

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1061 of 2006

1.Rose

2.V.Srinivasan

..Appellants/Respondents 2 & 3/
Respondents 2 & 3/Obstructions 2 & 3

Vs.

1.G.Kannan

..1st Respondent/1st Respondent/
1st Respondent/Judgment Debtor

2.A/m.Karneeswarar temple
rep.by its Executive Officer

..2nd Respondent/Appellant/
Petitioner/Decree Holder

3.Swami @ Kailasanathan

..3rd Respondent/4th Respondent/
4th Respondent/4th Obstructor

4.T.Murugan

..4th Respondent/5th Respondent/
5th Respondent/5th Obstructor

(R4 Given up)

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 20.06.2006 passed in A.S.No.232 of 2005 on the file of the Additional District and Sessions Court, (Fast Track Court-IV), Chennai, reversing the judgement and decree dated 05.10.2004 passed in E.A.No.2480 of 2000 in E.P.No.1216 of 1999 in O.S.No.2237 of 1992 on the file of the Xth Assistant City Civil Court, Chennai.

For Appellants
For Respondent
Nos.1 to 3

: Mr.Kiruba Munusamy
: No representation/No appearance
set exparte vide order
dated 26.04.2019

For Respondent
No.4

: given up

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 20.06.2006 passed in A.S.No.232 of 2005 on the file of the Additional District and Sessions Court, (Fast Track Court-IV), Chennai, reversing the fair order and decree dated 05.10.2004 passed in E.A.No.2480 of 2000 in E.P.No.1216 of 1999 in O.S.No.2237 of 1992 on the file of the X Assistant Judge, City Civil Court, Chennai.

2.The second appeal has been admitted on the following substantial questions of law:

"1.The appellants having raised objections in respect of the admissibility and enforceability of the collusive exparte decree obtained in O.S.No.2237 of 1992 against the first respondent/judgement debtor whether the findings of the lower appellate Court that the said decree is enforceable against the appellants and binding on them are sustainable in law?

2.Whether the findings of the lower appellate Court made contrary to the evidence covered by Exs.R2, R3 and R49 for holding that the appellants obtained possession of the suit building from the first respondent/judgment debtor and carried on business at his instigation are perverse and are liable to be set aside?

3.The predecessors in interest of the appellants having paid rent as tenants to the decree holder /temple as confirmed by Exs.R18, R21 and R22 and R38 and R40 and carried on business in the suit shop building whether the lower appellate Court was right in law in assuming the appellants were in possession of the suit shop building without any independent title, interest or right in the suit property but only as obstructors claiming under the first respondent/judgment debtor?"

3.Considering the scope of the issues involved between the

parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

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

5. It is found that the petitioner temple armed with the decree obtained in O.S.No.2237 of 1992 against the first respondent/judgment debtor preferred the Execution proceedings to obtain the possession of the suit property and the delivery having been ordered in favour of the petitioner temple, and when the petitioner temple along with the bailiff endeavoured to execute the warrant issued by the Court for obtaining the possession of the suit property, according to the petitioner, the judgment debtor remained absent and on the other hand, he had set up the respondents 2 to 5 in the suit property with a view to prevent the petitioner temple from taking the delivery of the suit property and according to the petitioner temple, the obstructors resisted the delivery, on the false footing that they are occupying the suit property as the tenants from the judgement debtor, however, it is therefore contended that the obstructors are not claiming any direct tenancy arrangement in respect of the suit property under the petitioner temple and has put forth the dubious claim of the right to squat in the suit property through the judgment debtor, it is thus contended that the obstructors are not entitled to resist the delivery of the property to the petitioner temple and hence, seeking the removal of the obstruction, the petition has come to be laid by the petitioner temple.

6. The respondents 2 & 3 mainly resisted the petition preferred by the petitioner temple contending that the maternal uncle of one Vijayan viz, Natesan Naicker was the original tenant of the suit property under the petitioner temple and as Natesan Naicker had no issues, he had brought up his brother's son Vijayan as his foster son and put him in the possession of the suit property including the tenancy right and accordingly Vijayan was occupying the suit property through Natesan Naicker and after the demise of Vijayan, the second respondent, who is the wife and the third respondent, who is the son of Vijayan, are continuing to occupy the suit property and it is stated that the third parties like Gunasekar and Kannan, the first respondent attempted to squat in the suit property on some reasons or the other, but they had been evicted by Vijayan and the respondents and inasmuch as the first respondent has no independent right to occupy the suit property and it is only the respondents 2 & 3, who are, as abovenoted, occupying the suit property, accordingly, put forth the case that the petitioner,

temple in the guise of the decree obtained against the first respondent, is not entitled to evict the respondents 2 & 3 from the suit property and accordingly, prayed for the dismissal of the application.

7. Based on the materials placed on record, it is found that the execution Court has dismissed the application preferred by the petitioner temple. On appeal, the first appellate Court, based on the appreciation of the materials placed on record, was pleased to set aside the order of the EP Court and resultantly, allowed the removal of obstruction application preferred by the petitioner. Impugning the same, the present second appeal has been preferred.

