

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 06.03.2019
PRONOUNCED ON : 27.03.2019
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.No.530 of 2005
and
C.M.P. No.8198 of 2005

1. K.S.Selvaraj
- 2.K.S.Jagadeesan (deceased)
- 3.K.S.Yogendran (deceased)
- 4.J.Padmini
- 5.J.Karthikeyan
- 6.J.Lokesh kumar
- 7.Usha Yogendran
- 8.Y.Vignesh
- 9.J.Indhu

...Appellants/Appellants/Defendants

Appellants 4 to 6 brought on record as LRS of deceased 2nd appellant as per order dated 10.09.2013 made in C.M.P. Nos.683 to 685 of 2013 in S.A.No.530 of 2005.

Appellants 7 to 9 brought on record as LRS of deceased 3rd appellant vide order of court dated 14.02.2019 made in C.M.P. No.3546 of 2019 in S.A.No.530 of 2005.

Vs.

Sree Komaleeswarar Devasthanam

Rep. by its Executive Officer : Respondent/Respondent/
Petitioner

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 10.03.2004 made by the learned 3rd Additional Judge, City Civil Court, Chennai in A.S. No.251 of 1993 confirming the order and decreetal order dated 14.03.1991 made in I.A. No.4902 of 1989 in O.S.No.1969 of 1973 by the learned XII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.K.V.Ananthakrishnan
For Respondent : Mr.S.D.Ramalingam

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 10.03.2004 passed in A.S.No. 251 of 1993 on the file of the III Additional Judge, City Civil Court, Chennai confirming the fair and decreetal orders dated 14.03.1991 passed

in I.A. No.4902 of 1989 in O.S.No.1969 of 1973 on the file of the XII Assistant Judge, City Civil Court, Chennai.

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

"1. Has not the Appellate court went wrong in suo motu restoring the suit O.S.No.1969 of 1973 which was dismissed for default on 29.01.1990?

2. Has not the Appellate Court went wrong in restoring the suit which was abated under Order 22 after the death of the sole defendant and when the legal representatives were not brought on record?

3. Did not the Appellate court went wrong in confirming the null and void decree on an erroneous principle of law that it is only a technical defect?

4. Did not the Appellate court went wrong in confirming the void decree without verifying the deposit made on 12.04.1985 is available and only on payment of compensation as per statutory requirement the eviction can be ordered?

5. Is not the judgment and decree of the appellate court against Sec.4(1) of the City Tenants Protection Act?

6. Has not the rights of the tenant and landlord come to an end and the entire pending proceedings as per Amendment Act 2 of 1996 and decision reported in 2003(2) CTC 129 abated?

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. The respondent has laid the suit for ejectment against the defendant K.Somasundaram (since deceased) in O.S.No.1969 of 1973. It is seen that the defendant had laid I.A.No.15296 of 1973 in the abovesaid suit under Section 9 of the Madras City Tenants Protection Act and the said petition had been entertained by fixing the value of the land at Rs.45,700/- and the defendant had been directed to pay the abovesaid amount in 36 instalments. It is found that the defendant had not deposited the said amount as directed within the stipulated

time. Consequently, it is found that the respondent has come out with an application in I.A.No.13706 of 1978 under Section 4 of the Madras City Tenants Protection Act willing to purchase the superstructure for the value fixed by the court for taking possession of the same from the defendant and it is seen that the value of the superstructure was fixed by the court at Rs.1,60,377-50 as per the order dated 19.01.1985. Following the same, it is found that the respondent had also deposited the same sum into the court on 12.04.1985. Aggrieved by the same, it is found that the appellants had preferred C.R.P. No.2580 of 1985 in the High Court putting forth the contention that the value of the superstructure as determined by the courts below is too low. The abovesaid CRP has been dismissed on 24.11.1986. As regards the abovesaid facts, there is no dispute between the parties as such. When the erstwhile defendant or for the matter the appellants, had not deposited the amount towards the value of the land, as per the order passed in their application filed under Section 9 of the Madras City Tenants Protection Act and thereby the appellants having lost their right to purchase the suit property from the respondent, subsequently, the respondent has moved the court for purchasing the superstructure in the land and following the order passed by the court, had also deposited the said amount in the court, the challenge made to the same by way of civil revision petition having also ended in vain, it is found that thereupon, the respondent has preferred I.A.No.4902 of 1989 under Section 4(1) of the Madras City Tenants Protection Act to pass the decree in I.A.No.13706 of 1978 directing the appellants to deliver the vacant possession of the suit land and the superstructure.

