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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.08.2019

PRONOUNCED ON : 30.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

A.S.No.737 of 2005
and
C.M.P. No.3900 of 2017

B.A.Chandrasekhara Setty ... Appellant/2nd Defendant

Vs.

1. Punjab National Bank,
rep. by its Branch Manager,
Taylors Road, Chennai - 10. ...1st Respondent/Plaintiff

2. K.Vasanth,
AJ.14, Anna Nagar,
Chennai - 600 040.

3. M/s. Rajparis Civil,
Construction Pvt. Ltd.,
162/B, Greams Lane,
Chennai - 600 006.

... Respondents 2 and 3 /
Defendants 1 & 3

Prayer: Appeal Suit filed under Section 96 r/w order 41 Rule 1 of Civil Procedure Code as against the judgment and decree dated 31.01.2005 made in O.S.No.14237/1996 on the file of the Additional District Judge & Sessions Judge, Fast Track Court - I, Chennai.

For Appellant : Mr.M.S.Krishnan Senior Counsel for
M/s.Sarvabhauman and Associates

For R1 : Mr. M.L.Ganesh

For R2 : Dismissed vide order dated 24.01.2012

For R3 : Mr. P.B.Balaji



JUDGMENT

Aggrieved over the judgment and decree dated 31.01.2005, passed in O.S.No.14237/1996, on the file of the Additional District Judge & Sessions Judge, Fast Track Court - I, Chennai, the second defendant has preferred the First Appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for specific performance, possession and damages.

4. The case of the plaintiff, in brief, is that the plaintiff has been a lessee in respect of the 3800sq.ft. in the ground and first floor in the premises bearing No.74, New Avadi Road, Kilpauk, Madras - 10, from 1981 under the first defendant and the plaintiff became the tenant in respect of the said premises by way of the lease agreement dated 16.12.1981 and the rent fixed for the said premises is Rs.7,600/- per month and the plaintiff has paid a sum of Rs.22,800/- as advance and the period of lease was fixed at 5 years and the lease was renewed from time to time. In or about April 1991, the first defendant approached the plaintiff with an intention to develop the property, renovate and reconstruct the building and the plaintiff accepted to the same and the plaintiff's office was shifted from the rear to the front portion measuring about 1000 sq. ft. The plaintiff surrendered the rear portion so that the first defendant could develop the property and it was agreed that the first defendant would convert the existing building into a multi-storeyed building which was including a ground floor having a carpet area with a strong room and spacious hall and the same would be handed over to the plaintiff within 24 months from the date of agreement and the plaintiff would pay a rent of Rs.12,000/- per month. The terms and conditions were reduced to writing by way of an agreement dated 10.05.1991 and the plaintiff and the first defendant and the third defendant accepted the same and signed the agreement and it was agreed that in case the first defendant defaulted in completing the transaction within the stipulated period, he should pay a penalty of Rs.12,000/- for every month's delay and the third defendant gave an undertaking to complete the transaction of 3000 sq.ft. carpet area and give it back to the plaintiff within the agreed period. In part performance of the agreement, the plaintiff, who had already been in occupation of the premises, vacated the rear portion measuring about 2800 sq.ft. and handed over the same to the defendants 1 and 3 on 10.05.1991 and



WEB GATES

occupied the front portion by paying the agreed rent and the portion occupied by the plaintiff is only 1000 sq.ft. The plaintiff developed goodwill in their business on account of their long occupation of the premises and while so, the plaintiff was shocked to receive a letter from the second defendant dated 31.07.1993, stating that the second defendant had purchased the entire ground floor from the first defendant as per the sale deed dated 01.07.1993. Since then, it is the second defendant who had recognised the plaintiff as his tenant and received the rent. As per the agreement dated 10.05.1991, the plaintiff is always ready and willing to specifically perform its part, of which the second defendant must be deemed to have had notice and in fact has had notice. The second defendant as the transferee is bound by the terms of the lease agreement and as the transferor namely, the first defendant, both are liable to enforce the agreement dated 10.05.1991. The plaintiff had sent letters to the second defendant to hand over the possession of the premises as per the agreement and the defendants failing to comply with the plaintiff's requests, the plaintiff issued a legal notice on 17.03.1996 and to the same the second defendant sent a letter requesting the plaintiff to vacate the premises. The plaintiff is in occupation of the premises in part performance of the contract dated 10.05.1991 and entitled to continue in possession as lessee by obtaining the regular lease deed from the second defendant. As per the terms of agreement dated 10.05.1991, the defendants are estopped from acting against the agreement dated 10.05.1991 and hence, the plaintiff has been necessitated to lay the suit against the defendants for appropriate reliefs.

