

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2019

PRONOUNCED ON : 20.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1456 of 2005

1.Raveenthiran
2.Booramoorthi
3.Rajashri
4.Vithya
5.Lavanya
6.Chandra (alias) Leena
7.Sarumathi
8.Jayashri

...Appellants

Vs.

R.D.Shanmugam

...Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 08.01.2003 passed in A.S.No.24 of 2002 on the file of the Principal Subordinate Court, Vridhachalam, partly reversing the Judgment and Decree dated 03.10.2001 passed in O.S.No.77 of 1998 on the file of the Principal District Munsif Court, Vridhachalam.

For Appellants : Mr.R.Agilesh

For Respondent : Mr.R.Sunil Kumar

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 08.01.2003 passed in A.S.No.24 of 2002 on the file of the Principal Subordinate Court, Vridhachalam, partly reversing the Judgment and Decree dated 03.10.2001 passed in O.S.No.77 of 1998 on the file of the Principal District Munsif Court, Vridhachalam.

2.The parties are referred to as per their rankings in the trial Court.

3.Suit for recovery of money.

4.The case of the plaintiffs in brief is that the first plaintiff is the owner of the rice mill building bearing Door No.181, Junction Road, Virudhachalam and Ganapathi Traders, the partnership firm, entered into a rental agreement on 10.07.1974 with the first plaintiff and as per the terms of the rent deed, the abovesaid firm is to be in the possession of the entire mill premises abovestated for a period of two years on a monthly rent of Rs.700/- and accordingly, the partners of the abovesaid partnership firm took the possession of the demised premises and was in enjoyment of the same and after the expiry of the period fixed, the partnership firm vacated a major portion of the demised premises retaining only a room, by name old expeller Hall, wherein, the machineries of the partnership firm were imbedded to earth. The partnership firm agreed to pay Rs.250/- per month, in respect of the abovesaid expeller room from 16.11.1976. The State Bank of India, Virudhachalam, for the amount due to it from the abovesaid partnership firm, filed a suit in O.S.No.65 of 1978 on the file of the Subordinate Court, Chidambaram, later, it was transferred to Subordinate Court, Virudhachalam and remembered as O.S.No.27 of 1981 and in the abovesaid suit, the plaintiff i.e State Bank of India, Virudhalchalam, got a receiver appointed to sell the machineries, which is available in the old expeller hall and the third defendant was appointed as the receiver and he took the possession of the property. The first plaintiff filed RCOP No.1 of 1980 against the partnership firm and against the State Bank of India, Virudhachalam and the receiver for eviction and delivery of the old expeller hall and the said petition was allowed on 02.01.1981. The State Bank of India preferred an application on 26.02.1981 seeking two months time for delivery of possession and the same was dismissed. Till date, the possession has not been handed over to the first plaintiff. Since the old expeller Hall has not been handed over to the first plaintiff, he is entitled to rent or damages for the use and occupation of the same. The receiver appointed by the Court, namely, the third defendant sold the machineries imbedded to earth in the old expeller Hall in public action and it appears that the first defendant is the highest bidder, but, the second defendant, who was also one of the bidders preferred objections questioning the auction and obtained stay of confirmation of sale and the proceedings are pending. Even now, the room is locked and the key is available with the third defendant and hence, the defendants are jointly and severely liable to pay damages to the first plaintiff for the use and occupation. The first plaintiff preferred a suit for recovery of rent/damages for the use and occupation and the suit laid by the first plaintiff in O.S.No.13 of 1993 for the period commencing from 12.12.1989 till 11.12.1992 had been decreed. The damages for the use and occupation now claimed is due from 12.12.1992 and the property in question had not been delivered to the first

plaintiff on account of the dispute between the defendants 1 & 2 and the third defendant as receiver and accordingly, the suit has been laid by the first plaintiff against the defendants for damages on account of the use and occupation of the property in question in a sum of Rs.250/- per month from 12.12.1992 ending with 11.12.1995 and pending the suit, the first plaintiff being died and his LRs are brought on record and hence, the suit.

