

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.580 of 2008
and M.P.Nos.1 & 2 of 2008

Sri Nanjaiah Brammannda Madam
and Vinayagar Temple,
Represented by the Present Sole
Trustee K.Sunder Raj,
S/o.Late P.Kuppuraj Chettiar,
11/223, New No.28, Sastry Road,
Ram Nagar, Coimbatore. ... Appellant/Appellant/Plaintiff

versus

P.Nachimuthu ... Respondent/ Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 24.03.2007 made in A.S.No.3 of 2007 on the file of the learned II Additional Subordinate Judge and Appellate Authority, Coimbatore, confirming the judgment and decree, dated 15.06.2006 made in O.S.No.1344 of 1996 on the file of the learned I Additional District Munsif, Coimbatore.

For Appellant : Mr.S.Parthasarathy
Senior Counsel
for Mr.J.Ramakrishnan

For Respondent : Mr.S.Saravanan

J U D G M E N T

This Second Appeal is filed against the judgment and decree, dated 24.03.2007 made in A.S.No.3 of 2007 on the file of the learned II Additional Subordinate Judge and Appellate Authority, Coimbatore, confirming the judgment and decree, dated 15.06.2006 made in O.S.No.1344 of 1996 on the file of the learned I Additional District Munsif, Coimbatore.

2. For the sake of convenience, the parties are to be referred to in their original rank in the suit. The plaintiff is the Trust. The suit properties were in possession of the Trust. The Trust has leased out the vacant site measuring 150 feet east-west, 20 feet south-north on the east and 65 feet north-south on the west, with a shed, to the defendant on 04.01.1976 on a monthly rent of Rs.110/-. Similarly, another extent measuring 17 x 15 feet of vacant land on the west of the earlier lease property also leased out to the defendant.

3. Thereafter, a fresh lease deed was executed between the parties on 01.04.1986 on a monthly rent of Rs.750/- and it was specifically agreed that the rent shall be enhanced to Rs.50/- per year. The original lease deed was executed for a period of 5 years and on expiry of the period, on 15.05.1991, the plaintiff issued a legal notice to the defendant to vacate and handover the possession of the entire properties as on 01.07.1991 and also pay the damages at the rate of Rs.3,000/- per month. As the defendant has failed to hand over the possession, the suit has been filed by the plaintiff praying for permanent injunction.

4. In the written statement filed by the defendant, it is contended that the plaintiff Trust is not legally appointed Trustee and the suit properties do not belong to the plaintiff Trust. No patta has been granted in respect of the suit properties. The lease agreement entered between the parties under an erroneous impression that the suit properties belong to the plaintiff Trust, which later turned to be untrue and they are comprised in road poramboke. The defendant is in road poramboke as well as in temple poramboke. In fact, the defendant has paid penal charges in respect of the suit properties as demanded by the Revenue Department by issuing B.Memos. The electricity service connection was also obtained by the defendant. Hence, it is the contention of the defendant that the suit is not maintainable and hence, the suit has to be dismissed.

5. The trial Court on the basis of the pleadings, framed the following issues:

"1. Whether the defendant denied the title of the plaintiff trust to the suit properties, rightly ?

2. Whether the plaintiff is entitled for eviction and delivery of vacant possession of the suit properties by the defendant ?

3. Whether the plaintiff trust is entitled for damages to be paid by the defendant for use and occupation of the suit properties?

4. To what relief the plaintiff trust is entitled?"

6. On the side of the plaintiff, he was examined as P.W.1 and 14 Exhibits were marked as Ex.A.1 to Ex.A-14 and on the side of the defendant, he was examined as D.W.1 and 11 Exhibits were marked as Ex.B.1 to Ex.B.11.

7. After analysing the evidence, the trial Court dismissed the suit. Aggrieved over the same, the plaintiff has preferred an Appeal in A.S.No.3 of 2007 on the file of the II Additional Subordinate Judge and Appellate Authority, Coimbatore.