5. The second defendant resisted the plaintiff's suit contending that the suit is not maintainable either in law or on facts and the second defendant purchased the undivided interest of the vacant land in premises No.15, New Avadi road, Kilpauk, Chennai - 600 010 and entered into a separate agreement for construction of 3800 sq.ft. of ground floor and 468 sq.ft. of basement floor and she was delivered the possession of the abovesaid portion after construction and the plaintiff was in the occupation of the rear portion and the so called agreement between the plaintiff and the defendants 1 and 3 is not valid and binding on the second defendant. The plaintiff is not entitled to enforce the agreement as the second defendant is not aware of the earlier lease entered into between the plaintiff and the first defendant. At the time of the purchase of the property, the plaintiff was occupying the portion of the ground floor and it is incorrect to state that in pursuance of some arrangement, the plaintiff vacated the rear portion and occupied the front portion. The case of the plaintiff that it has earned goodwill on account of their long occupation of the premises is denied. The agreement dated 10.05.1991 is not valid and binding



on the second defendant and it is false to state that the plaintiff has been always ready and willing to perform its part of the contract. The plaintiff is not in the possession of the premises by virtue of the so called arrangement dated 10.05.1991 and the plaintiff cannot claim any right of tenancy on the basis of the agreement dated 10.05.1991 and also not entitled to claim damages as put forth in the plaint. There is no estoppel on the part of the second defendant in demanding possession of the premises from the plaintiff. The plaintiff has no cause of action to lay the suit and therefore, the suit is liable to be dismissed.

6. The third defendant resisted the plaintiff's suit contending that the third defendant entered into the agreement with the first defendant for developing the property and the said agreement is purely between the first and the third defendant and does not confer any right on the plaintiff to maintain the claim for specific performance as prayed for. There is no delay on the part of the third defendant in completing the sale transaction and handing over the possession to the first defendant and thereafter, it is for the first defendant to decide to whom the property should be leased out and the third defendant has no say over the said matter. It is false to state that the third defendant gave an undertaking to complete the transaction of 3800 sq.ft. and handover the same to the plaintiff within 24 months. The third defendant is bound to complete the transaction and hand over the possession only to the owner and not to the plaintiff. The third defendant has completed his part of the contract and handed over the possession to the first defendant and hence, the plaintiff is not entitled to maintain the suit against the third defendant and the third defendant cannot be blamed for the first defendant selling the property to the second defendant and there is no estoppel on the part of the third defendant as put forth in the plaint and the plaintiff has no cause of action to maintain the suit and the suit is liable to be dismissed.

7. On the basis of the abovesaid pleas, the following issues were framed by the trial Court for consideration:

1. Whether the plaintiff is entitled to obtain the relief of mandatory injunction as claimed?
2. Whether the plaintiff is entitled to obtain the relief of possession as claimed?
3. Whether the plaintiff is entitled to claim damages as prayed for?



4. To what relief the plaintiff is entitled to?

8. In support of the plaintiff's case, PW1 was examined, Exs.A1 to A9 were marked. On the side of the defendants, DWS 1 and 2 were examined, Exs.B1 and B2 were marked.

9. 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 in favour of the plaintiff as prayed for as against the defendants 1 and 2 and dismissed the plaintiff's suit against the third defendant without costs. Impugning the same, the first appeal has been preferred by the second defendant.

10. The following points arises for determination in the First Appeal:

1. Whether the agreement dated 10.05.1991 is true, valid and binding upon the second defendant?

2. Whether the plaintiff is entitled to enforce the agreement dated 10.05.1991 as claimed in the plaint?

3. Whether the plaintiff is entitled to recover the possession of the property as put forth in the plaint?

4. Whether the plaintiff is entitled to claim damages from the defendants as prayed for?

5. To what relief the plaintiff is entitled to ?

6. To what relief the second defendant/appellant is entitled to?

Point Nos. 1 to 4:

11. From the materials placed on record, it is found that the plaintiff has been the tenant of the suit premises under the first defendant. It is found that with a view to enable the first defendant to develop the property, the plaintiff bank had agreed to shift the office from the rear portion to the front portion and occupied a space of 1000 sq.ft. and continued the business. It is further noted that the agreement dated 10.05.1991 has been entered into between the first defendant and the plaintiff, whereby, it is found that the parties thereto had



agreed that the first defendant should develop the property and construct a multi-storeyed building in the existing premises and in consideration of the same, the plaintiff's bank agreed to pay the enhanced rent. Accordingly, the parties having agreed that the new building with reference to which they had agreed for the lease will have a carpet area of 3800 sq.ft. in the ground floor and the parties had also agreed that a strong room and spacious hall should be constructed and accordingly they agreed to enter into a pucca lease deed after the construction is over and accordingly, the first defendant had agreed to hand over the building to the plaintiff bank for its occupation and while the construction progress is going on, the plaintiff bank has been permitted to carry on its business in the front portion of a lesser space of an extent of 1000 sq.ft. and it is also agreed that the first defendant should complete the transaction within 24 months and hand over the premises to the plaintiff bank for a rent of Rs.12,000/- per month and the agreement also stipulates that in the event of the first defendant committing default in completing the complex within the stipulated time, should pay the penalty of Rs.12,000/- for every month's delay and accordingly, it is found that the agreement dated 10.05.1991 has come to be executed between the plaintiff and the first defendant and the same has been marked as Ex.A1. It is also found that the construction work for the development of the building had been entrusted to the third defendant by the first defendant and in this connection, the third defendant had also given an undertaking that it would complete the transaction of 3800 sq.ft. carpet area and give it back to the plaintiff bank for its occupation within 24 months from the date of handing over the building to them and undertook to obtain licence for the construction of the complex from MMDA, within 6 months from the date of handing over of the building to them and also agreed to create a strong and spacious room in the premises for the plaintiff bank at the costs of the first defendant. The above undertaking given by the third defendant dated 10.05.1991 has been marked as Ex.A2. Therefore, it is found that on a perusal of Exs.A1 and A2, the original owner of the suit premises, namely the first defendant had agreed to letout the area of 3800 sq.ft. in the ground floor in favour of the plaintiff bank after the completion of the construction on rent at the rate of 12,000/- per month and also agreed that in case any default had been committed on her part, agreed to pay damages/penalty in a sum of Rs.12,000/- for every month's delay. It is thus found that the parties are aware of the terms on which the abovesaid agreement had been entered into between them and accordingly, the plaintiff has also in the plaint described the property involved in the matter as the premises bearing No.74, New Avadi Road, Kilpauk, Madras - 10. Considering the clear recitals found in Exs.A1 and A2 as well as the pleas set out by the respective parties in the present matter, particularly, the



pleas put forth by the second defendant and when the parties are not at issue as regards the terms and the property for which the abovesaid agreement had been entered into between them and there is a clear identity of the property agreed to be leased out following the agreement and even the second defendant had not taken a specific plea in the written statement that the subject matter of the agreement is not clearly described and identified by the plaintiff and in fact no such plea has been raised by the second defendant with reference to the same in the written statement, in such view of the matter, the arguments put forth by the second defendant's counsel that the plaintiff is not entitled to enforce the agreement dated 10.05.1991 on account of the indistinct and hazy description of the suit property, as such, cannot be countenanced. When the identity of the property has not been the bone of contention put forth by the parties and the same could be gathered from the pleas submitted by the parties and the identity of the property can be gathered from the agreement dated 10.05.1991 marked as Ex.A1, in such view of the matter, the arguments of the second defendant's counsel that the suit property has not been clearly described and identified and on that score alone, the plaintiff is not entitled to maintain the relief of specific performance, as such, cannot be accepted and accordingly, the decisions relied upon by him reported in (1996) 6 SCC 699 (Nahar Singh Vs. Harnak singh and others) and (2010) 15 SCC 601 (Pawan Kumar Dutt and another Vs. Shakuntala Devi and others), in my considered opinion, are found to be not applicable to the case at hand.