5.The case of the second defendant in brief is that the suit laid by the first plaintiff against him is not maintainable either in law or on facts and after admitting the averments contained in paras 3 to 5 of the plaint, putforth the case, disputing the entitlement of the plaintiff to claim damages from the second defendant, in particular, for the use and occupation of the old expeller Hall and also contended that in the auction conducted by the receiver, it is only the second defendant, who had taken part in the first auction and despite the same, the receiver had not confirmed the auction in favour of the second defendant and subsequently, the first defendant appears to have participated in the auction and challenging the same, the second defendant has levied the suit in O.S.No.428 of 1991 against the receiver, State of the India and the first defendant and the said suit ended in favour of the second defendant and even the appeal preferred against the same had been dismissed and despite the above position, the receiver had not so far entrusted the machineries to the second defendant and therefore, the second defendant is not liable to pay any damagers to the first plaintiff for the use and occupation of the property in question. The second defendant is not a necessary party to this lis and therefore, the suit is liable to be dismissed as against the second defendant.

6.In the reply statement preferred by the plaintiffs, it is putforth that the suit laid by the first plaintiff in O.S.No.13 of 1993 claiming rent or damages for the use and occupation of the premises for the period from 12.12.1989 to 11.12.1992 ended in favour of the first plaintiff and in the abovesaid suit, the second defendant is impleaded as 7th defendant and though the second defendant engaged an advocate in the abovesaid suit, later he remained exparte and the suit was decreed on 20.12.1994 and inasmuch as the present suit has been laid claiming damages for the use and occupation of the property for the subsequent period, the defendants are barred by the principles of Resjudicata to resist the plaintiff's suit and accordingly, the suit shall be decreed in favour of the plaintiff as prayed for.

7.In support of the plaintiffs' case, PW1 was examined and Ex.A1 was marked. On the side of the second defendant, DW1 was examined and Exs.B1 to 4 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court was pleased to decree the suit as prayed for by the plaintiff. Impugning the same, the second defendant has preferred the first appeal and the First Appellate Court, on a consideration of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the Trial Court as regards the second defendant alone and by way of allowing the appeal preferred by the second defendant, dismissed the suit laid by the plaintiff as against the second defendant only. Impugning the same, the plaintiffs have come forward with the present second appeal.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"(a). Whether the lower appellate Court is legally right in absolving the second defendant from payment of damages, when once he admits that the machinery owned by him was in the premises belonging to the plaintiffs?

(b). Whether the appellate Court is legally right in absolving the second defendant from payment of damages, when once it was claimed and proved that the machinery was purchased by the second defendant and kept in the plaintiffs' place?

(c). Whether the appellate Court is legally right in absolving the second defendant from payment of damages, even after finding that the machinery belongs to the second defendant and the third defendant had not given the keys of the room?

(d). Whether the Courts below are legally right in rejecting the claim of the plaintiffs that the same parties were directed to pay damages in O.S.No.13 of 1996 on the file of the court of District Munsif, Vridhachalam, in respect of the claim for the earlier period on the basis of claim which is same in the present proceedings?"

10. The plaintiffs have come forward with the suit against the defendants claiming damages for the use and occupation of the premises belonging to them, wherein, the machineries of the erstwhile tenant are found to be imbedded to earth and as regards, the case of the plaintiffs that the premises in

question was rented out to the partnership firm, Ganapathy Traders, has not been disputed by the second defendant and it is also seen that the second defendant has not disputed the case of the plaintiffs that the State Bank of India had levied the suit against the partnership firm in O.S.No.27 of 1981 for claiming the amount due to it from the abovesaid partnership firm and also not disputed the fact that in the abovesaid suit, the third defendant had been appointed as the receiver to sell the machineries imbedded to earth in the premises in question and accordingly, it is seen that as putforth by the plaintiffs in the premises belonging to them i.e. the old expeller hall, the machineries had been imbedded to earth and the litigation, with reference to the abovesaid machineries, are pending in O.S.No.27 of 1981. It is also not in dispute that the first plaintiff had filed RCOP No.1 of 1980 against the abovesaid partnership firm, the State Bank of India and the receiver for eviction and obtained the delivery order of the old expeller hall, wherein, the machineries are imbedded to earth.

