and neglected to pay the monthly rents. Hence, legal notice for terminating his tenancy from 30.04.1990 was sent to him on 14.03.1990 which was acknowledged by him on 20.03.1990. The arrears of rent from 01.11.1989 to 30.04.1990 was due and liable from the first defendant, amount to Rs.600/- and he was also liable to pay damages for use and occupation at Rs.25/- per day from 01.05.1990 till the date of plaint i.e. Rs.5,850/- and till the date of delivery of the vacant possession of the schedule mentioned land.

4.The first defendant unauthorisedly subletting the schedule mentioned land to the second and third defendants, the proprietors of T.P.S.Mani & Co. On 11.03.1985, a legal notice was sent to the second and third defendants regarding the unauthorised subletting the property, the same was also acknowledged by the defendants. No reply was sent to the legal notice sent to the second and third defendants as well as to the termination notice dated 14.03.1990 sent to the first defendant. The plaintiffs further averred that the first defendant was liable to quit and deliver the vacant possession of the schedule mentioned land along with his sub-tenants and the second and third defendants should remove all the unauthorised constructions and the first defendant was not entitled to any protection under any statute, namely Madras City Tenant Protection Act.

5.The first defendant in his written statement has stated as follows:

The first defendant's father was the tenant in respect of eight grounds of land in Survey No.3734/1, Plot No.89 in Door No.33, Erattakuzhi Street, Madras 600 021 from one Perundevi Ammal. This defendant's father has constructed a superstructure and enjoyed the property along with leasehold right of land. The suit property forms eastern half of the said property. After the death of his father on 05.03.1979, his legal heirs succeeded to the leasehold right of the land and superstructure constructed thereunder.

6.The legal heirs are 1.Andalammal-first wife, 2.Chinnapapammal-second wife, 3.Selvarani-daughter, 4.R.Sekar @ R.Dhanasekar-son (1st defendant herein), 5.R.Koteeswaran-son and 6.Rajakumari-daughter.

7.For the sake of convenience, the rent was collected from the first defendant. Since all the above legal representatives had right in the suit property, they were also proper and necessary parties in the present suit.

8.Only with the consent of the original lessee namely Perundevi Ammal, the superstructure and the leasehold right of the land was subletted to the second and third defendants. The plaintiffs were fully aware of the fact when the property was allotted to him and the same was not objected by the plaintiffs at any point of time.

9.On 03.08.1987, the first defendant along with other legal heirs of deceased Rajarathinam Mudaliar entered into an agreement for the sale of leasehold right of the land along with superstructure in the entire extent of eight grounds to the second and third defendants. The fact was also informed to the plaintiffs for which also he never had objections for the sale but the plaintiffs insisted upon the enhanced rent for the land which was agreed upon by the second and third defendants once the sale transaction completed, but the same could not be effected. Immediately the plaintiffs issued notice on 14.03.1990. The first defendant approached the first respondent and informed that the enhanced rent would be paid as soon as the sale is completed. The plaintiffs assured that no action would be initiated against the first defendant.

10.On 19.11.1991, the first defendant along with other legal heirs sold the leasehold right of eight grounds of land along with superstructure in R.S.No.3734/1 in premises No.33, Erattakuzhi Street, Madras 600 021 which includes suit property to the second and third defendants, through registered document No.2235/91 in the office of Sub Registrar, Royapuram. In pursuance of the said sale deed, these defendants have become the tenants of the land for 8 grounds. In the meantime, the plaintiffs filed the above suit but promised to withdraw the same when the enhanced rent was settled. Hence, the second and third defendants were entitled for protection under the Madras City Tenants Protection Act, 1921 and as per Section 9 of the said Act, the plaintiffs were bound to sell the suit land to these defendants and there is no unauthorised subletting as alleged by the plaintiffs. The plaintiffs is not entitled for any relief as claimed in the plaint.

11.Thereafter, the suit was contested before the Lower Court. However, the Lower Court dismissed the suit on the ground of non-joinder of necessary parties and the tenancy agreement held between the first defendant and the second and third defendants based on the evidence and oral acceptance of the sublet agreement in between the first, second and third defendants.

12.Aggrrieved by the same, the respondents / plaintiffs have filed an appeal before the Lower Appellate Court. The Lower Appellate Court had decreed the suit and granted the relief as sought in the plaint. Aggrrieved by the same, the present second appeal has been filed by the second and third defendants are before this Court.

13.At the time of entertaining this second appeal, this Court has framed the following substantial questions of law:

1.Whether the certificate issued by the concerned banker under Ex.B3 confirming the payment of the money covered by the demand drafts sent as rents, by the appellants herein and the clearance in favour of the plaintiff - landlord has no legal validity and can still be disbelieved thereby denying benefits under the concerned statute for the appellants - defendants 2 and 3?

2.Whether the 1st Appellate Court below is justified in disposing of the 1st appeal ignoring the pendency of statutory application I.A.No.9895/92 filed under Section 9 of the City Tenants' Protection Act?

3.Whether such lapses indicate lack of application of mind especially since the statutory rights of the parties under the beneficial legislation City Tenants' Protection Act are involved?

