

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N. SATHISH KUMAR

S.A.No.1713 of 2008
and M.P.No.1 of 2008

1. R.S.Govindaraj,
S/o.Late R.K.Sadayappan,
Metrological Department Staff,
Meenambakkam Air Port,
Chennai.

2. Lakshmi,
W/o.Late R.S.Ramadoss.

3. Devendra Raghavan,
S/o.Late R.S.Ramadoss.

4. Murugaraj,
S/o.Late R.S.Ramadoss.

5. Tamil Malar,
D/o.Late R.S.Ramadoss.

.. Appellants 1 to 5/
Defendants 3,5 to 8/
Defendants 3,5 to 8

6. Kamalam,
W/o.R.S.Gopal.

7. Soundarajan,
S/o.R.S.Gopal.

.. Appellants 6 &7

सत्यमेव जयते
vs.

1. Padmavathy,
W/o.Late Lakshmanan.

2. Kalaiselvi,
D/o.Late Thiruvankadasamy.

3. Vivekanandan,
S/o.Late Thiruvankadasamy.

.. Respondents 1 to 3/
Plaintiffs 4 to 6/
Plaintiffs 4 to 6

4.Nanjammal,
D/o. Late Gopal.

5. Easwaran,
S/o. Late Gopal.

6. Ponnusamy,
S/o. Late Gopal.

7. Thangamani,
S/o.Late Gopal.

8.Nagamani,
D/o.Late Gopal.

9. Aruvumani.
S/o.Late Gopal.

... Respondents 4 to 9/
Plaintiffs 7 to 12/Plaintiffs 7 to 12

10. M.Alamelu,
W/o.Late V.Lakshmanan.

11. R.V.L.Jagajeevan,
S/o.Late V.Lakshmanan.

12. L.Siddharthan,
S/o.Late V.Lakshmanan.

13. L.Sankar,
S/o.Late V.Lakshmanan.

14. L.Sivasankar,
S/o.Late V.Lakshmanan.

15. L.Venkatakrishnan,
S/o.Late V.Lakshmanan.

... Respondents 10 to 15/ Respondents 13 to 18

Cause title accepted as per order dated 22.12.2008 made in M.P.No.2 of 2008 in S.A.No.SR60911 of 2007 regarding Appellants 6&7.

Second Appeal is dismissed as abated as against 1st appellant and also dismissed as against 6th and 7th appellants vide order of this Court dated 09.04.2019.

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 27.06.2006 in A.S.No.162 of 2005 on the file of the Principal Subordinate Court, Coimbatore, reversing the judgment and decree dated 28.01.2005 in

O.S.No.3286 of 1981 on the file of the II Additional District Munsif, Coimbatore.

For AA 2 to 5 : Mr.S.Gunalan

For RR 1, 2 & 12 : No appearance

For RR 4,5,7 to 11,
13 to 15 : Mr.A.Sivaji

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 27.06.2006 in A.S.No.162 of 2005 on the file of the Principal Subordinate Court, Coimbatore, reversing the judgment and decree dated 28.01.2005 in O.S.No.3286 of 1981 on the file of the II Additional District Munsif Court, Coimbatore.

2. The appellants are defendants and the respondents are plaintiffs in this appeal.

3. The brief facts leading to the filing of this second appeal are as follows:

The suit property was originally belonged to Karuppana Pannadi and Venkatarama Pannadi exclusively and plaintiffs are the legal heirs of Karuppana Pannadi and Venkatarama Pannadi. Originally, the property was leased to one R.K.Sadayappan in the year 1951 for the rent of Rs.3/- per month for five years. On the expiry of the statutory period of five years, it is promised that the vacant possession of the property would be handed over to Karuppana Pannadi and Venkatarama Pannadi. However, R.K.Sadayappan failed to surrender the possession of the property even after the statutory period. In the year 1954, he put up a super-structure at the cost of Rs.500/- without the consent of the lessors. The said R.K.Sadayappan died leaving behind him the defendants as his legal heirs. The defendants had tried to put up construction in the vacant site on 01.03.1981 in respect of which the plaintiffs have filed a suit for permanent injunction and the same is pending. Hence, the suit is for recovery of possession and compensation of Rs.500/-.

4.It is the case of the defendants that the plaintiffs are not the owners of the super-structure bearing Door Nos.121, 122 and 123 which has been changed with new Door Nos.420, 421 and 422. Though the vacant site was originally leased to R.K.Sadayappan, husband of the first defendant and the father of the defendants 2 to 4, for specific purpose of putting super-structure, the said R.K.Sadayappan constructed the pucca building and the same was assessed to building tax. Even during the time of Karuppana Pannadi and Venkatarama Pannadi and

R.K.Sadayappan, dispute arose between them with regard to the suit property and a suit in O.S.No.292 of 1959 was filed and ended in favour of R.K.Sadayappan, against which, an appeal has been filed and the same was dismissed. In the above proceedings, it was held that R.K.Sadayappan was entitled to the benefits under Tamil Nadu City Tenants Protection Act. Hence, prayed for the dismissal of the appeal suit.

5.The Trial Court has dismissed the suit, however, the Appellate Court in re-appreciation of the entire facts, found that only the legal heirs of Ramadoss were in possession of the property. They never paid rent for more than twenty five years and also came to the conclusion that they are not entitled to claim benefits under Tamil Nadu City Tenants Protection Act. The application filed by the appellants was also dismissed, holding that they are not entitled to the benefits under Tamil Nadu City Tenants Protection Act, as against which the present Second Appeal has been filed.

6.The learned Counsel for the appellants would contend that the appellants are in possession of the property from long period so that they cannot be evicted. The Appellate Court has not properly considered the evidence and non-suited the appellants on technical grounds, whereas, it is the contention of the Counsel appearing for the respondents that the Appellate Court has thoroughly re-appreciated the entire evidence and found that the appellants 2 to 5 were the legal heirs of one Ramadoss and they were in possession without paying any rent for more than twenty five years. The Appellate Court has also held that they are not entitled to the benefits under Tamil Nadu City Tenants Protection Act. Even in the Commissioner report, it has been stated that the appellants were residing in the suit property. However, they recovered the possession of the property. Further, they have not paid any rent for more than twenty five years. The Appellate Court has held that the appellants were in possession of the suit property and further, held that the person not paying rent for more than twenty five years cannot be considered as a tenant and cannot claim benefits under the Tamil Nadu City Tenants Protection Act and it has also found that the original tenant taking advantage of his position as a Councilor has created receipts such as property tax receipts, etc., and held that since the appellants are in possession of the property and not paying any rent for more than twenty five years, they are not entitled to the benefits under Section 9 of the Tamil Nadu City Tenants Protection Act. The Appellate Court has clearly appreciated the evidence and indicated that the appellants were in possession of the property at the relevant point of time. Having regard to the entire facts, the plaintiffs are in possession of the property and they are entitled to claim the possession and hence, do not find any interference. Subsequently, at this stage, the learned counsel

for the appellants would contend that six months time may be granted for vacating the premises. Considering his request four months time is granted for vacating the premises. A memo filed on behalf of the appellants is also taken on record, wherein, it has been stated that the appellants 2 to 5 are only interested in prosecuting the case.

With the above observations, the second appeal is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nsd
To

1. The Principal Subordinate Judge,
Coimbatore.
2. The II Additional District Munsif,
Coimbatore.

Copy to

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

+1cc to Mr.A.Sivaji , Advocate SR.No. 42609
+1cc to Mr.S.Gunalan , Advocate SR.No. 41820

S.A.No.1713 of 2008

A.SK(02/03/2020)

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