11.From the materials placed on record, it is found that in the auction conducted by the receiver, viz., the third defendant, as regards the machineries involved in the matter, dispute arose between the defendants 1 & 2 as to who among them is the valid highest bidder of the said machineries and accordingly, it is found that the second defendant has levied the suit in O.S.No.428 of 1981 on the file of the Subordinate Court, Vridhachalam against the first defendant, the third defendant and one Seshagiri Rao to declare that the sale of machineries held and concluded in favour of the first defendant on 19.05.1981 as invalid and for other consequential reliefs. It is noted that the abovesaid suit ended in favour of the second defendant as could be seen from the copy of the decree passed in the said suit marked as Ex.B1. It is also seen that the first appeal and the second appeal preferred against the abovesaid decree had come to be dismissed and the same can be evidenced from the copy of the decree passed by the High Court in second appeal No.607 of 1985 marked as Ex.B4. Thus, it is found that claiming title to the machineries in question imbedded to earth in the premises belonging to the plaintiffs, it is found that the second defendant had levied the abovesaid civil action against the defendants 1 and 3 and another and accordingly, it is found that the abovesaid action ended in favour of the second defendant. It is thus noted that the defendants 1 & 2 had been putting forth rival claims to the machineries imbedded to earth in the premises in question and consequently, it is seen that the premises in question had not been handed over to the plaintiffs, who are admittedly the owners of the same. In such view of the matter, it is found that inasmuch as the plaintiffs are entitled to secure the damages for the use and occupation of the premises in question from the occupiers of the same and admittedly, when the third

defendant receiver had taken the possession of the machineries imbedded to earth and fixed in the abovesaid premises and furthermore, when the defendants 1 & 2 are projecting rival claims to the machineries and questioning one way or the other their respective bids in the auction of the same and when with reference to the abovesaid issues, the civil action laid by the second defendant in O.S.No.428 of 1981 had been concluded in favour of the second defendant, it is found that on account of the abovesaid position and the dispute amongst the defendants 1 to 3, the plaintiffs are unable to secure the possession of the premises in question and accordingly, it is found that the plaintiffs had been necessitated to seek the appropriate reliefs with reference to the same against the defendants and accordingly, it is also noted that in the suit laid by the plaintiffs with reference to the same in O.S.No.13 of 1996 on the file of the District Munsif Court, Virudhachalam, claiming damages for the period commencing from 12.12.1989 to 11.12.1992, the same had ended in favour of the plaintiffs, which could be gathered from the copy of the decree marked as Ex.A1 and furthermore, when it is found that in the abovesaid suit, the present contesting second defendant is also impleaded as the seventh defendant and he had not chosen to contest the abovesaid lis preferred by the plaintiffs, in such view of the matter, when the second defendant, in particular, is claiming title to the machineries imbedded to earth and available in the premises in question, as rightly determined by the trial Court, he would also be liable to pay the damages to the plaintiffs for the use and occupation of the machineries in question in the demised premises belonging to the plaintiffs and therefore, the first appellate Court is found to have erred in holding that the second defendant is not liable to pay the damages to the plaintiffs for the period in question on the footing that the third defendant had not chosen to confirm the auction in favour of the second defendant. As rightly put forth by the plaintiffs' counsel, inasmuch as admittedly the machineries in question are fixed in the premises belonging to the plaintiffs and thereby, the defendants are liable to pay the damages for use and occupation of the same and in particular, when the second defendant has been projecting a valid claim of title to the machineries in question by levying the civil action against the defendants 1 & 3 in particular and furthermore, when the abovesaid lis had ended in favour of the second defendant, when admittedly the machineries in respect of which the second defendant has put forth a claim of ownership is lying in the premises belonging to the plaintiffs, the first appellate Court is found to have erred in exonerating the second defendant from the liability of paying the damages to the plaintiffs as prayed for by the plaintiffs on the footing that the third defendant had not confirmed the auction in favour of the second defendant. When as far as the plaintiffs are concerned, they are no way concerned with the dispute qua the ownership of the machineries