8. As could be seen from the materials placed on record, the petitioner temple had obtained the decree against the first respondent Kannan for possession and accordingly, seeking to execute the decree, it is found that they had endeavoured to execute the decree through the process of the Court. However, at the time of executing the warrant, inasmuch as the respondents 2 & 3, in particular along with the other respondents obstructed the delivery of the property to the petitioner temple contending that it is they, who are occupying the suit property in their own right and through Natesan Naicker and Vijayan and inasmuch as the first respondent has no legal entitlement to the suit property, accordingly, contended that the petitioner temple is not entitled to evict them from the suit property based on the decree obtained against the first respondent.

9. As could be seen from the materials placed on record and as determined by the first appellate Court, it is found that originally Natesan Naicker was occupying the suit property under the tenancy arrangement with the petitioner temple. Furthermore, it could be seen that after the demise of Natesan Naicker, the tenancy arrangement was effected in favour of the first respondent Kannan and inasmuch as the first respondent had committed default in the payment of rent, it is found that the petitioner temple had initiated the proceedings to evict him from the suit property and as abovenoted, the petitioner temple had also obtained the decree to evict the first respondent from the suit property, accordingly, they had preferred the execution proceedings to evict the first respondent from the suit property. However, the same had been resisted by the respondents 2 & 3 in particular and according to the respondents 2 & 3, their predecessor in interest viz., Vijayan had acquired the tenancy right of the suit property from Natesan Naicker, who was the original tenant and it is also stated that Vijayan is the foster son of Natesan Naicker and accordingly, continuing the

business of Natesan Naicker in the suit property and after the demise of Vijayan, it is put forth by the respondents 2 & 3 that they are continuing the business in the suit property and it is also seen that they had also projected the settlement deed dated 29.11.1978 said to have been executed by Bommiammal w/o. Natesan Naicker in favour of Vijayan with reference to the suit property and on that basis contended that it is only Vijayan and thereafter the respondents 2 & 3, who are occupying the suit property under a valid arrangement, hence, according to them, the first respondent is not having any leasehold right in respect of the suit property and therefore, in the guise of the decree obtained against the first respondent, the petitioner temple is not entitled to evict them from the suit property.

10. However, as abovenoted, it is seen that the materials placed on record go to show that it is only the first respondent, who had obtained the leasehold right in respect of the suit property, after the demise of Natesan Naicker. Though the respondents 2 & 3 would contend that the first respondent has no semblance of right whatsoever to occupy the suit property, however, the third respondent examined as RW1, during the course of cross examination, has clearly admitted that it is only the first respondent, who had been occupying the suit property as a tenant and only from him, Vijayan had obtained the possession of the suit property and thereafter, the third respondent viz., RW1 is occupying the suit property. Not only that the 4th respondent examined as RW2, who is said to be an employee of the alleged business run by the respondents 2 & 3 in the suit property, has admitted during the course of his evidence that it is only the name of the first respondent, which had been recorded in the register maintained by the petitioner temple as the tenant of the suit property and also admitted that he has been paying the rent only in the name of the first respondent Kannan. Therefore, as rightly determined by the first appellate Court, when as per the admission of RW1 & RW2, it is seen that it is only Kannan, the first respondent, who had been granted the leasehold right in respect of the suit property by the petitioner temple and when the respondents 2 & 3, in particular, have not placed acceptable and convincing materials to establish that they had derived the lease hold right through Natesan Naicker and on the other hand, having admitted that they had derived the leasehold right only from Kannan, in such view of the matter, when the petitioner temple is found to have obtained the valid decree against the first respondent Kannan, the other respondents, who are found to be occupying the suit property through Kannan, are not entitled to resist the delivery of the property to the petitioner temple, while executing the decree obtained by the petitioner temple. The abovesaid

reasonings of the first appellate Court for not accepting the defence of the respondents 2 & 3 are found to be based on the proper appreciation of the materials placed on record, particularly, on factual matrix and in such view of the matter, when the abovesaid reasonings do not suffer from any perversity, as such, it is found that the respondents 2 & 3 cannot be allowed to contend that they have derived leasehold right of the suit property through Natesan Naicker and Vijayan as put forth by them.

11. The documents had been pressed into service by the respondents 2 & 3 as if their predecessor in interest Vijayan had been occupying the suit property and running the business therein, however, when there is no reliable materials placed by them evidencing that they had acquired a valid transfer of lease hold right from Natesan Naicker and when the relationship between Natesan Naicker and Vijayan has not been properly explained and also not established by placing acceptable and convincing materials and when the respondents have also projected the case as if they had obtained the leasehold right by way of the settlement deed dated 29.11.1978, on the other hand, when they had failed to establish that the settlor had the competency to settle the tenancy right in favour of their predecessor in interest viz., Vijayan, in such view of the matter, it is evident that the respondents 2 & 3 have been giving inconsistent pleas for squatting and continuing the retention of the suit property one way or the other and accordingly, as determined by the first appellate Court, the documents projected by the respondents pointing to the payment of rents by Natesan Naicker, the legal heir certificate and other documents pointing to the payment of electricity charges, demand notice etc., when the abovesaid documents are found to be issued in their favour in their capacity of occupying the suit property through the judgment debtor viz., the first respondent and when the abovesaid documents are not shown to be issued in their favour as having derived the right validly through Natesan Naicker as such, in such view of the matter, as determined by the first appellate Court, when no valid material has been put forth by the respondents 2 & 3 evidencing that they had derived the tenancy right through Natesan Naicker in accordance with law and their right had been recognised by the petitioner temple at any point of time and the other proceedings inter se between them and the first respondent and one Gunasekar would not in any manner be useful to advance their case, when it is seen that the petitioner temple is not a party to the abovesaid proceedings and in such view of the matter, it is found that the first appellate Court had appreciated the materials placed on record in the right perspective and come to the conclusion that without

