

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

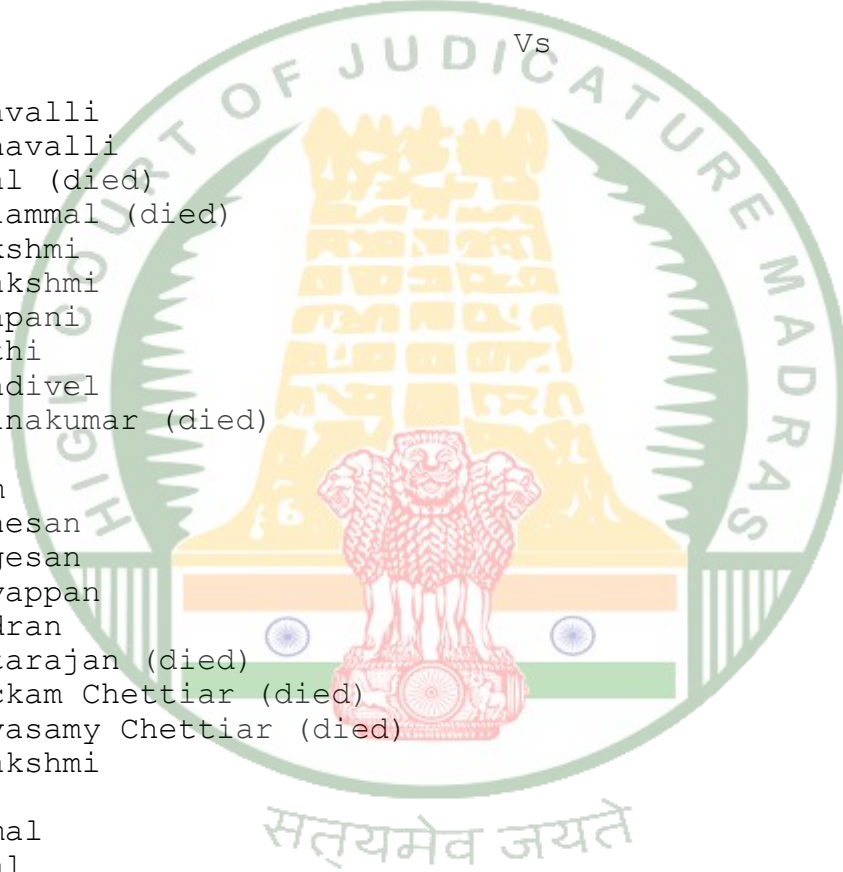
C.M.S.A.No.15 of 2018

R.Krishnamurthy

... Appellant/Appellant

Vs

- 1.Shenbagavalli
- 2.Maragathavalli
- 3.Ponnammal (died)
- 4.Ruckmaniammal (died)
- 5.Dhanalakshmi
- 6.Vijayalakshmi
- 7.S.Dhandapani
- 8.Leelavathi
- 9.Sakthivadivel
- 10.S.Rathinakumar (died)
- 11.Rani
- 12.Kamalam
- 13.C.K.Ganesan
- 14.V.Murugesan
- 15.C.K.Ayyappan
- 16.C.Chandran
- 17.P.S.Natarajan (died)
- 18.K.Manickam Chettiar (died)
- 19.S.A.Sivasamy Chettiar (died)
- 20.Dhanalakshmi
- 21.Leela
- 22.Veerammal
- 23.Nagammal
- 24.Saraswathi
- 25.Chandrodayam
- 26.Anitharani
- 27.Preethi
- 28.Nagammal
- 29.Karthik Kumar
- 30.Leelavathi
- 31.Dhanabakkiyam
- 32.Gandhi
- 33.Rajagopal
- 34.Srinivasan
- 35.Venugopal



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36.Murugesh
37.Rathinam
38.Maragatham
39.Kalamani
40.Chitra
41.Shanthi

(Respondents 2 to 41 are given up)

... Respondents/Respondents 1,2,3 to 8,9 to 41

Prayer : Civil Miscellaneous Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 24.04.2018 in C.M.A.No.54 of 2017 on the file of the I Additional District Judge's Court, Coimbatore confirming the fair and decretal orders dated 30.06.2017 in E.A.No.329 of 2016 in E.P.No.132 of 2013 in O.S.No.70 of 1982 on the file of the II Additional Subordinate Judge's Court, Coimbatore.