amongst the defendants 1 to 3, when admittedly the machineries involved in the matter are lying in the premises belonging to the plaintiffs and as regards the same, rival claims are pending between the defendants 1 to 3 as above pointed out, in such view of the matter, particularly, when the claim of ownership to the machineries in question by the second defendant had been upheld in O.S.No.428 of 1981 and confirmed by this Court in the second appeal, in all, it is found that the second defendant is also equally liable to pay the damages to the plaintiffs as prayed for. In addition to that, it is seen that the plaintiffs have also levied the suit in O.S.No.13 of 1996 against the various persons including the second defendant claiming damages for the earlier period and when the said suit had ended in favour of the plaintiffs, as rightly put forth, the present suit laid by the plaintiffs claiming damages for the subsequent period, should have also been upheld by the first appellate Court, particularly, when the claim of ownership to the machineries in question and lying in the premises belonging to the plaintiffs had been upheld in the suit laid by the second defendant and accordingly, the first appellate Court is found to be not justified in exonerating the second defendant from the liability of paying the damages to the plaintiffs as prayed for.

12. In the light of the above discussions, the substantial questions of law formulated in the second appeal are answered accordingly in favour of the plaintiffs and against the second defendant.

For the reasons aforesaid, the judgement and decree dated 08.01.2003 passed in A.S.No.24 of 2002 on the file of the Principal Subordinate Court, Vridhachalam, holding that the second defendant is not liable to pay the damages to the plaintiffs claimed in the suit are alone set aside and resultantly, the Judgement and Decree dated 03.10.2001 passed in O.S.No.77 of 1998 on the file of the Principal District Munsif Court, Vridhachalam, are restored. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Principal Subordinate Court,
Vridhachalam.

2.The Principal District Munsif Court,
Vridhachalam.

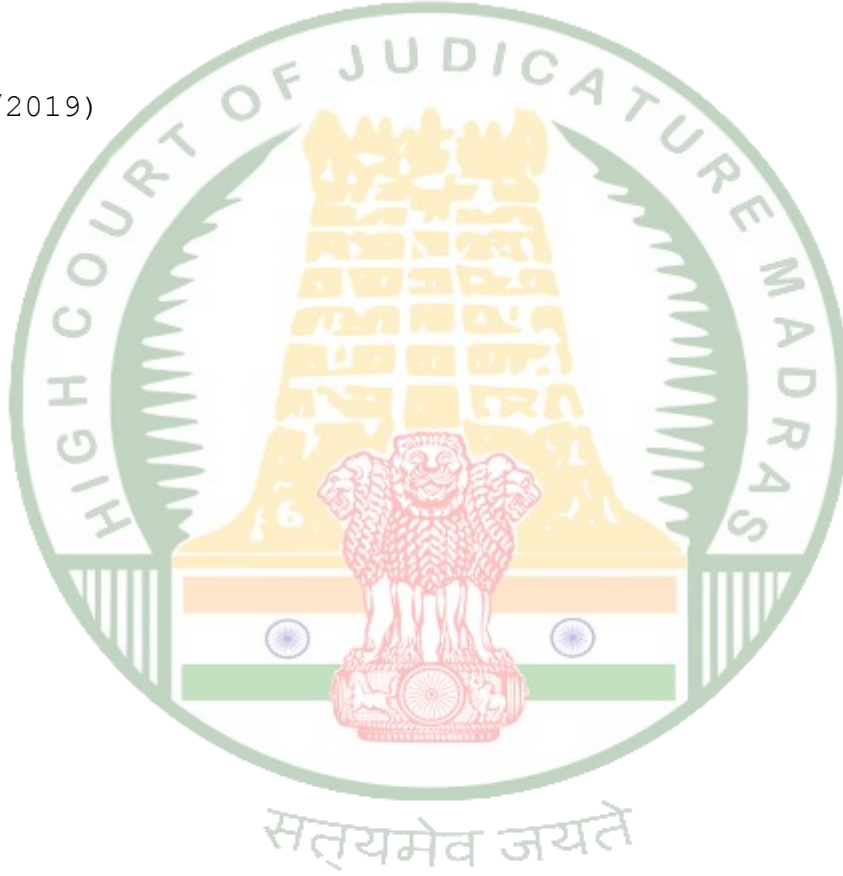
3.The Section officer,
V.R.Section, High Court,
Madras - 104.

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.15851

S.A.No.1456 of 2005

RSV (CO)

RRS (22/04/2019)



WEB COPY