12. As could be seen from the materials placed on record, it is found that the second defendant is found to have acquired title to the premises in question from the first defendant by way of sale deed dated 01.07.1993 and following the same, it is found that the second defendant had also informed about the purchase of the same to the plaintiff bank and directed the bank to attorn the tenancy in respect of the premises in his favour and to remit the rent to him commencing from 1.07.1993 and the same could be gathered from the letter addressed by the second defendant to the plaintiff bank dated 28.07.1993, marked as Ex.A9. The copy of the letter has also been addressed to the first defendant. Therefore, it is found that the second defendant had purchased the premise in question from the first defendant and as could be seen from the materials placed on record, the plaintiff bank has also attorned the tenancy in favour of the second defendant and continued to pay the rent as agreed to. Now the defence taken by the second defendant is that inasmuch as he is not a party to the agreement dated 10.05.1991, marked as Ex.A1, nor a party to the undertaking given by the third defendant, marked as Ex.A2 and according to the second defendant he is not bound by the terms of the agreement and therefore, put forth the case that the plaintiff



is not entitled to enforce the sale agreement as against him. However, as rightly determined by the trial Court, particularly, considering the agreement or understanding entered into between the first defendant, her husband and the second defendant marked as Ex.B2 and when Ex.B2 is found to have been entered into on 03.06.1993, much prior to the purchase of the premise in question by the second defendant on 01.07.1993 and when from the abovesaid agreement or understanding entered into between the parties abovestated, when it is noted that the first defendant, her husband and the second defendant had assured the third defendant that they will not make it liable with regard to any matter including the tenancy of the Punjab National Bank or any other affair that they have with the Punjab National Bank and agreed that they will abide by clause 4 of tripartite agreement dated 21.09.1992 as the same being their sole responsibility, in such view of the matter, as rightly held by the trial Court, it is found that much prior to the purchase of the premises in question, the second defendant is aware of the right which the plaintiff bank had qua the said premises with the original owner, namely, the first defendant and also it is found that the second defendant had knowledge about the agreement entered into between the parties concerned marked as Ex.A1 as well as the undertaking given by the third defendant marked as Ex.A2 and accordingly had agreed that the third defendant would not be fastened with any liability with reference to the issue that may be raised by the plaintiff bank as regards the tenancy with the second defendant in particular who has acquired the title of the same from the first defendant. That apart, when the second defendant has not disputed that the plaintiff bank is in the occupation of the front portion of an area of 1000 sq.ft. and when the second defendant had ventured to purchase it from the first defendant, naturally the second defendant would have questioned the first defendant with reference to the same and therefore, as put forth by the plaintiff's counsel, the second defendant would have acquired knowledge on what basis the plaintiff bank had retained the possession of the said portion measuring about 1000 sq.ft. and thereby would also come to know about the existence of the agreement dated 10.05.91, marked as Ex.A1 and accordingly, it is found that following the understanding entered into between the parties concerned, proceeded to enter into the arrangement marked as Ex.B2 wherein it is agreed that the third defendant would not be made liable for the issues that may be raised by the plaintiff bank qua the tenancy arrangement and in such view of the matter, the plea put forth by the second defendant that he is not aware of the agreement dated 10.05.1991 entered into between the plaintiff and the first defendant, as such, cannot at all be accepted. Furthermore, as could be seen from the various correspondences sent by the plaintiff bank to the second defendant regarding the attornment of tenancy in favour of the



second defendant marked as Exs.A3 to A7 and the various correspondences referred to therein, in toto, as held by the trial Court, the third defendant cannot be allowed to feign ignorance as regards the agreement dated 10.05.1991, marked as Ex.A1 and as rightly put forth by the plaintiff's counsel, when the second defendant had acquired title to the premises in question from the first defendant, during the course of the tenancy of the plaintiff bank, in such view of the matter, the second defendant as the transferee of the property concerned would be equally bound by the terms of the agreement Ex.A1 as would be binding upon the first defendant, the transferor and in such view of the matter, the second defendant cannot be allowed to wriggled out of his liability to hand over the possession of the premises to the plaintiff bank on the completion of the construction and enter into the fresh lease deed as agreed to between the parties by way of Ex.A1 agreement.

13. The materials placed on record go to show that as there was delay on the part of the first and second defendant in particular to handover the premises in question, it is found that the plaintiff bank had also chosen to shift its business to Taylors Road. However, the plaintiff bank continued to occupy the front portion of the area covering an extent of 1000 sq.ft. and kept its goods in the said premises. Therefore, it is found that even though the plaintiff has shifted its business to Taylors Road, it has not agreed to remove its goods from the premise and as per the terms of the agreement entered into with the first defendant in particular marked as Ex.A1, accordingly, it is found that the plaintiff still seeks to enforce the agreement and accordingly had retained the front portion by keeping its goods and as the delay had been made on the part of the second defendant in enforcing the sale agreement Ex.A1 and handing over the possession of the agreed area of 3800 sq.ft and accordingly, left with no other alternative, after the issuance of the legal notice, had chosen to institute the suit against the defendants for appropriate reliefs.