For Appellant : Mr.N.Manokaran
for Mr.S.Vinothkumar

For R1 : Mr.L.Mouli for Caveator
For R2 to R41 : Given up

JUDGMENT

Challenging the impugned judgment and decree dated 24.04.2018 passed in C.M.A.No.54 of 2017 by the learned I Additional District Judge, Coimbatore, confirming the fair and decretal order dated 30.06.2017 passed in E.A.No.329 of 2016 in E.P.No.132 of 2013 in O.S.No.70 of 1982 by the learned II Additional Subordinate Judge, Coimbatore, the appellant/third party/objector has filed this appeal raising the following substantial questions of law:

"(i) Whether in law the courts below are right in overlooking that if tenant is not made a party after a decree for partition passed it is open to any co-sharers to evict the tenant only by filing the separate proceedings for eviction under rent control laws on the grounds enumerated thereunder and not otherwise as laid down in the judgment reported in 2006 1 SCC 125 (M/s.Kartharam Rameswar Dass Vs. Ramvilas and others)

(ii) Whether in law the Courts below erred in overlooking that when there is a special act such as TN building Lease and Rent Control Act, the landlord cannot resort to a civil proceedings by filing a suit against a tenant as the same is barred and even the civil court decree cannot be executed against

any tenant once the special act had been enacted as laid down in the judgment reported in 2007 1 LW 522 and 1996 1 LW 689?

(iii) Whether the findings of the Courts below that the appellant is not a tenant in the absence of proof of tenancy and attornment of tenancy by the first respondent herein overlooking that when possession of appellant had been admittedly proved as evident from the documents marked as Ex.A1 to Ex.A34 it is nothing but of a tenant's possession?

(iv) Whether in law the Courts below erred in overlooking the documents marked as Ex.A2 the unregistered lease deed which confirmed the oral lease even before filing the suit?"

2. Learned counsel for the appellant submitted that the second respondent herein originally filed a suit in O.S.No.70 of 1982 for partition of the properties described in Schedule B to I and then allot 1/10th of share in her favour and further direct the defendants 1 to 5 to pay her a sum of Rs.15,000/- towards 1/10th share of the value of the tobacco stock sold and appropriated by the defendants 1 to 5/respondents 3 to 7 herein, etc. Initially, preliminary decree was passed on 07.04.1986 and against which, when appeals were filed, this Court, vide its judgment and decree dated 19.11.2002, passed in A.S.Nos.812 of 1986 and A.S.No.203 of 1992, confirmed the judgment and decree passed by the learned trial Court. Subsequently, final decree was passed on 13.02.2006 by the learned III Additional Subordinate Court, Coimbatore. Pursuant to the final decree, E.P.No.132 of 2013 was also filed on 06.06.2013 for taking possession of the same. Whiles, the appellant herein/obstructor has filed E.A.No.329 of 2016 in E.P.No.132 of 2013 under Order XXI Rule 97 of the Civil Procedure Code to record his obstruction on the grounds; (i) he was inducted in possession by the first defendant/3rd respondent herein as tenant under a rental agreement dated 11.02.1984, marked as Ex.P1 before the trial Court, on payment of Rs.75,000/- and the interest accrued therein has been treated as rent; (ii) as per Exs.A1 to A34, the appellant herein is a tenant and therefore, he could be evicted by the plaintiff/second respondent herein only by filing RCOP for eviction; and that (iii) the first defendant/third respondent herein had already received a sum of Rs.2,00,000/- from the appellant herein with a promise to sell her share/subject property in his favour.

2 (a). Opposing the said grounds raised by the appellant herein, a counter affidavit was filed on the premise that the appellant is a lessee during pendente lite and

therefore, he cannot obstruct the execution under Order XXI Rule 102. Learned Execution Court, vide order dated 30.06.2017, dismissed the E.A.No.329 of 2016, holding that since the suit was filed on 20.08.1981 and that he was inducted only on 11.02.1984 as a tenant, the rule of lis pendens will apply and therefore, lis pendens lessee cannot raise any obstruction and it is further observed that the appellant herein has to file a separate suit against the decree holder/first respondent herein to restrain her from dispossessing the appellant herein except by due process of law.

2 (b). Aggrieved thereby, the appellant herein filed an appeal in C.M.A.No.54 of 2017 taking a stand that under Order XXI Rule 101, all questions including questions relating to right, title or interest in the property shall be determined by the Court dealing with such application and therefore, the reason assigned by the learned Execution Court that the appellant has to file a separate suit is wholly running contrary to the mandate given under Order XXI Rule 101. The learned first appellate Court, vide order dated 24.04.2018, dismissed the above said appeal holding that Ex.P1-rental agreement relied on by the appellant is an unregistered document and therefore, the same cannot be taken on record.

