

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2019

CORAM :

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.440 of 2005
and
C.M.P.No.7131 of 2005

1.Sree Rangammal
2.Anjaneyalu Chettiar (Deceased)
3.C.A.Venkatesan
4.C.A.Parthasarathy
5.C.A.Ganesan
6.S.Jayalakshmi
7.C.A.Mohanvel Appellants

(Appellants 3 to 7 brought on record as LRs
of the deceased 2nd Appellant vide order of
Court dated 14.12.12 made in C.M.P.
No.597 of 2012 in S.A.No.440 of 2005)

Vs.

Sankar Chettiar

... Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 08.07.2004 in A.S.No.153 of 2003 on the file of the Principal District Court, Cuddalore, reversing the judgment and decree dated 15.12.2003 in O.S.No.559 of 1997 on the file of the Principal District Munsif Court, Cuddalore.

For Appellants : Ms.G.Sumitra

For Respondent : Mr.Kingston Jerold

J U D G M E N T

The defendants in O.S.No.559 of 1997 are the appellants before this Court.

2.The appeal arises against the judgment and decree of the Principal District Judge, Cuddalore, in A.S.No.153 of 2003, reversing the judgment and decree of the Principal District

Munsif, Cuddalore, in O.S.No.559 of 1997. The parties are arrayed in the same status as in the suit.

3.The facts in brief necessary to dispose of the above second appeal are as follows.

4.Plaintiff's Case:

4.1.The plaintiff had instituted the suit in O.S.No.559 of 1997, seeking grant of permanent injunction restraining the defendants from dispossessing him from the suit schedule property except by due process of law. The suit schedule property is a shop, bearing No.5 in Rajaji Complex, bearing Door No.1, Chinna Vanniar Street, Thiruppapuliur, Cuddalore. It is the case of the plaintiff that he had been inducted as a tenant in the month of September 1992 by the 1st defendant on monthly rental basis, with rent fixed at Rs.800/- per month and an advance of Rs.50,000/- had been paid by him. It is his further case that, till the month of August 1997, there was absolutely no demur on the part of the defendants in receiving the rents which were paid by him, either to the 1st defendant or the 2nd defendant. When the rent for the month of September 1997 was tendered, the 2nd defendant refused to receive the payment, demanding enhanced rent. As on that date, the rent was Rs.800/- per month. The plaintiff would submit that, thereafter, the defendants tried to forcibly evict him from the suit schedule property, constraining him to move the suit in question.

5.Defendants' Case:

5.1.The defendants had come forward with their written statement, contending that the 2nd defendant was the owner of the property and the 1st defendant was a lessee under him. She had leased out the property to one Kamalakannan for carrying out business of plastic bags under a rent deed dated 07.08.1992 and the monthly rent was fixed at Rs.800/-. Receipts were being issued to Kamalakannan for the rent paid by him and he had specifically undertaken not to sub-lease the property to anyone. However, contrary to his assurance, Kamalakannan started defaulting in the payment of rent. The notice dated 17.10.1996 was issued by the 1st defendant calling upon the said Kamalakannan to clear the arrears of rent of Rs.21,600/- and to vacate the premises. Since, the said Kamalakannan had evaded the payment of rent and notice, the 1st defendant was constrained to file R.C.O.P.No.18 of 1996 and eviction was ordered. It was their case that, there was no tenancy agreement between the plaintiff and the defendants and the suit itself was on account of the collusion between the said Kamalakannan and the plaintiff. The defendants would contend that the plaintiff had approached them stating that he had purchased the business of Kamalakannan and that he was ready to pay the arrears of rent and he had requested the defendants to execute the rent deed in

his favour. However, the 2nd defendant had informed the plaintiff that they would accept his request, only after taking possession of the suit schedule property through Court. The plaintiff, who went back stating that he would revert after discussing with his Advocate, had chosen to file the suit.

6.Trial Court:

6.1.The learned District Munsif, by his judgment and decree dated 15.12.2003, dismissed the suit.

7.Appellate Court:

7.1.Aggrrieved by the same, the plaintiff had filed A.S.No.153 of 2003 on the file of the Principal District Court, Cuddalore.

7.2.The learned District Judge, by his judgment and decree dated 08.07.2004, relied upon the very admissions of the defendants regarding the possession of the property and allowed the appeal and reversed the judgment and decree in O.S.No.559 of 1997.

