

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.581 of 2018

&

C.M.P.No.17452 of 2018

K.V.Jayachandran (Deceased)

1.K.V.Govindarajulu

2.K.J.Ramaniammal

3.K.J.Sridhar

4.A.Lalitha

5.K.J.Jagadeesh ... Appellants/Appellants/Defendant No.5 &
LRS of Decree/ Defendant

Vs

1.Arulmighu Kasi Viswanatha Temple,
Represented by its Trustee,
Kanniammal (deceased),

2.A.Vinayagam

3.A.Viswanathan

4.K.A.Natarajan

5.Mrs.T.S.Visalakshmi

6.Mrs.Parvarthavardhini

7.Mrs.Saraswathi

8.Mrs.V.Santhanalakshmi

D.C.Mohana (deceased) ... R1 to R8/Plaintiffs

9.Mrs.P.Kothainayaki

10.Mrs.J.Roopavathi

11.Mr.Somasundaram ... R9 to R11/Defendants 3,4 & 6

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.32 of 2010 on the file of the learned III Additional Judge, City Civil Court, Chennai dated 05.09.2017 confirming the Judgment and Decree made in O.S.No.1856 of 2000 on the file of the III Assistant Judge, City Civil Court, Chennai dated 01.08.2008.

For Appellants : Mr.G.Mohanarangan

O R D E R

The defendants are the appellants before this Court challenging the Judgment and Decree in A.S.No.32 of 2010 of the learned III Additional City Civil Judge, Chennai confirming the Judgment and Decree of the learned III Assistant City Civil Judge, Chennai in O.S.No.1856 of 2000. Parties are arrayed in the same rank as in the suit.

2.Plaintiff's Case:

2.1.The suit O.S.No.1856 of 2000 had been filed by the plaintiff Devasthanam against the appellants herein for payment of a sum of Rs.31,000/- land rent from 01.07.1982 to 31.12.2000 together with interest at 12% per annum from the date of plaint till date of realisation and for recovery of possession of the suit schedule property.

2.2.The land belongs to the plaintiff and which was taken on lease by T.V.Natarajan and he was paying the land rent. He had put up a superstructure. The said T.V.Natarajan had thereafter without the permission of the plaintiff sold the superstructure to one Jayalakshmi Ammal mother of defendants 1 to 5 on 07.10.1968. The said T.V.Natarajan has not paid land rent and the plaintiff had filed suits for arrears of rent and had obtained decrees.

2.3.It is seen that after the death of Jayalakshmi Ammal, the defendants 1 to 5 are in possession of the superstructure as her legal heirs and they are liable to pay land rent. It was also the case of the plaintiff that the defendants 1 to 5 had approached plaintiff and informed that they would pay arrears of land rent and continue to pay a monthly rental of Rs.1,000/- from 01.07.1997. Defendants 1 to 5 have let out the property to the 6th defendant and they are no longer in possession of the superstructure. This dis-entitled them to claim any benefit under the Tamil Nadu City Tenants Protection Act. The plaintiff had come to understand that the defendants are trying to alienate the property. However, the plaintiff had issued the legal notice dated 10.12.1999 calling upon the defendants to pay the arrears of land rent from 01.07.1982 to 30.11.1999 amounting to sum of Rs.69,077.50/- and the lease was also terminated and the plaintiff called upon the defendants to deliver vacant possession of the suit property. The notice was received by the defendants 1 to 4 and 6 and the plaintiff thereafter filed the above suit.

3. Written Statement of the 2nd defendant:

3.1. Defendant would submit that since the defendants were paying the land tax and other outgoings payable the plaintiff had no right to direct them to deliver possession. However, since he is in occupation of the property for over 50 years he ultimately gets right to claim ownership of the land in which his buildings are put up and is ready to purchase the land.

3.2. Defendant also submits that since they are in occupation of the property for over 50 years they had obtained ownership over the said lands. They have also pleaded "resjudicata" since, the Judgment and Decree in O.S.No.1600 of 1968 on the file of the City Civil Judge, Chennai decreed in favour of the defendants and the appeal suit No.326 of 1971 was also dismissed in favour of the defendants.

4. Written statement of defendants 1, 3 and 5:

Defendants 1, 3 and 5 would contend that their mother Jayalakshmi Ammal had purchased superstructure from T.V.Natarajan on 07.10.1968 for a valid sale consideration. They have also denied non payment of rent by T.V.Natarajan. It was their case that after the death of the mother on 06.04.1981 the defendants' father was paying the rents regularly to the Devasthanam till May, 1990. They had sought for the Protection under the Tamil Nadu City Tenants Protection Act, this was followed by another additional written statement by defendants 2 and 5 where they had raised two issues namely the identity of the property and locus of the person suing on behalf of the plaintiff.

5. Trial Court:

The learned III Assistant Judge, City Civil Court, Chennai by her Judgment and Decree dated 01.08.2008 was pleased to decree the suit as prayed for. As against the said Judgment and Decree the appellants have preferred A.S.No.32 of 2010, the III Additional Judge, City Civil Court, Chennai and by Judgement dated 05.09.2010 was pleased to dismiss the appeal and confirmed the order passed by the Trial Court Judge. The learned Appellant Judge has rightly held that the defendants cannot raise the issues of estoppel especially they themselves have admitted that they are tenants in respect of the land alone. The Lower Court has held that the subject matter of the earlier suit was different from the subject matter involved in the present suit and hence therefore, the issue of 'resjudicata' would not arise. The Lower Court further went on to held that since the defendants had alienated the property subject matter

of the petition Section 9 of the Tamil Nadu City Tenants Protection Act they were not entitled to its benefits. Consequently, the appeal was dismissed. Challenging the same the appellant is before this Court.

6.Heard, Mr.G.Mohanarangan, learned counsel for the appellants. The only ground that they would raise is that under Section 34(b) of the HR and CE Act the suit is bad in law since the Civil Court's Jurisdiction has been barred. It is pertinent to mention that the suit filed is one for arrears of rent and for recovery of possession.

7.It is seen that the suit itself has been initiated only on the fact that the defendants and their predecessors title have been in arrears of rent from 01.07.1982 to date. Though initially the defendants contended that the land rents was paid to Devasthanam, in their additional written statement they had contradicted the said claim. They have also set up a plea of independent title.

8.I find no Substantial Questions of Law for admitting the Second Appeal.

Consequently, the Second Appeal is dismissed and the connected Civil Miscellaneous Petition is also closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The III Additional Judge,
City Civil Court,
Chennai

2.The III Assistant Judge,
City Civil Court,
Chennai.

+1cc to Mr.G.Mohanarangan, Advocate sr.79003

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srg 22/01/2019