3. Assailing the said reasonings, learned counsel for the appellant further contended that the appellant herein has approached the learned trial Court on the basis of Ex.P1-Rental Agreement entered between him and the landlord/first defendant/third respondent herein and her son/third defendant/7th respondent herein. However, without even examining either the first defendant/landlord or her son/third defendant, the learned Courts below have arbitrarily come to the conclusion that the appellant has set up a different case claiming right over the subject property more than a tenant. If the Courts below have adhered to the conditions mentioned under Order XXI Rule 101 and took evidence from both the parties during E.A.No.329 of 2019 filed by the appellant herein as an obstructor, then the genuine claim of the appellant herein would have come to the light whether there was an rental agreement executed between the appellant herein and the first defendant. However, such procedure was not followed by the Courts below, he pleaded.

4. In support of his submissions, learned counsel for the appellant has relied on a judgment of the Hon'ble Apex Court in the case of Messrs.Karta Ram Rameshwar Dass Vs. Ram Bilas and others [(2006) 1 SCC 125] to say that in a suit for partition filed by one co-sharer against another if a tenant is made party, he can object to the claim for partition if it is shown that the same was not bonafide and made with an oblique motive to overcome the rigours of rent control laws which protected the eviction of the tenant except on the grounds set out in the

relevant statute. The said judgment further holds that after a partition is effected or a decree for partition is passed, it would be open to the co-sharers to evict a tenant from that portion of tenanted premises which had fallen in their respective shares by filing separate proceedings for eviction under rent control laws on the grounds enumerated thereunder. By relying the said proposition, he submitted that when the first respondent herein was not the owner of the land in question during the pendency of the suit and only by virtue of the final decree passed in I.A.No.253 of 1986, dated 13.02.2006, she became owner of the subject property, the claim of the appellant herein to record his objection for delivery of possession in view of the rental agreement dated 11.02.1984 marked as Ex.P1 executed between the original landlord/first defendant and the appellant herein cannot be hit by the principles of lis pendens. In any event, there is no harm or impediment for the first respondent herein to proceed against the appellant in the manner known to law by initiating proceedings under the Tamil Nadu Building Lease and Rent Control Act as laid down in the above said judgment of the Hon'ble Apex Court.

5. Again, explaining further, he contended that when the first respondent herein filed a counter affidavit opposing the prayer made in E.A.No.329 of 2016, the law requires that the parties to the suit proceedings apart from filing of a written statement, should enter into the witness box for cross-examination. In the present case, the first respondent has simply filed a counter affidavit, but, never took any active step to bring either the first defendant/landlord or her son/third defendant, as a result, the appellant was not given the benefit of cross-examination. Therefore, the reasonings given by the learned Courts below cannot be allowed to stand on record and they should pass the test of reasonableness, which has not been complied with. Hence, the impugned judgments and decrees passed by the learned Courts below are liable to be interfered with.

6. Per contra, learned counsel appearing for the decree holder/fifth defendant/first respondent herein heavily contended that after the final decree was passed on 13.02.2006 in I.A.No.253 of 1986, the subject matter of the disputed land was allotted to the first respondent herein as one of the share holders. After 7 years, E.P.No.132 of 2013 was filed for taking possession of the land in question on 06.06.2013 and three years thereafter, the appellant herein filed E.A.No.329 of 2016 invoking Order XXI Rule 97 to record his objection solely relying on the unregistered rental agreement dated 11.02.1984 and

therefore, the learned first appellate Court has rightly come to the conclusion that he is not a statutory tenant as the rental agreement relied upon by him is not a registered one.

7. Adding further, learned counsel for the first respondent submitted that any agreement or deed executed beyond the period of 11 months has to be registered, but, in the present case, although the appellant states that he is a statutory tenant, he has not chosen to register the unregistered rental agreement dated 10.02.1984. Secondly, as pleaded by the learned counsel for the appellant, although the appellant became tenant under the first defendant/third respondent herein even before the respective share was allotted to the first respondent herein, it is not known how the appellant can cross his bound of statutory tenant by saying that he has paid a sum of Rs.2,00,000/- towards the part of sale consideration of the land in question. Peculiarly, although he has stated that he has paid a sum of Rs.2,00,000/-, till date, he has not come forward to file a suit for specific performance either against the first defendant or against her son/third defendant. Therefore, when the appellant has travelled on two grounds; firstly as statutory tenant without even getting the Ex.P1-rental agreement registered; and secondly, as an agreement holder advancing a sum of Rs.2,00,000/- to the first defendant/third respondent herein, it is for the appellant to prove his case by examining either the first defendant or her son/7th defendant. Hence, since the appellant has not brought them before the witness box for examination to support his case, he is not entitled to invoke Order XXI Rule 102. Therefore, he pleaded, the concurrent findings given by the Courts below do not call for interference.