5. At one stage of the matter, it is found that the application preferred by the respondent in I.A.No.13706 of 1978 has come to be dismissed for default. Thereafter, the same had come to be restored and in the interregnum, the ejection suit laid by the respondent has been dismissed consequently. Even after the restoration of I.A.No.13706 of 1978, the suit dismissed had not come to be restored. However, the enquiry in I.A.No.13706 of 1978 had proceeded further and as above pointed out, the value of the superstructure determined by the court had come to be deposited by the respondent. Accordingly, it is found that the respondent is entitled to obtain the superstructure from the appellants as per the value deposited by them qua the superstructure in the court pursuant to the order passed in I.A.No.13706 of 1978 and when the appellants had also been brought on record during the pendency of the abovesaid proceedings, it is seen that, as rightly determined by the courts below, the application preferred by the respondent against the appellants in I.A.No.4902 of 1989 is perfectly maintainable. Merely because the appellants were not arrayed as parties in the earlier proceedings initiated with reference

to the main suit, that would not be a ground for the appellants to contend that without impleading them as parties in the main suit, the respondent is not entitled to proceed against them in the subsequent proceedings. The argument has also been projected before the courts below that the respondent has shown some leniency in selling the lands to the other tenants and therefore, the same benefit should be extended to the appellants also and the appellants should be permitted to purchase the land in question. As rightly determined by the courts below, if at all, the appellants are entitled to the same as per law, it is for the appellants to move appropriate authority with reference to the same, if law permits.

6. Inasmuch as the respondent had deposited the value of the superstructure as fixed by the court, it is seen that they are consequently entitled to recover the possession of the land as well as the superstructure and on that determination, the trial court entertained the application preferred by the respondent in I.A.No.4902 of 1989. Impugning the same, the appellants preferred the first appeal. The first appellate court has also concurred with all the abovesaid facts and issues between the parties as determined the trial court, however, according to the first appellate court, inasmuch the order for directing the appellants to deliver the vacant possession of the suit property and the superstructure should be made only in the suit and not in the interlocutory application as per the procedure envisaged under the Madras City Tenants Protection Act, particularly, Section 4 of the abovesaid act, on that determination, remanded the matter back to the trial court to pass appropriate orders in the suit and accordingly also directed the trial court to restore the suit dismissed as abovenoted earlier and accordingly dismissed the appeal preferred by the appellants. Impugning the same, the second appeal has been laid.

7. The only short point that is urged by the appellants' counsel is that when the suit laid by the respondent had already been dismissed at one stage of the matter, without necessary application to restore the same as per law on the part of the respondent, the appellate court suo motu is not entitled to give a direction to the court below to restore the suit and pass appropriate orders of handing over the possession of the property in question to the appellants and on that basis, the judgment and decree of the first appellate court requires interference. Furthermore, it is also contended that the first appellate court has also erred in ordering the restoration of the suit when the appellants had not been made as parties to the suit as such.

8. The right to purchase the land under Section 9 of the Madras City Tenants Protection Act available with the

appellants had been lost, inasmuch as they had failed to pay the amount towards the cost of the land as directed by the court within the stipulated period. Subsequently, the respondent has preferred necessary application for purchasing the value of the superstructure in the land. The value had been determined by the courts below and the same had also been confirmed by the High Court. The value fixed by the court had been deposited by the respondent. It is thus found that as a corollary to the abovesaid undisputed facts, the respondent is entitled as per law to obtain the vacant possession of the land and the superstructure and accordingly in I.A.No.4902 of 1989 preferred by them, necessary orders in favour of the respondent had come to be passed by the trial court. The same had also been confirmed by the first appellate court only modifying the same to the extent that inasmuch as the order directing the appellants to deliver the possession of the land and superstructure should be passed only in the main suit, accordingly, directed the trial court to pass necessary order in the suit by restoring the suit dismissed for default on an earlier occasion. Impugning the same the present second appeal has been laid.

