

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :26.02.2019

PRONOUNCED ON:14.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.891 of 2005

B.Vijayal ... Appellant/Plaintiff

Vs.

The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit,
Salem -8. ... Respondent/Defendant

Prayer:-

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree in A.S.No.38 of 2004 dated 29.10.2004 on the file of the Additional Subordinate Judge, Salem modifying the judgment and decree in O.S.No.907 of 2001 dated 01.03.2004 on the file of the Principal District Munsif, Salem.

For Appellant : Mr.C.K.M.Appaji

For Respondent : Mr.R.Jayaseelan

सत्यमेव जयते
J U D G M E N T

The second Appeal is directed against the judgment and decree dated 29.10.2004 passed in A.S.No.38 of 2004 on the file of the Additional Subordinate Court, Salem modifying the judgment and decree dated 01.03.2004 passed in O.S.No.907 of 2001 on the file of the Additional District Munsif Court, Salem.

2. The Second Appeal has been admitted on the following substantial questions of law:

1. Whether the Court below is right in holding that the relief of injunction is maintainable and the relief of declaration is

not maintainable in view of Order II Rule 2 C.P.C.?

(2) Whether the respondent is entitled to raise the objection of maintainability of the suit in the civil court having failed to exercise jurisdiction over Ex.A7 representation given as per the provisions of Tamil Nadu Housing Board Act ?

(3) Whether the court below is right in relying on the decision reported in 2003 (3) Law Weekly to the effect that the relief of declaration is barred under the Tamil Nadu Housing Board Act?

3. Considering the scope of the issues involved between the parties in the second appeal 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 the rankings in the trial court.

5. Suffice to state that the plaintiff has laid the suit for reliefs of declaration and permanent injunction. The plaintiff claims to be the lessee of the suit property under the defendant on a monthly rent and it is seen that the defendant seeking the enhancement of rent from the plaintiff had issued communications with reference to the same and at one stage of the matter, it is found that the plaintiff repudiated the demand of enhancement of rent put forth by the defendant and even thereafter, the defendant sent further communications to the plaintiff directing him to pay the enhancement rent and accordingly by way of the letter dated 30.10.2001 called upon the plaintiff to pay the arrears of rent at the enhanced rate fixed by the defendant and agreed to by the plaintiff amounting to Rs.70,538/- and challenging the same and apprehending that the defendant is attempting to vacate the plaintiff from the suit property by unlawful means, according to the plaintiff, when he has preferred the appeal petition to the Chief Secretary, Housing Board impugning the letter dated 30.10.2001, he has been necessitated to levy the suit for appropriate reliefs.

6. The defendant resisted the plaintiff's suit contending that the suit laid by the plaintiff is specifically barred under section 88 of the Tamil Nadu Housing Board Act 191 and according to the defendant, the order passed by the competent authority under the abovesaid Act cannot be called in question in the

Civil Court and no injunction could also be granted by the Civil Court in respect of the action taken by the competent authority by virtue of the powers conferred under the abovesaid Act and according to the defendant, if the plaintiff is not willing to the payment of the rent enhanced by the defendant, his only remedy is to vacate the property and the same cannot be challenged in the Civil Court and when the defendant had fixed the rent as per the directions of the Government, accordingly prayed for the dismissal of the plaintiff's suit.

7. Based on the abovesaid pleas, the parties went for trial and it is found that on an analysis of the same, the trial court was pleased to decree the suit in favour of the plaintiff as prayed for. Impugning the same, the defendant has preferred the appeal. The first appellate court on an analysis of the materials, both factually as well as legally, noting that the suit levied by the plaintiff against the defendant challenging the demand of enhanced rent by way of the letter dated 30.10.2001 which has been put forth by the defendant by virtue of the powers conferred under the Tamilnadu Housing Board 1961 and noting that section 88 of the abovesaid Act bars the jurisdiction of the Civil Court in determining the challenge made to the said act of the competent authority by way of a civil action, in all, determined that the only remedy available to the plaintiff is to challenge the impugned letter only by way of an appeal to the appellate authority and noting that the plaintiff had already sent the appeal petition to the Chief Secretary, Housing Board, Chennai, and the same is pending, consequently held that the plaintiff is not entitled to seek the relief of declaration as prayed for. However, on the determination that the defendant is not entitled to disturb the plaintiff's possession, except under due process of law, accordingly granted relief of permanent injunction in favour of the plaintiff that he should not be disturbed i.e., his possession should not be disturbed except under due process of law and accordingly, granted the relief of injunction in favour of the plaintiff on the abovesaid lines and dismissed the plaintiff's suit as regards the relief of declaration claimed by him. Impugning the same, the present Second Appeal has been preferred.