any semblance of right, the respondents 2 to 5 are obstructing the delivery of the property in favour of the petitioner temple and accordingly, rightly directed to removal of the said obstruction put forth by them.

12. In the light of the abovesaid factors and when the issues involved between the parties as abovesaid are found to be centering on the factual matrix and when the materials placed on record had been properly appreciated and analysed by the first appellate Court and rightly come to the conclusion that the respondents 2 & 3 have no semblance of right independently to occupy the suit property and on the other hand, when they are found to be occupying the suit property only through the first respondent /judgment debtor and when the petitioner temple had obtained the valid decree to evict the first respondent from the suit property, the said decree obtained by the petitioner temple is equally binding upon the respondents 2 & 3 and in such view of the matter, the respondents 2 & 3 are not entitled to obstruct the delivery of the suit property to the petitioner temple. The abovesaid facts having been rightly appreciated and determined by the first appellate Court, in such view of the matter, there is no warrant to interfere with the judgment and decree of the first appellate Court in the second appeal, accordingly, the substantial questions of law formulated in the second appeal are answered against the respondents and in favour of the petitioner temple.

13. In support of his contentions, the respondents' counsel placed reliance upon the decisions reported in 1968 AIR (SC) 1413 (Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and others), 2009 (5) CTC 563 (Dubaria Vs. Har Prasad and another), 2010-3-L.W.908 (Chinnammal and another Vs. Valliammal and two others) and 1998(1) CTC 477 (Muthu Goundar Vs. Poosari @ Palaniappan and 4 others). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

In conclusion, the second appeal fails and is, accordingly, dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
(Fast Track Court-IV), Chennai.

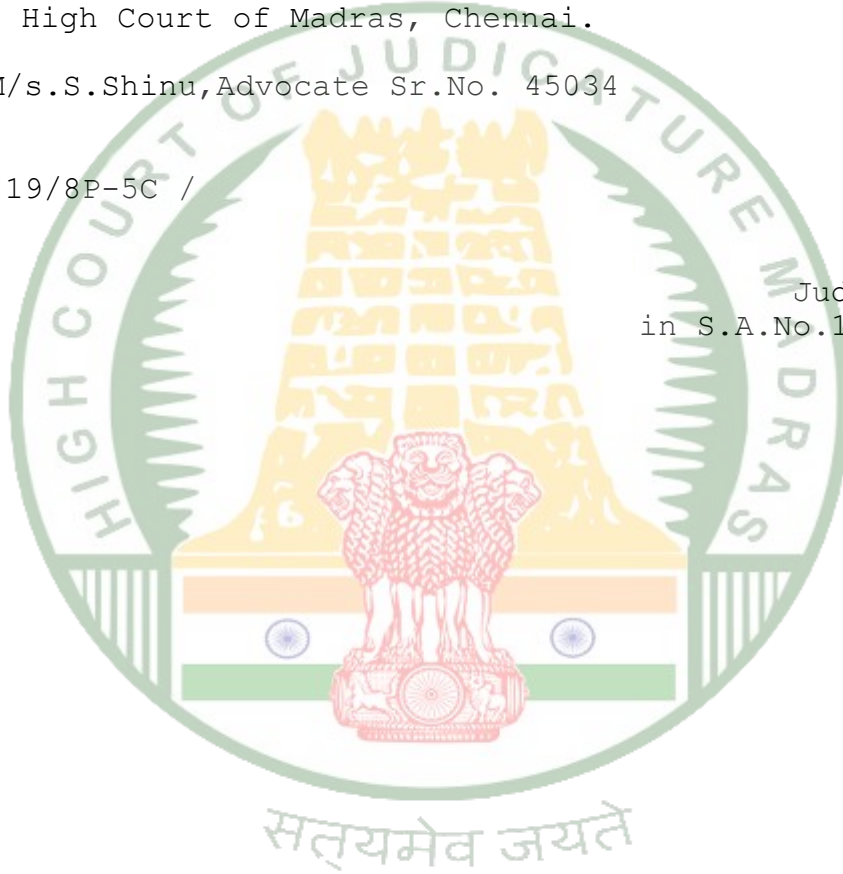
2.The Xth Assistant Judge,
City Civil Court,
Chennai.

Copy to : The Section Officer, V.R. Section,
High Court of Madras, Chennai.

+1 cc to M/s.S.Shinu, Advocate Sr.No. 45034

AKM/12.12.19/8P-5C /

Judgment made
in S.A.No.1061 of 2006



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