9. As rightly determined by the courts below, several proceedings had been initiated by the respective parties in the main suit. At one stage of the matter, when the application preferred by the respondent for fixing the value of the superstructure on the land is dismissed, consequently the suit laid by the respondent had come to be dismissed. However, on application preferred by the respondent, the interlocutory application preferred by them in I.A.No.13706 of 1978 had come to be restored. As a follow up measure, the court should have endeavoured on its own to restore the suit dismissed earlier. The court had failed to do so, however, proceeded to go ahead with the disposal of I.A.No.13706 of 1978 and as above noted, fixed the value of the superstructure, which had been also deposited by the respondent. Resultantly, I.A.No.4902 of 1989 has been laid by the respondent for taking the possession. The same had been ordered by the trial court. The appellate court has felt that the said order of directing the appellants to hand over the possession of the land with the superstructure should be passed only in the main suit and not in the interlocutory application as per the procedure envisaged under the Madras City Tenants Protection Act. Accordingly, to the abovesaid limited extent only, it had remitted back the matter to the trial court. In such view of the matter, when as could be seen from the abovesaid factual matrix, the suit laid by the respondent had come to be dismissed on earlier occasion as a corollary to the dismissal of the application in I.A.No.13706 of 1978, however, when the said interlocutory application had come to be subsequently restored, automatically the court below should have

revived the order of dismissal passed in the suit and restored the same, the court having failed to do so and as abovenoted, I.A.No.13706 of 1978 having been taken on file and disposed of on merits and the order passed therein has come to be affirmed by the High Court in the civil revision petition also, in such view of the matter, the dismissal of the suit earlier, being only a technical flaw, that too, on the part of the court as abovenoted, the appellate court, noting the same, accordingly, directed the trial court to restore the suit on file and pass appropriate orders for delivery in the said suit. In my considered opinion, the procedure contemplated under law, being a hand maid to the cause of justice, the same need not be extensively adhered to, so as to result in the deprivation of the justice to the needy party, particularly by way of the same, no serious prejudice is caused to the opposite party. When the court, on its own, should have restored the suit dismissed for default, following the restoration of I.A.No.13706 of 1978, in such view of the matter, the direction given by the first appellate court to restore the suit for passing the order of delivery of the suit land and the superstructure has not suffered from any illegality or irregularity nor caused any serious prejudice to the appellants and therefore, the abovesaid contention put forth by the appellants' counsel that the first appellate court should not have ordered the restoration of the suit while remitting the matter, as such, cannot be countenanced.

10. As abovenoted, when the appellants had already been impleaded as parties in the proceedings laid in continuation of the main suit at one stage of the matter, they cannot complain that inasmuch as they are not parties to the suit, the appellate court is not justified in ordering the restoration of the suit without notice to them, as such, particularly when the judgment of the appellate court had been preferred only in the appeal preferred by the appellants. In such view of the matter, when the appellants are found to have been contesting the case of the respondent tooth and nail, almost, from the inception one way or the other, the abovesaid case projected by the appellants for interfering with the judgment and decree of the appellate court, in my considered opinion, do not merit acceptance.

11. The appellants having lost their right to purchase the land in question and the respondent having deposited the value of the superstructure in the court as determined by the court and thereby entitled to obtain the delivery and possession of the land and superstructure from the appellants and when the abovesaid order should be passed only in the suit laid by the respondent and instead the same having come to be passed in an interlocutory application i.e. I.A.No.4902 of 1989, in such view of the matter, it is seen that the first appellate court

had remitted the matter back to the trial court by giving appropriate direction with reference to the same.

12. Counsel for the respondent, in support of his contentions, placed reliance upon the decisions reported in 1996 1 LW 231 (Sri Madhavaperumal Devasthanam, Mylapore Vs. Tmt. Dhanalakshmi and others) and 2003 (2) CTC 129 (N.Sreedharan Nair Vs.Mottaipatti Chinna Pallivasal Muslim Jamath). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

13. In the light of the abovesaid factors, I do not find any valid reason to interfere with the judgment and decree of the first appellate court as such. In my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly answered against the appellants in favour of the respondent.

14. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

bga

To

1. III Additional Judge, City Civil Court, Chennai .
2. XII Assistant Judge, City Civil Court, Chennai.

Copy to

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

+2CC to Mr.K.V.Ananthakrishnan, Advocate, SR.No.28714.

+1CC to Mr.S.D.Ramalingam, Advocate, SR.No.28857.

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Judgment in
S.A.No.530 of 2005
and
C.M.P. No.8198 of 2005

VSII (C)

CSR: 03/01/2020