14.The learned counsel appearing for the appellants would submit that as per Ex.B1, the first defendant's father, namely Rajarathinam Mudaliar, executed a leasehold rights in favour of the second and third defendants, the proprietors of T.P.S.Mani & Co. The appellants and defendants 2 and 3 have entered into a valid tenancy agreement with the first defendant's father and thereafter, the defendants have sent a sum of Rs.300/- towards the rent of suit schedule property to the plaintiffs. In order to substantiate the payment of rent in favour of the plaintiffs/respondents through Ex.B3, the Bankers Certificate issued by the Manager, UCO Bank, and copy of letter marked as Ex.B2. The Manager of the Bank certified that the cheque bearing No.139929 dated 25.06.1987 for a sum of Rs.300/-favouring Mr.Ramakrishnan and cheque bearing No.139930 dated 25.06.1987 favouring Ananathapadmanaban were purchased by M/s. T.P.S.Mani & Co., and paid by the bank on 04.08.1987 and 15.10.1987 respectively and other related documents would go to show two documents viz., Exs.B4 and B5 with regard to sale agreement with the first defendant and purchase of the superstructure and the leasehold property from the legal heirs of the first defendant. The said documents are also marked in order to substantiate that the defendants 2 and 3 are lawfully leasehold purchaser of the property. It is to be perused as to whether the first defendant's father got a right from Perundevi Ammal, who is the mother of the plaintiffs. The lower appellate court, without considering all these things and without giving protection under the City Tenants' Protection Act decreed the suit in favour of the plaintiffs. On the other hand, the lower appellate court has failed to note that there was a case

tenancy from the plaintiffs through Exs.B2 and B3 and the plaintiffs accepted the payment of rent from the defendants 2 and 3 through the payment of rent as well as Bankers Statement in the year 1987 after issuance of the first notice in the year, 1985. However, learned counsel appearing for the appellants fairly conceded that there is no document to show that the tenancy agreement and leasehold right were entered into between first defendant's father and Perundevi Ammal. But, the other documents and presumption is in favour of the defendants and the same was established through Exs.B1 to B3. Since the plaintiffs did not object the purchase of the superstructure by receiving the amount from the legalheirs of Rajarathinam, it is binding on him and the plaintiffs accepted the tenancy by receiving the rent from the defendants and it is binding on him. Accordingly, the plaintiffs are not entitled to the decree of recovery of possession. He further adds that without invoking the City Tenancy Protection Act, filing the suit for recovery of possession, is not maintainable and subsequent to the suit, the defendants filed a Section 9 Application before the lower court and decreeing the suit pending Section 9 application, is null and void.

15. Per contra, learned counsel for the respondents/plaintiffs would submit that originally Rajarathinam Mudaliar entered into a lease agreement with the plaintiffs' mother - Perundevi Ammal. Since the litigation is pending between the legalheirs of Perundevi Ammal, the legalheirs could not concentrate on the rental income and the violation of the rental agreement after settlement of the issue in between the legalheirs through C.S.No.40/1981 in respect of the property, they entered into a compromise memo. On 14.09.1983, by virtue of a compromise decree, half portion of the property i.e, four grounds was allotted in favour of the plaintiffs. Thereafter, the plaintiffs took steps to secure the property from the unauthorised persons. These plaintiffs came to know that the Rajarathinam Mudaliar originally was a lessee and his legalheirs sub-letted the property in violation of the leasehold agreement/EX.A1. Thereafter, the plaintiffs issued a legal notice through lawyer initially in the year 1985, which was marked as Ex.A1. The acknowledgement was also marked as Ex.A2. Even then, the plaintiffs have not vacated the suit premises and have not paid the rent. He issued another lawyer notice on 14.03.1990 calling upon the defendants to vacate the premises and handedover the vacant portion. However, these appellants/defendants have not replied to the legal notice sent by the plaintiffs. However, the first defendant replied the legal notice on 21.07.1986 which was marked as Ex.A6.

16. On perusal of Ex.A6, the first defendant admitted that he was a tenant under the plaintiffs in respect of the land in eastern half of Plot No.89, (Door No.33), Rettai Kulli Street, Appaswamy Pillai Garden, Madras 600 021 on a monthly rent of

Rs.100/- and includes the Pay Order of Rs.1700/- drawn on UCO Bank, Madras on 18.07.1986. In the reply notice, the first defendant did not state anything of sub-letting of the property in favour of the defendants 2 and 3 and he has not disclosed to the other legal heirs that Rajarathinam Mudaliar is having lease hold right in the suit schedule property.

17. In the absence of any relevant documents with regard to the sublet, the statement that the legal heirs have lease hold right over the property and the entire story created by the defendants 2 and 3, is not acceptable. As per Ex.A6, he claimed only tenancy right with the plaintiffs and he did not disclose the rights of other legalheirs in respect of the sub-let of the property.