8. The First Appellate Court, reappraised the entire evidence and came to the conclusion that the defendant was in possession and enjoyment of the suit properties and dismissed the appeal, confirming the judgment of the trial Court. Being aggrieved by the concurrent findings of the Courts below, the plaintiff has preferred this Second Appeal.

9. At the time of admission, the following Substantial Questions of Law were framed.:

"1. Whether the Courts below have committed an error in rejecting the contentions of the plaintiff that the defendant is estopped from denying the title of the plaintiff under Section 116 of the Indian Evidence Act?

2. Whether the plea of the defendant is barred by the principle of res-judicata enshrined under Section 11 of the Civil Procedure Code?"

10. I have heard Mr.S.Parthasarathy, learned Senior Counsel appearing for the appellant as well as Mr.S.Saravanan, learned counsel appearing for the respondent.

11. The learned Senior Counsel appearing for the appellant vehemently contended that the defendant having admitted the lease agreement entered between the parties, defendant is estopped from denying the same. Merely because B.Memo receipts were issued, the same cannot be a ground to non-suit the plaintiff. It is the further contention of the learned Senior Counsel that the tenant during the trial has filed an application under Section 9 of the Tamil Nadu City Tenants Protection Act. The above said application has been dismissed and the appeal is confirmed. Hence having taken a plea that he is a tenant in the property, now he cannot contend that the lesser has no title over the property. It is the main contention of the learned Senior Counsel that the title it is relevant for suit filed by lessor. Further, according to him, the trial Court

has wrongly rejected the claim of the plaintiff and hence, pleaded for allowing this Second Appeal. In support of his submissions, the learned Senior Counsel has placed reliance on the following decisions;

- "1.KALIAPERUMAL vs. PARVATHI AND OTHERS [2017 (2) CTC 577 (MAD)]
2. KAMALJIT SINGH vs. SARABJIT SINGH [2014 (16) SCC 472]
3. BALU vs. DHANAM AND OTHERS [1999 (3) CTC 374 (MAD)]
- 4.HINDUSTAN PETROLEUM CORPORATION LTD. vs. K.M.YAKUB (DIED) AND OTHERS [1996-2-L.W.817]"

12. The learned counsel appearing for the respondent would submit that the Courts below has considered the documents found that the plaintiff is not the owner of the suit property. Admittedly, Ex.B3 to Ex.B9 show that the defendant is in the possession of the Government properties and hence, submitted that when the plaintiff is not the owner of the suit property, they are not entitled to recover the possession. Merely because the lease deed was executed under erroneous impression, the same cannot be a ground to file the suit for recovery of possession. Hence, the learned counsel submitted that the Courts below, only after analysing both oral as well as documentary evidence and also the legal aspects dismissed the suit and the same has also been rightly confirmed by the First Appellate Court and it does not require any interference.

13. I have perused the entire materials available on record. The short question involved in this appeal is whether the plaintiff is entitled to recover the possession from the defendant, who was inducted a lessee under the plaintiff under valid lease agreement.

14. It is not in dispute that the item No.1 was originally leased out in the year 1976. This fact has been clearly admitted by the defendant in the entire pleadings in the written statement. There is no denial with regard to the lease agreement entered into between the plaintiff and defendant. Similarly, it is not in dispute that the vacate land also leased out in the year 1986 and the monthly rent has been enhanced from Rs.110/- to Rs.750/-. The main contention of the defendant is that subsequent to the lease agreement, the Government has issued B.Memos and collected the fine from the defendant and therefore, the plaintiff is not entitled to recover the suit property.

15. It is to be noted that B.Memos were issued subsequent to the lease agreement, Ex.B11 citta still shows the name of the plaintiff, at any event once the defendant was inducted as a lessee lawfully under the lease agreement, he is estopped from denying the title of the landlord/lessor.