8.Second Appeal:

8.1.It is this judgment and decree, that is the subject matter of challenge under the present second appeal. The second appeal has been admitted on the following substantial questions of law.

(a) Whether the learned District Judge did not err in inferring tenancy in favour of the plaintiff, failing to note that there was a presumption about subsistence of lawful tenancy under Section 109 of the Evidence Act and in the absence of proof of termination of admitted tenancy to favour Kamalakannan, the plaintiff could not deem himself to be a tenant under the defendants from the year 1992 itself ?

(b) Whether the learned District Judge was not in error in inferring tenancy in the absence of any proof regarding payment of rent or advance or any form of consent from the defendants to the plaintiff possession ?

(c) Whether the learned District Judge was not in error in granting the relief of injunction for a trespasser against the lawful owners ?

9.Arguments advanced by both sides:

9.1.Heard Ms.Sumitra for the appellants, who would contend that, the plaintiff is a rank trespasser and was not inducted into possession of the property by the defendants. She would further contend that the plaintiff had come into possession only on account of the collusion between him and the said

Kamalakannan. She therefore argued that the finding of the learned District Judge that the plaintiff was in possession of the suit schedule property, pursuant to the lease, is totally erroneous.

9.2.Per contra, Mr.Kingston Jerold, arguing on behalf of the plaintiff would contend that, the Appellate Court has only relied upon the very admissions of the defendants and had come to the conclusion that the plaintiff is in possession of the suit property and therefore, no exception can be taken to the judgment and decree of the learned District Judge.

10.Discussion:

10.1.Heard the learned counsel on either side and perused the records.

10.2.The plaintiff has come forward with the case that he had been inducted into tenancy as early as in the year 1992 and that it was only from September 1997 that the defendants had refused to received the rent and the subsequent event of filing of Rent Control Petition and the attempt to dispossess him would clearly prove the aforesaid statement. D.W.1, who is none other than the 2nd defendant, the husband of the 1st defendant and the alleged owner of the suit property, has admitted that the plaintiff has been in possession and enjoyment of the property since 1992. If the plaintiff was a rank trespasser, the defendants would have immediately taken steps to evict him from the property, however, no action has been taken till the year 1997.

10.3.That apart, the defendants have themselves admitted that Kamalakannan has not been in possession and he had been abroad for a period of more than four years and therefore, their contention that Kamalakannan was a tenant appears to be a false statement and the Rent Control Petition itself appears to be a stage managed petition to evict the plaintiff.

10.4.The plaintiff had contended that the rent was not received from the month of September 1997 and it is seen that the Rent Control Petition has been instituted in October 1997. The Appellate Court has taken into account the exhibits Ex.A1 to Ex.A37, all of which would show that the plaintiff has been in possession of the suit property since the year 1992. The Commissioner's report, viz., Exs.C1 and C2 also confirm the possession of the plaintiff and the fact that the 2nd defendant who was present at the time of inspection had refused to sign the Commissioner's notice of investigation would constrain this Court to draw adverse inference against the defendants.

10.5.The substantial question of law (a) is that, unless there is termination of tenancy in favour of Kamalakannan, the plaintiff could not deem himself to be a tenant. However, the defendants have not been able to prove that Kamalakannan was a tenant and in the interconnected Civil Revision Petition, the said Kamalakannan had filed a counter under Order XXI Rule 97 that he was never a tenant in the property. Therefore, the substantial question of law (a) is answered against the defendants.

10.6.As regards the questions of law (b) and (c), the fact that the plaintiff had proved his possession from the year 1992 by filing Exs.A1 to A37 corroborated by the evidence of the Advocate Commissioner will clearly show that the Appellate Court has not erred in interfering with the tenancy. In fact, the Court was only protecting the rights of the tenant in the suit property and it cannot be stated that the plaintiff is a trespasser as he has proved his lawful possession from the year 1992 to date. Therefore, substantial questions of law (b) and (c) are also answered against the defendants.

10.7.In the result, this Second Appeal is dismissed and the judgment and decree passed in A.S.No.153 of 2003 by the learned Principal District Judge, Cuddalore, stands confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal District Judge,
Cuddalore.
- 2.The Principal District Munsif,
Cuddalore.
- 3.The Section Officer,
VR Section, High Court, Madras.

+1cc to Ms.G.Sumitra, Advocate Sr.8534

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srg 25/06/2019