14. When the first defendant as the original owner and the second defendant as the purchaser of the premises in question are bound by the terms of the agreement Ex.A1 and when the plaintiff bank has been not entrusted the possession of the premises as agreed to within the stipulated period, in such view of the matter, when the agreement Ex.A1 is found to be equally binding upon the defendants 1 and 2, in all, it is found that the trial Court is justified in directing the defendants 1 and 2 to enforce the agreement and also justified in directing them to pay the damages to the plaintiff bank as agreed to between the parties under Ex.A1.

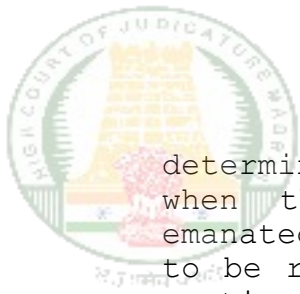
C.M.P.No. 3900 of 2017:



15. The petition has been laid by the second defendant/appellant under Order 41 Rule 27 C.P.C. for marking additional evidence. As could be seen from the pleas put forth by the second defendant, though he had disowned the liability under the agreement dated 10.05.1991, marked as Ex.A1, according to the second defendant, following the disposal of the suit, he had decided to comply with the decree of the trial Court and accordingly called upon the plaintiff bank to take the possession of 3800 sq.ft. as per the agreement dated 10.05.1991 and accordingly it is found that correspondences had been made between the plaintiff bank and the second defendant and it is further put forth that despite the readiness and willingness on the part of the second defendant in offering the premises to the plaintiff bank on lease, it is only the plaintiff bank who has been always not ready and willingness to perform it is part of the contract under Ex.A1 one way or the other and accordingly contended that it would only go to expose that the plaintiff bank is not ready and willing to perform its part of the contract and prolonging the matter one way or the other, hence, according to the second defendant, all the correspondences with reference to the abovesaid factors are required to be projected as additional evidence in this matter and the need for the petition.

16. The plaintiff's counsel strongly resisted the above said application contending that the correspondences between the parties concerned as regards the enforcement of the agreement dated 10.05.1991, with reference to the adjudication of the issues involved between the parties as on the date of the lis, it is put forth that the projected additional evidence are not germane and relevant for determining the issues involved in the matter between the parties based on the agreement dated 10.05.1991 and accordingly contended that the additional evidence sought to be projected by the second defendant requires no consideration and prayed for the dismissal of the petition.

17. Considering the projected additional evidence i.e. the correspondences entered into between the parties qua the agreement dated 10.05.1991, however, though the correspondences having come into existence between the parties as put forth therein and when the lis has to be determined as rightly agreed to between the parties based on Ex.A1 agreement as on the date of the institution of the suit, in such view of the matter, in my considered opinion, the projected additional evidence would not be germane and relevant for deciding the issues between the parties as on the date of the suit or on the date of the agreement and therefore, in such view of the matter, it is found that the projected additional evidence would not be useful for



determining the issues involved in the matter and accordingly when the projected additional evidence are found to have emanated after the institution of the suit, they are not found to be relevant for adjudicating the issues involved between the parties as such and accordingly, the petition for the reception of additional evidence put forth by the second defendant cannot be countenanced and accordingly, the petition for the reception of the additional evidence is dismissed.

18. In the light of the abovesaid discussions, the trial Court is found to have assessed and analysed the materials placed on record in the right perspective and rightly determined that the plaintiff is entitled to enforce the agreement dated 10.05.1991 as against the defendants 1 and 2 and entitle to receive the damages from them as per the abovesaid agreement and accordingly, I do not find any valid reason to interfere with the reasonings and conclusions of the trial Court for upholding the plaintiff's case. Accordingly the point Nos.1 to 4 are answered against second defendant/appellant and in favour of the plaintiff.

Point Nos.5 and 6:

19. In the light of the abovesaid discussions, the judgment and decree of the trial Court are confirmed and resultantly, the First Appeal is dismissed with costs. C.M.P.No.3900 of 2017 is also dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sli

To:

The Additional District Judge & Sessions Judge,
Fast Track Court - I, Chennai.



Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.M.L.Ganesh, Advocate Sr.84202

+1cc to M/s.Sarvabhauman Associates, Advocate Sr.83367

A.S.No.737 of 2005
and
C.M.P. No.3900 of 2017

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