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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.No.221 of 2007
and
M.P.No.1 of 2007

S.Jeyakumar

...Appellant

Vs.

N.Neelakantan

...Respondent

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Additional District Judge, Chennai, Fast Track Court-II dated 11.09.2006 in A.S.No.452/05 confirming the judgment and decree of the XIV Assistant Judge, City Civil Court at Chennai in O.S.No.8681/98 dated 18.10.2004.

For Appellant : Mr. S.Venkatesan

For Respondent : Mr.A.Palaniappan

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 11.09.2006 passed in A.S.No.452/05 on the file of the Additional District Court / Fast Track Court-II, Chennai, confirming the judgment and decree dated 18.10.2004 passed in O.S.No.8681/98 on the file of the XIV Assistant Judge, City Civil Court, Chennai.

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

3. Suit for possession and damages.

4. The case of the plaintiff, in brief, is that the Tamilnadu Housing board has allotted a plot bearing



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No.13, Ground Floor, MIG Flat, Kamaraj Nagar, Thiruvannamipur, Madras 41 as per the order dated 11.03.1982 and as per the said order, apart from Rs.750/- towards EMD, the plaintiff should pay Rs.4,500/- on or before 15.04.1982 and the total cost of the flat including the cost of proportionate cost of the land is Rs.45,000/-. After adjusting the sum of Rs.4,500/- and EMD of Rs.750/-, the balance sum of Rs.39,750/- should be paid within the period of ten years in monthly installments with interest at the rate of 12% per annum. On the above basis, the monthly installment for the flat works out to Rs.576/- excluding the maintenance charges of Rs.60/- and the total sum of Rs.636/- should be paid on or before the 10th of every month from the date of handing over the flat and all the taxes should be paid by the plaintiff from the date of allotment. The flat was handed over on 17.03.1983. The defendant had approached the plaintiff to let out the said flat to him and the plaintiff agreed to the same on condition that the defendant should pay a sum of Rs.636/- both for installment and maintenance charges to the Tamilnadu Housing Board and also pay the corporation taxes and the said amount was to be treated as the rent for the premises. The defendant had agreed to the same and accordingly the flat was let out to the defendant under the said arrangement. However, the defendant has not kept up his word and failed to pay the installment as agreed to and this has resulted in heavy arrears of installment due and interest as well as the penal interest and thereby the plaintiff had been forced to pay the said amount and accordingly the plaintiff had paid the amount due after deducting the amount already paid and the defendant has also failed to pay the corporation tax as well as the water charges and also not paid the maintenance charges and in view of the abovesaid attitude of the defendant, he has become liable to be evicted and therefore, according to the plaintiff, he has been necessitated to lay the suit against the defendant for appropriate reliefs.

5. The case of the defendant, in brief, is that, it is true that the flat was allotted to the plaintiff by the Tamilnadu Housing Board described in the plaint and the plaintiff had been in a financial crisis at the time of allotment and requested the defendant to pay a sum of Rs.4,500/- being the deposit for the allotted flat and accordingly, the defendant had paid the caution deposit and agreed to pay the monthly installment of Rs.636/- for ten years from 1983 under specific agreement from the plaintiff that he would execute the sale deed of the allotted flat in favour of the defendant after the installments of the flat were paid to the Tamilnadu



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Housing Board. The defendant had advanced a sum of Rs.45,000/- to the plaintiff as the sale amount. The plaintiff had agreed to execute the sale deed in favour of the defendant after the installment of the flat was over i.e., in the year 1993. While so, when the defendant had gone to pay the installment for the flat, he was informed by the Tamilnadu Housing Board that the plaintiff has paid the remaining installments and obtained the sale deed in his favour. The defendant was shocked by the conduct of the plaintiff breaching the terms of the agreement between the parties and according to the defendant, the suit framed by the plaintiff is not maintainable as according to the plaintiff, the monthly payment payable to the Tamilnadu Housing Board was to be treated as the rent and if that be so, the plaintiff should have approached only the rent control court and not the civil court. On the abovesaid ground alone, the suit should fail. Furthermore, the plaintiff has suppressed the material facts and after receiving the sale amount of Rs.45,000/- from the defendant and agreeing to transfer the flat in favour of the defendant, the plaintiff has failed to honour his promise and has come forward with the false suit. When, according to the plaintiff, he has paid the installments in the year 1989 and got the sale deed executed, there is no reason for the plaintiff to wait till 1998 to file the present case, which would go to expose the lack of bonafides on the part of the plaintiff. The defendant is not liable to pay any damages as put forth in the plaint and accordingly prayed for the dismissal of the plaintiff's suit.