8. The plaintiff has come forward with the suit contending that the defendant is not entitled to enhance the rent in respect of the suit property and accordingly challenging the letter dated 30.10.2001 sent by the defendant seeking the enhanced rent is null and void and unenforceable, levied the suit seeking the reliefs of declaration and permanent injunction.

9. The defendant resisted the plaintiff's suit contending that the plaintiff is not entitled to institute the civil action challenging the orders passed by the competent authority by virtue of the powers conferred under the Tamil Nadu Housing Board 1961 and in specific, according to the defendant, section 88 of the abovesaid Act bars the jurisdiction of the Civil Court in toto and according to the defendant, the only remedy available to the plaintiff is to prefer the appeal challenging the enhanced rent claimed by the defendant by way of the impugned letter as provided under the abovesaid Act and therefore it is put forth by the defendant that the suit laid by the plaintiff is not maintainable in the Civil Court.

10. As rightly determined by the first appellate court, on an perusal of the provisions contained in the Tamil Nadu Housing Board Act 1961 particularly, section 88 of the said Act, it is found that the jurisdiction of the Civil Court has been specifically barred and in such view of the matter, when the plaintiff by way of the present suit is only challenging the order passed by the competent authority seeking the enhanced rent from the plaintiff and when the demand of enhanced rent by the competent authority is found to be made by virtue of the powers conferred under the abovesaid Act and as per the directions of the Government, in all, it is clear that the suit laid by the plaintiff seeking the reliefs of declaration and permanent injunction is barred by law and in such view of matter, the first appellate court is found to be fully justified in determining that the plaintiff is not entitled to obtain the relief of declaration prayed for in the suit. Furthermore, when the materials placed on record point out that the plaintiff has already preferred the appeal petition before the appellate authority challenging the impugned letter, in such view of the matter, the plaintiff cannot be allowed to institute the parallel civil action against the impugned letter and in such view of the matter, when the civil action is found to be not maintainable, I do not find any valid reason to interfere with the abovesaid determination of the Courts below.

11. The first appellate court, however is found to have granted the relief of injunction in favour of the plaintiff to a limited extent holding that his possession should not be disturbed except under due process of law.

12. The defendant has not preferred independent appeal or cross objection or cross appeal challenging the abovesaid relief granted by the first appellate court in favour of the plaintiff. In any event it is noted that the defendant had taken further appropriate steps as per law to evict the plaintiff from the suit property occupied by him as a lessee under the defendant. In this connection it is pointed out by

the counsel appearing for the defendant that the plaintiff has also preferred W.P.No.2438 of 2007 challenging the said action initiated by the defendant and it is further represented by him that the said writ petition has been dismissed by this Court on 16.07.1918. It is thus noted that when the defendant is endeavoring to dispossess the plaintiff from the suit property only in accordance with law and not illegally and when the challenge made by the plaintiff with reference to the same has also been rejected by this court in the abovesaid writ petition and when the plaintiff cannot restrain the defendant from taking lawful steps to evict him from the suit property as per law, in such view of the matter, I do not find any merits in the second appeal.

13. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is found to be involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

14. The learned counsel for the plaintiff, in support of his contentions placed reliance upon the decision reported in 2004 (3) SCC 137 [Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others]. The principles of law outlined in the above decision are taken into consideration and followed as applicable to the case at hand.

15. In the light of the abovesaid discussions, the second appeal is found to be devoid of merits and accordingly is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

सत्यमेव जयते Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Additional Subordinate Judge,
Additional Sub Court,
Salem.

2. The Principal District Munsif,
Principal District Munsif Court,
Salem.

Copy to

The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.R.Jayaseelan, Advocate, S.R.No.23798

S.A.No.891 of 2005

BS (CO)
CS/08/08/2019



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