



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 12.06.2019]

[PRONOUNCED ON : 28.06.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.Nos.619 and 622 of 2019
and
C.M.P.No.10797 of 2019

Murali ... Appellant in S.A.No.619
of 2019/ Plaintiff

Murali ... Appellant in S.A.No.622
of 2019/ Defendant

.. Vs ..

1. V.K.Aleem Sahib
2. K.H.Abdul Samad
3. K.S.Suel
4. K.S.Fawad Ahmed

... Respondents in S.A.No.619 of
2019/Defendants

1. K.S.Sugale Ahmed
2. K.S.Fawad Ahmed
3. Minor K.F.Mohammed Adeef
Rep. by next friend
2nd respondent

... Respondents in S.A.No.622 of
2019/Plaintiffs

Prayer in both S.As.: Appeals are filed under Section 100 of the Civil Procedure Code against the decree and common Judgment dated 31.01.2019, passed by the learned Additional Subordinate Judge, Vellore, in A.S.Nos.24 of 2018 and 9 of 2017 respectively, confirming the Common judgment and decree dated 31.01.2017 of the learned Principal District Munsif, Vellore, in O.S.Nos.217 of 2012 and 19 of 2014 respectively.

In both S.As.

For Appellant : Mr.B.Christ Das

For Respondents : Mr.T.R.Rajaraman
for Mrs.P.Veena Suresh



COMMON JUDGMENT

These two appeals are filed against the decree and common judgment dated 31.01.2019 passed by the learned Additional Subordinate Judge, Vellore, in A.S.Nos.24 of 2018 and 9 of 2017 respectively, confirming the Common judgment and decree dated 31.01.2017 passed by the learned Principal District Munsif, Vellore, in O.S.Nos.217 of 2012 and 19 of 2014 respectively.

2. The respondents in both the second appeals claimed ownership to the suit property in O.S.No.19 of 2004 at Door No.63/3 shop No.63/2 and as the occupant of the shop claimed that he is a tenant by way of attainment of tenancy from the earlier tenant viz., V.T.Krishnaswamy Mudaliar, the land owner has filed a suit for declaration of title and for rejection alleging that the appellant herein is a trespasser.

3. The appellant herein also has filed a suit in O.S.No.217 of 2012 alleging that his paternal grandfather namely, V.T.Krishnaswamy Mudaliar was the tenant right from the year 1973 and was the tenant under the earlier land owner and after his death, he was carrying on business and he was paying rent to the land owner and hence, seeks the relief of injunction restraining the owner from eviction without due process of law.

4. Since both the suits are inter related, joint trial appears to have been conducted by the learned Principal District Munsif, Vellore and common judgment was delivered. Aggrieved against the said common judgment, the appellant herein had preferred two appeal suits in A.S.Nos.9 of 2017 and 24 of 2018 respectively and the same were dismissed by the learned Additional Subordinate Judge, Vellore, and hence, the above second appeals have been filed before this Court.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents/caveator.

6. After hearing the learned counsel appearing for the appellant and perusing the judgments of both the Courts below, it is seen that both the Courts below have concurrently held that there is no landlord and tenant relationship between the plaintiff and the defendants as projected by the defendants and the defendants, who claims to be the tenants under the landlord, have not produced any document to show that they are carrying on business in the suit premises and also held that the appellant herein had worked under the erstwhile tenant V.T.Krishnaswamy Mudaliar and accordingly, ordered for eviction and also for means profit.



7. After going through the documentary evidence placed before the trial Court, it is seen that Exs.B.8 to B.13 relied upon by the appellant herein does not indicate the name of the appellant, but however, it indicates the erstwhile tenant viz., V.T.Krishnaswamy Mudaliar assumes significance. Though the appellant/defendant has produced Exs.B.15, B.16 and B.17, it is seen that the period of tenancy alleged by the appellant/defendant being 31 years and 4 months. For the reasons best known only for 9 months, the appellant had filed the alleged rental receipts that too issued in the name of V.T.Krishnaswamy Mudaliar. Both the Courts below have concurrently held that in the absence of any document to show that the appellant/defendant herein is in possession of the suit property as a tenant, the alleged relationship of landlord and tenant does not succeed and accordingly, declared the appellant herein as a trespasser which is found to be correct.

8. It remains to be stated that D.W.4, who is the elder brother of the appellant herein, in his cross-examination, has categorically admitted that his grandfather V.T.Krishnaswamy Mudaliar was carrying on business as individual proprietorship and not partnership firm and further, he has also admitted in his cross-examination that the younger brother of D.W.1 had worked under the grandfather and not as a partner of the firm also assumes significance. Furthermore, even in the cross-examination of D.W.1/appellant herein, he has categorically admitted that his grandfather V.T.Krishnaswamy Mudaliar has carried on business and he had worked under him or not along with him either as a partner or as a tenant and hence, both the Courts below, based upon the documentary evidence adduced by the appellant herein and also the admission elicited in the cross-examination of D.Ws.1 and 4 [brother of the appellant herein], concurrently held that the landlord and tenant relationship between the parties has not been established in the manner known to law and further, held that the appellant herein has not produced any legal document showing his alleged possession and the documents filed by him are relating to much oldest period and not close in proximity with the date of filing and further held that the plea of attainment of tenancy was not proved and also held that the plea of the adverse possession was not proved.

9. Taking into consideration the concurrent findings rendered by both the Courts below in view of the admission of D.Ws.1 and 4 that the appellant herein had worked only as an Assistant under the V.T.Krishnaswamy Mudaliar, the original tenant and even in the documents produced under Exs.B.17, 18 and 20, the name of the appellant seems to have been inserted subsequently and the Door number of the shop has been tampered with and made corrections and hence, both the Courts below have



rightly held that there is no landlord and tenant relationship between the parties and in the absence of any positive evidence to indicate that on the date of the plaint, the appellant was in possession of the suit property, the Courts below have rightly and concurrently held that the appellant was a trespasser and ordered for eviction and hence, there is no illegality or irregularity in the judgments of both the Courts below and there is no substantial question of law much less any ground to interfere with the well considered judgments of both the Courts below.

10. In this view of the matter, both the Second Appeals are liable to be dismissed and accordingly, the same are dismissed. There shall be no order as to costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

Jrl

To

1. The Additional Subordinate Judge,
Vellore.

2. The Principal District Munsif,
Vellore.

+2cc to Mr.B.Christ Daas, Advocate SR.No.54428,54427

+2cc to Mr.P.Veenasuresh, Advocate SR.No.54301, 54302

S.A.Nos.619 & 622 of 2019

VSN II(CO)
GMY(27/09/2019)