6. In support of the plaintiff's case P.W.1 was examined and Exs.A1 to A20 were marked. On the side of the defendant D.Ws.1 and 2 were examined and Exs.B1 to B12 were marked.

7. Based on the materials placed on record, both oral and documentary, by the respective parties and the submissions made, the courts below were pleased to accept the plaintiff's case and granted the reliefs in favour of the plaintiff. Aggrieved over the same, the second appeal has been preferred by the defendant.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration.

"1. Whether in view of Order VI Rule 1 IPC, an evidence contrary to what was pleaded by the plaintiff can be accepted?



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9. It is not in dispute that the suit flat was allotted to the plaintiff by the Tamilnadu Housing Board. Shorn of unnecessary details, it is admitted that the plaintiff has to pay the monthly installment of Rs.576/- plus the maintenance charges of Rs.60/- with reference to the said flat, amounting to Rs.636/- . As per the case projected by the plaintiff, it is seen that he had let out the suit flat to the defendant on rent on condition that the defendant should pay the abovesaid sum of Rs.636/- in respect of the flat to the Tamilnadu Housing Board and further according to the plaintiff, the defendant should also pay the corporation tax and it has been specifically averred by the plaintiff that the abovesaid amount to be paid by the defendant shall be treated as the rent for the suit flat. Only on the abovesaid rental arrangement, according to the plaintiff, the defendant had been put in the possession and enjoyment of the suit property. Now, according to the plaintiff, the defendant has failed to pay the installments as abovestated and this has resulted in the plaintiff to pay the huge sum to the Tamilnadu Housing Board by way of interest and penal interest and according to the case projected, the plaintiff had paid the sum due to the Tamilnadu Housing Board on 18.03.1989 and obtained the sale deed. Thereafter, the present suit has come to be filed in the year 1998 seeking for the eviction of the defendant from the suit flat.

10. It is thus seen that as per the plaintiff averments, the defendant had been inducted into the suit property only as the tenant. The monthly rent is found to be Rs.636/-. The monthly rent, according to the plaintiff, being the installment to be paid to the Tamilnadu Housing Board, according to the plaintiff, as per the rental arrangement between the parties, the defendant should pay the same to the Tamilnadu Housing Board. It is the case of the plaintiff that the defendant has not paid the abovesaid amount regularly and thereafter he had been forced to pay the amount due to the Tamilnadu Housing Board and it is found that the plaintiff had paid the amount and obtained the sale deed from the Tamilnadu Housing Board. So, when the plaintiff has let out the suit property to the defendant only on the basis of the tenancy arrangement entered into with the defendant in respect of the suit property, obviously, it is seen that as contended by the defendant in the written statement, the civil suit is not maintainable.

11. The suit property is found to be the flat allotted to the plaintiff by the Tamilnadu Housing Board. According to the plaintiff, the same had been let on rent to the defendant and the monthly rent is fixed at



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Rs.636/- . The only difference is that, instead of paying the abovesaid rent to the plaintiff, the defendant should pay the same to the Tamilnadu Housing Board as the said amount is liable to be paid by the plaintiff to the Tamilnadu Housing Board for the allotment of the flat. When the Tamilnadu Housing Board had already allotted the flat and passed appropriate orders in favour of the plaintiff and the flat had also been handed over to the plaintiff on 17.03.1983, it is found that the plaintiff, as such, has become the owner of the flat and become entitled to collect the rent in respect of the flat and accordingly, he having become the landlord in respect of the flat as per the definition of the landlord under the Tamilnadu Buildings (Lease and Rent Control) Act 1960, it is seen that he had let out the the same to the defendant on tenancy arrangement, as above noted, and the monthly rent is fixed at Rs.636/- . It is the case of the plaintiff that the defendant had failed to pay the monthly rent regularly to the Tamilnadu Housing Board and thereby, it is found that the plaintiff has taken the plea that the defendant has committed willful default in the payment of rent. When the suit property, namely, the flat, also falls within the definition of the building contemplated under the Tamilnadu Buildings (Lease and Rent Control) Act, 1960, if according to the plaintiff, the defendant has committed willful default in the payment of the rent, as abovestated, either to the Tamilnadu Housing Board or to him, as the case may be, to evict the defendant from the suit property, the only remedy available to the plaintiff is by way of filing the rent control petition and not by way of the civil suit. On the abovesaid score alone, as rightly contended by the defendant, the suit laid by the plaintiff is not maintainable.