8. In support of his submissions, he has also relied on the judgment of this Court in the case of Elumalaiyan Vs. Lakshmi and another [2015 (1) MWN (Civil) 115] to say that even if a person claiming to be a tenant comes before the Execution Court raising any obstruction on the way of implementing the decree, then such transaction, being one pendente lite, is hit by the principles of doctrine of lis pendens. Therefore, since the suit was filed in the year 1982 itself and that the unregistered rental agreement was entered only on 11.02.1984, the claim of the appellant to record his obstruction for delivery of possession is hit by the principles of lis pendens and hence, the present appeal filed by him challenging the concurrent findings given by the learned Courts below is liable to be dismissed.

9. I fully agree with the above said submissions of the learned counsel appearing for the first respondent. Originally, when a suit in O.S.No.70 of 1982 was filed by the plaintiff/second respondent herein on the file of III Additional

Subordinate Court, Coimbatore, for partition claiming 1/10th of share, preliminary decree was passed on 07.04.1986 and subsequently, when appeal was filed, the same was also confirmed by this Court on 19.11.2002 and thereafter, final decree was also passed on 13.02.2006 by the learned III Additional Subordinate Court, Coimbatore, allotting 1/10th of share in favour of the first respondent herein/fifth defendant. After a period of 7 years, when Execution Petition No.132 of 2013 was filed, the appellant herein came into the picture and he filed E.A.No.329 of 2016 seeking to record his obstruction for delivery of possession on the ground that he was a tenant in view of Ex.P1-Rental Agreement dated 10.02.1984 entered between the first defendant/landlord and the appellant herein. A perusal of Ex.P1 vividly shows that it is an unregistered rental agreement entered into between the appellant herein as a tenant and the first defendant/third respondent herein as a landlord for leasing out the subject property for a period of three years.

10. It is settled law that an unregistered and unstamped document cannot be relied upon for any purpose and in the present case, as stated by the learned counsel for the appellant, the lease agreement dated 11.02.1984 was more than a period of 11 months i.e. for a period of three years and hence, the said lease agreement necessitates registration as required under the law, but, the same has not been done so in the case on hand. Therefore, the learned Courts below have rightly come to the conclusion that Ex.P1-Rental Agreement dated 11.02.1984 is inadmissible in evidence.

11. Another contention of the learned counsel for the appellant is that the appellant had already paid a sum of Rs.2,00,000/- to the landlord/first defendant/third respondent herein towards part of sale consideration to sell the subject property in his favour. Had the appellant indeed paid the said sum towards the part of sale consideration to the landlord/first defendant, in my considered view, he ought to have filed a suit for specific performance, but, peculiarly, till date, he has not even sent a single notice to the first defendant or her son/third defendant calling upon them either to execute the subject property in his favour or to return the money. Therefore, the said contention cannot be sustained in the eye of law. Secondly, the appellant unwisely attempted to travel simultaneously on two grounds; firstly, as a statutory tenant, without even getting the Ex.P1-rental agreement registered; and secondly, as an agreement holder, advancing of a sum of Rs.2,00,000/- to the first defendant/third respondent herein towards the part of sale consideration, therefore, taking such a contra contention shows that the entire claim is false.

12. Besides, the appellant herein has not even taken any effort to bring the landlord/first defendant/third respondent herein or her son/3rd defendant/7th respondent herein before the Courts below for examination to substantiate his claim that he is a statutory tenant in view of Ex.P1-Rental Agreement dated 11.02.1984 and that he had also paid a sum of Rs.2,00,000/- towards part of sale consideration agreeing to sell the subject property in his favour. Therefore, in such view of the matter, I do not find any merit whatsoever in the claim of the appellant.

13. In fine, for the reasons stated above, the Civil Miscellaneous Second Appeal is dismissed answering the substantial questions of law against the appellant. Consequently, the judgments and decrees passed by the learned Courts below are hereby confirmed. No Costs. CMP.No.11991 of 2018 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The I Additional District Court,
Coimbatore.
2. The II Additional Subordinate Court,
Coimbatore.
3. The III Additional Subordinate Court,
Coimbatore.

Copy to

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

+1ccc to Mr.L.Mouli, Advocate Sr.64345

C.M.S.A.No.15 of 2018

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srg 21/11/2019