18. Learned counsel for the respondents/plaintiffs further contended that the suit is filed on 20.12.1990 in order to secure the rights of the plaintiffs. Though the first defendant and his legalheirs do not have the right to alienate the superstructure and the leasehold right in favour of defendants 2 and 3, in order to deprive the rights of the plaintiffs, they executed a sale deed in favour of the defendants 2 and 3 which is not binding on the plaintiffs. When the first defendant has no right to construct the superstructure and the same is not constructed with the consent of the original owner, the first defendant has no right to sublet and to execute the sale deed in favour of the defendants 2 and 3.

19. The lower appellate court after considering the documents marked by the plaintiffs as well as the defendants had arrived at a conclusion that the plaintiffs/respondents are entitled to the decree of recovery of possession.

20. Learned counsel appearing for the respondents/plaintiffs further contended that in the absence of any valid tenancy agreement between the parties invariably the beneficial legislation in favour of the appellants does not arise and subsequent petition with regard to Section 9 Application under the City Tenant Protection Act is not binding on the plaintiffs.

21. Heard the learned counsel appearing for appellants as well as for the respondents.

22. The points for consideration before this court are as follows:

Whether the defendants 2 and 3 have a valid tenancy agreement either from the original owner or from the first defendant. In the present case, no document was filed to show that the first defendant has entered into tenancy agreement with the Perundevi Ammal. It is an admitted case of the plaintiffs as well as the appellants that the first defendant have the leasehold right of 8 grounds for reasoning included in

the suit schedule property. Though the lease is expired much earlier, due to litigation, the first defendant has continued with the leasehold rights. On completion of legal battle between the legal heirs of Perundevi Ammal, the plaintiffs were allotted the present suit schedule property. Thereafter, the plaintiffs had taken steps to vacate the premises. Accordingly, they sent a notice and the appellants/defendants did not mark any document to show that the superstructure was constructed by Rajarathinam Mudaliar with the consent of Perundevi Ammal. In the absence of any documents of superstructure showing that it was constructed by Rajarathinam Mudaliar and the same was executed in favour of the appellants, is not binding on the plaintiffs. It is further admitted that the plaintiffs issued a legal notice between the years 1985 and 1990. The appellants/defendants purchased the superstructure only after filing of the suit. When that being so, the leasehold agreement executed by the legal heirs of Rajarathinam Mudaliar in favour of the appellants/defendants is not binding on the plaintiffs. The sole claim is with regard to the tenancy right with Rajarathinam Mudaliar and the appellant marked Ex.B1-the rental advance receipt issued by Rajarathinam Mudaliar on 12.08.1970. The rental receipt issued by the lessee are not binding on the plaintiffs.

23. Interestingly, on perusal of Ex.A6, which was sent by first defendant, the legal heirs of Rajarathinam Mudaliar stated to the plaintiffs that they have admitted that they are the tenants and they did not disclose any sub-letting with regard to claiming of ownership to the superstructure. On 21.07.86, after first lawyer notice, the said letter was sent by the first defendant.

24. On perusal of the Ex.B1, it is seen that no witnesses signed in the documents. However, Rajarathinam Mudaliar's name appears in the stamp receipt. In order to substantiate the said documents, it was accepted by Rajarathinam Mudaliar. The defendants have not taken any steps to mark the other documents and rental advance receipt issued by Rajarathinam Mudaliar dated 12.08.1970. Accordingly, the lower appellate court has arrived at a fair conclusion that Ex.B1 is not executed by the Rajarathinam Mudaliar and the same was not accepted by the plaintiffs since Ex.B1 marked by the defendants. It is for the defendants to prove the Ex.B7-signature of Rajarathinam Mudaliar and the same is not established by the appellants.

25. The appellants in order to substantiate the tenancy right, marked Ex.B3 with regard to payment of rent in favour of plaintiffs through Demand Draft in order to substantiate the landlord and tenants relationship. These appellants vehemently relied on Ex.B3 as well as Ex.B4. Through Ex.B4 certificate which was issued by the UCO Bank Manager certifying that the

payment was made in favour of one Ramakrishnan and Ananthapadmanabhan, the cheque was purchased by the appellant company. However, the certificate dated 16.02.1995 did not disclose whether the payment was made to the plaintiffs or not and the defendants/appellants did not take any steps to examine the Manager as their evidence and not established the rent paid to the plaintiffs. In the absence of such proof, the lower appellate court has arrived at a conclusion that Exs.B2 and B3 is not acceptable one. Accordingly, this did not find any landlord-tenant relationship between the appellants and the plaintiffs. Therefore, the benefit of beneficial legislation extending to the appellants does not arise and Section 9 Application filed by the defendants was only subsequent to the filing of the suit. When there is no relationship with regard to landlord and tenant, extending the benefit of beneficial legislation in favour of appellants does not arise and the subsequent Section 9 Application is not binding on the plaintiffs. Accordingly, this court did not see any merits in the appeal filed by the appellants and did not call for any interference with the Judgment and decree of the lower appellate court. Accordingly, the substantial questions of law is answered against the appellants.

In the result, the Second Appeal is dismissed and the order or the lower appellate court is confirmed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kas/gv
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City Civil Court, Madras

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