16. It is useful to refer Section 116 of the Indian Evidence Act, 1872, which reads as follows:

"116. Estoppel of tenant; and of licensee of person in possession.- No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

17. On perusal of the above Section shows that once the defendant was inducted as a lessee, he cannot deny the title of the landlord. The suit has been filed for ejectment, the title issue is irrelevant. The defendant is estopped from denying the title of the landlord. Even assuming that only the Government has title over the property, it is for the Government to take proper action against the plaintiff and not against the defendant. In this regard, it is useful to refer the judgment of this Court in KALIAPERUMAL vs. PARVATHI AND OTHERS reported in 2017 (2) CTC 577 (MAD), wherein it has held as follows:

"11. The learned counsel for the respondent/landlord placed his reliance on the Judgment of this Court in Mrs. Yashoda Raju v. A. Kuselan, 2004 (1) LW 172, wherein it is held as follows:

7. As rightly pointed out by both the Courts below, the petitioner is estopped from taking a different stand, which is made clear under Section 116 of the Indian Evidence Act. Section 116 of the Indian Evidence Act contemplates that no Tenant of immovable property, or person claiming through such Tenant, shall during the continuance of the Tenancy, be permitted to deny that the Landlord of such Tenant had, at the beginning of the Tenancy, a title to such immovable property; and no person who came upon any immovable property of License of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such License was given.

8. Section 116 of the Indian Evidence

Act sets out in clear term that during the continuance of tenancy, a Tenant cannot be permitted to deny the Title of the Landlord. The decision of the Constitution Bench of the Honourable Supreme Court in Aryam Veeraraju and others v. Pechetti Venkanna and others, AIR 1996 SC 629 held in Para 13 as follows:

13. Having regard to Section 116 of the Indian Evidence Act, 1872, during the continuance of the Tenancy, a Tenant will not be permitted to deny the Title of the deity at the beginning of the Tenancy. In Bilas Kanwar v. Desraj Ranjit Singh, ILR 37 All 557 at P.567: AIR 1915 PC 96 at pg.98 the Privy Council observed:

A Tenant, who has been let into possession cannot deny his Landlord's Title however defective it may be so, so long as he has not openly restored possession by surrender to his Landlord.

The ratio laid down in the above Judgment by the Honourable Supreme Court is squarely applicable to the facts and circumstances of the case on hand."

18. Similarly, in the case of KAMALJIT SINGH vs. SARABJIT SINGH reported in [2014 (16) SCC 472], wherein, the Honourable Apex Court has held as follows:

"16.A Three-Judge of this Court in Sri Ram Pasricha v. Jagannath reiterated the principle that a Tenant in a Suit for possession was estopped from questioning the Title of the Landlord under Section 116 of the Evidence Act. The Title of the Landlord, declared this Court, even otherwise irrelevant in a Suit for Eviction of the Tenant.What is important is that so long as a jural relationship exists between the respondent/Tenant and the Appellant and so long as he has not surrendered the possession of the premises in his occupation, he cannot question the title of the Appellant of the property...."

19. Admittedly, the defendant has filed an application under Section 9 of the Tamil Nadu City Tenants Protection Act for claiming right over the building, which was negated by the trial Court. It appears that the appeal also confirmed and the decision in above issue has reached finality. It is the another contention of the defendant that one trustee cannot maintain the suit, such contention cannot be countenanced. Any religious institution, the suit can be filed by any of the trustees to protect the trust properties.

20. For the aforesaid reasons, the substantial questions of law are answered in favour of the appellant and against the respondent. The Second Appeal is therefore allowed, by setting aside the judgment and decree of the Courts below hand the suit is decreed as prayed for. The defendant shall hand over the possession of the suit properties, within a period of 2 months from the date of receipt of a copy of this order, failing which, he shall pay a sum of Rs.5,000/- per month as damages to the plaintiff. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

sri

To

1.The II Additional Subordinate Judge
and Appellate Authority,
Coimbatore.

2.The I Additional District Munsif,
Coimbatore.

+1cc to Mr.J.Ramakrishnan, Advocate SR.No.11019

+1cc to Mr.S.Saravanan, Advocate SR.No.11107

S.A.No.580 of 2008
and M.P.Nos.1 & 2 of 2008

BS (CO)
GMY (04/07/2019)