12. However, from the materials placed on record, it is found that a pucca agreement of sale had been entered into between the plaintiff and the defendant in respect of the suit flat and the agreement with reference to the suit flat entered into between the plaintiff and the defendant has been marked as Ex.B4. On being confronted with Ex.B4, the plaintiff has admitted the same and admitted his signature contained in Ex.B4 and that he had executed the said agreement in favour of the defendant agreeing to transfer the suit flat in his favour after the defendant paying the installments regularly to the Tamilnadu Housing Board. Therefore, when as per the materials placed on record, the plaintiff and the defendant is found to have entered into the sale agreement as regards the sale of the suit flat under Ex.B4 as per the terms contained therein, it does not stand to reason as to how come the plaintiff had



14. In addition to that, according to the defendant, he had paid a sum of Rs.45,000/- to the plaintiff towards the sale amount of the flat in advance and only on that basis, he had been put up in the possession of the flat following Ex.B4 agreement granting him the opportunity / liberty to pay the installments to the Housing Board as abovestated. In this connection, the



defendant has come forward with the promissory notes executed by the plaintiff for a sum of Rs.20,000/- marked as Ex.B2 and for a sum of Rs.25,000/- marked as Ex.B3. In this connection, the plaintiff, on being confronted with the abovesaid documents, would admit that he had borrowed a sum of Rs.20,000/- from the defendant and on that footing handed over the suit flat to him and that he had not rented out the suit property to the defendant. Furthermore, he had also admitted the execution of Ex.B2 promissory note. Though, he would dispute the borrowal of Rs.25,000/- from the defendant, however, would admit that his signature is available in the promissory note of Rs.25,000/- marked as Ex.B3. If the plaintiff had not borrowed the said sum, it has not been explained as to how come the plaintiff has affixed the signature in the said document. There is no valid and acceptable reason put forth by the plaintiff with reference to the same coupled with the fact when accordingly it is found that the plaintiff had also chosen to agree to convey the suit flat in favour of the defendant by way of Ex.B4 deed and inasmuch as the defendant had already paid a sum of Rs.45,000/-, the value of the flat, it is found that the parties had agreed that the defendant should pay the installment due to the Housing Board within the period fixed and on the payment of the same, the plaintiff pursuant to Ex.B4 agreement should execute the sale deed in favour of the defendant. However, the plaintiff suppressing the abovesaid documents, having pleaded that the suit property had been let out to the defendant on rent, inconsistent to the abovesaid plea also is found to have tendered the evidence as if he had entrusted the suit property to the defendant only on account of the borrowal of the sum of Rs.20,000/- from the defendant and further asserted the same subsequently and also denied that he had let out the suit property on rent to the defendant and also would state that it is only the defendant who had paid the installment till 30.03.1989 and subsequently also would claim that he had not let out the suit property to the defendant, in all, it is found that the plaintiff has not come forward with the clear case as to on what basis he seeks the claim of reliefs prayed for in the suit.

15. Having come forward with the plea of tenancy arrangement between him and the defendant in respect of the suit property on monthly rental arrangement and when according to the plaintiff if the defendant had defaulted in the payment of the rent agreed to be paid to the Tamilnadu Housing Board and when pursuant to the allotment order issued in favour of the plaintiff, the plaintiff has become the landlord and entitled to collect the rent in respect of the same and the suit flat is also



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falling within the definition of building under the Rent Control Act., in such view of the matter, when the plaintiff has projected the case that the defendant had failed to pay the monthly rent i.e. the installments to the Housing Board regularly, as rightly contended by the defendant, the only remedy available to the plaintiff to evict the defendant from the suit property is by way of the rent control action and not by way of the civil suit.

