

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.242 of 2018

Tamilarasi

..Appellant/1st Defendant

Vs.

1. Chidambaram South Vaniya Street,
Vanniar Podhu by its Trustees,
a) Natanam
b) Panneerselvam
c) Veeramani
2. Ranjitham (Died)
3. Chidambaram,
South Vaniya Street,
Vaniyar Podhu rep. By the Trustees.
a) Kathan
b) Natesan
c) Raju

4. Rajendran
5. Santhi
6. Revathi

..Respondents/Plaintiffs & 2nd Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned II Additional District and Sessions Judge, Chidambaram dated 11.07.2017 in A.S.No.54 of 2011, confirming the judgment and decree of the learned Principal District Munsif, Chidambaram, dated 28.11.2008 in O.S.No.99 of 2007 and to decree the said suit as prayed for.

For Appellant : Mr.S.N.Subramani

J U D G M E N T

The first defendant who suffered the decree for eviction in O.S.No.99 of 2007, which was confirmed in A.S.No.54 of 2011, has come forward with the above second appeal.

2. The said suit in O.S.No.99 of 2007 was filed by the plaintiffs/respondents seeking a decree for ejection, claiming that the 1st defendant's father Boomilingam was inducted as a tenant under the registered Lease Deed, dated 01.12.1979. He

had also agreed to pay a monthly rent of Rs.10/- . Pursuant to the agreement, the said Boomilingam had constructed a thatched hut in the suit property and he has been residing there for about 15 years. After his demise, his daughter, the first defendant is in occupation of the property as a tenant under the trust.

3. It is also the claim of the plaintiff that after the death of her father, the first defendant had attained tenancy and continued to reside in the suit property by paying rent. It is claimed that the first defendant had sub let the property to the second defendant, namely Ranjitham (died), and was enjoying income therefrom. Therefore, the Trust / plaintiff, claiming that it requires the land for its own use, filed the suit seeking ejectment.

4. The suit was resisted by the first defendant contending that her father had taken the property on lease from one Babu and he was paying rents to the said Babu. After the death of her father Boomilingam, she is continuing in possession of the property and paying rents to the said Babu. Therefore, according to the first defendant, there is no landlord and tenant relationship between the plaintiff and the first defendant and, hence, the suit for ejectment is not maintainable.

5. The second defendant/the alleged sub tenant was impleaded as a party in the suit. At trial, the registered Lease Deed was produced as Ex.A12. The copies of the proceedings in O.S.No.725 of 1987 were filed to show the title of the plaintiff to the suit property. The rent ledger maintained by the plaintiff trust was marked as Ex.A20. In Ex.A20, the first defendant has signed as tenant agreeing to pay rent to the plaintiff trust. However, the first defendant had denied her signature in the said document. The trial Court, on consideration of evidence on record, concluded that though the lessee under the Trust is described as Boomilinga Chettiyar in Ex.A12, the father of the first defendant, Boomilingam and the lessee are one and the same. The learned trial Judge also concluded that the denial of signature in Ex.A20 by the first defendant is only for the purpose of the case. The trial Court decreed the suit on the ground that the first defendant in her evidence had chosen to deny her signatures in vakalath, written statement as well as in the proof affidavit filed before the Court. The learned trial Judge on comparison of the signature found in Ex.A20 with the signature found in pleadings as well as evidence, concluded that it was the first defendant who had signed in Ex.A20 admitting that she is a tenant under the trust. On the above evidence, the trial Judge decreed the suit.

6. Aggrieved the first defendant had filed an appeal in A.S.No.54 of 2011. Pending appeal, an application in I.A.18 of

2016 was filed by the present trustees of the trust seeking to remove the first respondent's trustees names and substituted them as trustees. The said application was allowed and the present trustees of trust have been impleaded as respondents in the appeal. The lower appellate Court also agreed with the conclusions of the trial Court and dismissed the appeal.

7. Aggrieved by the said dismissal, the first defendant has come forward with the present appeal.

8. I have heard Mr.S.N.Subramani, learned counsel appearing for the appellant.

9. The learned counsel for the appellant would contend that when the appellant had denied the relationship of landlord and tenant, the Courts below ought not to have granted the decree for ejectment. The learned counsel also drew my attention to the fact that in the Lease deed namely Ex.A12 dated 01.12.1979, the name of the lessee has been given as Boomilinga Chettiyar, whereas the first defendant belongs to Vanniar community and his father is known only Boomilinga Padayatchi and not as Bommilinga Chettiyar.

10. The Courts below have disbelieved the version of the first defendant on the ground that the description of the caste name cannot be used by the first defendant to invalidate the document itself. Even otherwise, the Courts below have found that the first defendant had signed in Ex.A20 and that she had been continuing as a tenant under the plaintiffs apart from admitting the title of the plaintiff over the suit property. Even though, the first defendant had denied the signature in Ex.A20, the Courts below have concluded that her conduct in denying her signature in the written statement as well as the proof affidavit filed before the Court would show the said denial of the signature in Ex.A20 is only to support the claim that she is not a tenant. The trial Court had also found that the signature found in Ex.A20 is that of the first defendant and it tallies with the signature in the written statement as well as evidence. In Ex.A20, there is a clear admission of the tenancy by the first defendant. Apart from the above, the Lease deed dated 01.12.1979 is a registered instrument entered into between the plaintiffs and the father of the first defendant. The claim of the first defendant that her father became the tenant under one Babu was rejected by the Court below on her own evidence, wherein she has stated that her father became a tenant and after his death one Babu came to the suit property to take care of her mother. She would also depose, in her cross examination, that she does not know as to who was the owner of the suit property before the occupation the property. In view of

the said evidence, the claim of the first defendant/ appellant that her father became a tenant under one Babu was disbelieved.

11. The above conclusion reached by the Courts below is factual conclusion and I can not reassess the evidence and interfere with the said conclusion and substitute my own opinion to the findings of the courts below, particularly, in a second appeal. I do not find any any question of law, much less a substantial question of law, to enable this court to entertain this Second Appeal.

12. Hence, this Second Appeal is dismissed without being admitted. There will be no order as to costs.

s/d-

Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1. The II Additional District and Sessions Court,
Chidambaram.
 2. The Principal District Munsif,
Chidambaram.
- +1 CC to Mr.S.N.Subramani, advocate sr 77352.

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SP(12/02/2020)

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