

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.10.2019
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.1117 of 2007
and
M.P. No.2 of 2007

Private Bus Owners
Associates, Tiruvallur
Rep. by its President
T.S. Sachidanandam

...

Appellant/Plaintiff

Vs

The Commissioner of
Municipality,
Tiruvallur
J.N. Road,
Tiruvallur,
Chengalapattu Taluk

...

Respondent/Defendant

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree dated 26.04.2002 made in A.S. No.18 of 2001 on the file of the Additional District Judge, Fast Track Court (Sub Court, Chengalapattu) and confirming the Judgment and decree dated 09.07.2001 made in O.S. No.471 of 1995 on the file of the Court of the learned District Munsif, Tiruvallur.

For appellant : Mr. K.V. Sundararajan

For respondent : Mr.I. Paranthaman
NA

JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below.

2. The Trial Court by its judgment and decree dated 09.07.2001 in O.S. No.471 of 1995 dismissed the suit filed by the appellant for i) a declaration to declare the demand notices issued by the respondent dated 08.08.1994 and 20.10.1995 as null and void, and (ii) a consequential injunction restraining the respondent from in anyway dispossessing the appellant from the booking office occupied by them in the respondent's premises.

3. Aggrieved by the dismissal of the suit O.S. No.471 of 1995 by the Trial Court, the appellant preferred a first appeal in A.S. No.18 of 2001 before the First Appellate Court. The First Appellate Court also confirmed the findings of the Trial Court and dismissed the first appeal by its judgment and decree dated 25.04.2002 in A.S. No.18 of 2001.

4. Challenging the concurrent findings of the Courts below, this Second Appeal has been filed.

5. At the time of the admission of the Second Appeal on 20.12.2007, the following Substantial questions of law were framed by this Court.

1. Whether the court below erred in not appreciating that it is a settled law that any concession given to any person can be modified or withdrawn only after due notice and following the principles of natural justice?

2. Whether the court below erred in not appreciating the evidence of DW1, wherein there is a clear admission that any increase in rent or imposition of payment of rent can be done only after show cause notice and that no show cause notice was given in the present case?

6. The contention of the appellant is that they were occupying the respondent's premises only on rent free basis and they were permissive occupants. However, it is the contention of the respondent that the appellant is liable to pay rent. The Trial Court based on the oral and documentary evidence available on record has come to the conclusion that the appellant is not liable to pay rent from April 1993 to 07.08.1994 and is liable to pay only the future rent from 08.08.1994 onwards.

7. It was the contention of the appellant before the Trial Court that principles of natural justice was violated, as the respondent has arbitrarily fixed the rent and directed the appellant to pay the rent. According to them, no notice was received by them from the respondent prior to fixation of the rent.

8. The Trial Court has considered all the contentions raised by the appellant and only thereafter has come to the right conclusion that the appellant is not liable to pay the rent upto 07.08.1994, being the date of the notice and is liable to pay future rent from 08.08.1994 onwards.

9. As seen from the finding, the Trial Court has accepted the contention of the appellant that the appellant was only a permissive occupant and was allotted space in their premises only on rent free basis upto 07.08.1994. However, the appellant cannot hold on to the shop even after the date of the notice i.e. from 07.08.1994, issued by the respondent calling upon the appellant to pay the arrears of rent.

10. The Trial Court has rightly considered the evidence available on record and held that the appellant is liable to pay the respondent future rent from 08.08.1994 after issuance of the impugned notice dated 08.08.1994 by the respondent.

11. The Trial Court has rightly held that till the date of issuance of notice dated 08.08.1994 by the respondent to the appellant, the appellant is not liable to pay the rent as they were occupying the premises as a permissive occupant only on rent free basis. But once, notice has been issued by the respondent calling upon the appellant to pay the arrears of rent from that date onwards, the appellant is liable to pay the rent. Only after considering these factors, the Trial Court has rightly held that the appellant is liable to pay the respondent the rent from the date of notice i.e. 08.08.1994. The lower appellate court accepted the findings of the Trial Court which in the considered view of this Court is correct.

12. This Court does not find any infirmity in the findings given by the Trial Court as it is based on evidence available on record. The lower appellate Court has also rightly confirmed the findings of the Trial Court and dismissed the appeal A.S. No.18 of 2001 on 25.04.2002. The issues involved in the substantial questions of law formulated by this Court at the time of the admission of the Second Appeal on 20.12.2007, enumerated supra, have been duly considered by the Courts below and answered against the appellant as there is no perversity in the said findings.

13. In the result, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vs12

To

1. The Additional District Judge,
Fast Track Court V,
Subordinate Court,
Chengalapattu at Thiruvallur.
2. The District Munsif,
Tiruvallur.

Copy To

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

+1cc to Mr.K.V.Sundararajan, Advocate, S.R.No. 85891

S.A. No.1117 of 2007

EV(CO)
GN(26/06/2020)



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