16. When the plaintiff has not come forward with the suit that he had entrusted the possession of the suit property to the defendant in lieu of the borrowal of the amount from the defendant and when there is no clear pleas on the part of the plaintiff with reference to the same and also when the plaintiff has not pleaded as to what is the arrangement between the parties as regards the repayment of the borrowed sum from the defendant and when it is further seen that the plaintiff has executed two promissory notes in favour of the defendant one for Rs.20,000/- and another for Rs.25,000/- marked as Exs.B2 and B3 and when the plaintiff has admitted the execution of Ex.B2 and also admitted the availability of his signature in Ex.B3 and in such view of the matter, accordingly, when it is seen that as put forth by the defendant, the plaintiff has already received a sum of Rs.45,000/- from the defendant towards the value of the flat due to be paid to the Tamilnadu Housing Board, in such view of the matter, when the defendant has been given the right to purchase the suit flat from the plaintiff under Ex.B4 and when the said agreement provides for a period of 10 years time to pay the installments / rent in respect of the suit property, with a view to nullify the same, it is found that the plaintiff suppressing the entire facts, is found to have paid the amount to the Tamilnadu Housing Board in the year 1989 itself and obtained the sale deed in his own name contrary to the terms of Ex.B4 sale agreement.

17. Till date Ex.B4 sale agreement has not been cancelled. It remains intact. It is not the case of the plaintiff that Ex.B4 sale agreement had been cancelled and thereby he is entitled to seek the possession of the suit property from the defendant. No relief of declaration is sought for by the plaintiff qua the sale agreement dated 25.03.1983. It has not been explained by the plaintiff as to how he would be entitled to seek the possession of the suit property without cancelling the sale agreement executed in favour of the defendant in respect of the suit property. If the plaintiff has come forward with suit putting forth the true facts and thereby sought for the appropriate relief by way of cancellation of Ex.B4 sale agreement and the consequent



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entitlement of the recovery of the possession from the defendant, as rightly contended by the defendant, he would have been at the liberty / provided with the opportunity to resist the plaintiff's suit by taking appropriate defences with reference to the sale agreement Ex.B4. On the other hand, the plaintiff having suppressed the abovesaid facts, in toto, and only having chosen to admit the same during the course of cross examination and having laid the suit only on the basis of the tenancy arrangement said to have been entered into between the parties as above noted, in the light of the abovesaid pleas, in such a scenario, the only remedy available to the plaintiff for seeking the possession of the property from the defendant is by way of resorting to the provisions of the rent control Act, provided the plaintiff is entitled to the same, as per law. As above noted, despite obtaining the sale deed in the year 1989, nearly 10 years thereafter, the plaintiff has not chosen to come forward with the suit for seeking the possession, and on the other hand, he has laid the suit only in the year 1998 against the defendant, that too, suppressing the true facts and material information.

18. In the light of the abovesaid factors, when the plaintiff has laid the suit against the defendant for the appropriate reliefs only on the basis of the tenancy arrangement, the plaintiff should stick on to the said case and accordingly adduce evidence in tune with the same. On the other hand, the plaintiff is found to have deviated from his case projected in the plaint and come forward with the new case during the course of evidence. However, with reference to the abovesaid case also, there is no acceptable and reliable materials on the part of the plaintiff. The plaintiff had suppressed the sale agreement entered into between the parties marked as Ex.B4. The plaintiff has suppressed the borrowal of a sum of Rs.45,000/- from the defendant under Exs.B2 and B3. The plaintiff had suppressed the entitlement of the defendant to purchase the suit property pursuant to Ex.B4 sale agreement. In such view of the matter, to say that the defendant had been entrusted the possession of the suit property for the amount borrowed by the plaintiff from the defendant and thereby the plaintiff is entitled to recover the suit property from the defendant as such cannot be accepted. Even with reference to the same, there is no clear plea on the part of the plaintiff as to whether the amount borrowed by him, whether it is Rs.20,000/- or Rs.45,000/- and as the case may be, and whether any amount had been repaid by him to the defendant. In such view of the matter, as rightly contended by the defendant's counsel, when the plaintiff is not entitled to adduce evidence contrary to the pleas



file of the Additional District Court / Fast Track Court-II, Chennai, confirming the judgment and decree dated 18.10.2004 passed in O.S.No.8681/98 on the file of the XIV Assistant Judge, City Civil Court, Chennai, are set aside and resultantly, the suit laid by the plaintiff in O.S.No. 8681/98 is dismissed with costs. In conclusion, the second appeal is allowed with costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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Copy to

1.Additional District Court / Fast Track Court-II,
Chennai.

2.XIV Assistant Judge,
City Civil Court, Chennai.

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

+1cc to Mr. S.Venkatesan,Advocate SR.No. 44864
S.A.No.221 of 2007

A.SK(07/08/2019)