

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.207 of 2016
and C.M.P.No.4321 of 2016

1. M/s.Indian Oil Corporation Ltd.,
Rep. by
The Deputy General Manager,
Nungambakkam,
Chennai - 600 034.
2. The Chief Divisional Manager,
Sales Manager,
Chennai Division Office,
Indian Oil Corporation,
Chennai Division. ..Appellants/Appellants/Defendants 1 & 2

Vs.

P.R.S.Dhanapal Chettiar (Deceased)

1. P.Rajakumari
Sarathambal (died)
2. D.Mohana Chetty
3. D.Kumar
4. D.Palani
5. D.Gnanam
6. D.Balaji
7. D.Bhanumathi
8. D.Malathi

..Respondents/Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned IV Additional District Judge, Ponneri, dated 23.03.2015 in A.S.No.07 of 2010, confirming the judgment and decree of the Subordinate Judge, Ponneri, dated 13.09.2007 in O.S.No.13 of 2005.

For Appellants : Mr.S.V.Jeyaraman, Senior Counsel
for Mr.P.S.Sivasubramaniam

For Respondents: Mr.T.N.Rajagopalan for
Mr.D.Kangasundaram (for R6)
Mr.V.R.Kamalanathan (for R4)

J U D G M E N T

The defendants 1 and 2 in O.S.No.7 of 2005 on the file of the Sub Court, Ponneri renumbered as O.S.No.13 of 2005 having suffered a decree for recovery of possession of the suit property, after removal of the super structure at the hands of the Courts below, have come up with the second appeal.

2. The plaintiff sued for delivery of possession contending that the defendants became tenants under a lease in the year 1965 and the lease was renewed till 31.10.2003. Originally rent was fixed at Rs.150/- per month and it was periodically revised. During the year 2003, the defendants 1 and 2 were paying a sum of Rs.2,000/- as monthly rent. Claiming that the defendants sought for renewal of the lease in August 2003 which was not acceptable to the plaintiff, the plaintiff, by letter dated 01.09.2003 refused to renew the lease and required the defendants to vacate and deliver the possession of the suit property. Subsequently, the plaintiff also sent another legal notice on 18.10.2004 demanding immediate possession of the property since the lease period had expired on 31.10.2003. Since the defendants failed to comply with the said demand, the plaintiff had come up with the suit seeking delivery of possession after removal of superstructure. The plaintiff also sought for damages for use and occupation at Rs.25,000/- per month.

3. The defendants resisted the suit contending that there is no proper termination of the lease. It was also claimed that it was a practice of the parties to extend the lease by oral agreement and when the defendants sought for negotiated settlement for further renewal, the plaintiff has not come forward. According to the defendants 1 and 2, the claim of the plaintiff of a sum of Rs.50,000/- per month for damages for use and occupation is 24 times higher than the rent last paid by them. It is also claimed that the defendants are open for discussion for renewal of the lease. On the above contentions, the defendants sought for dismissal of the suit.

4. The 3rd defendant did not file written statement. It is stated that the 3rd defendant was a licensee and dealer, but as on date, it is the company namely the 1st defendant which is carrying on the business directly.

5. At trial, one R.T.Balaji, son of the plaintiff was examined as P.W.1 and Exs.A1 to A10 were marked. One Ramakrishnan was examined on the side of the defendants as D.W.1. No document was produced on the side of the defendants.

6. The trial Court upon a consideration of the evidence on record held that the defendants have not proved the renewal of the lease. Their request for renewal of lease having been rejected by the plaintiff even in the year 2003, the suit laid for recovery of possession has to be decreed. The trial Court also pointed out that there is no evidence in support of the claim of the defendants that there was a oral renewal of the lease. The learned trial Judge found that the plaintiff is entitled to the delivery of possession, after removal of the super structure. On the question of damages, the learned trial Judge took into account the location of the property and fixed Rs.6,000/- per month for damages for use and occupation payable from 01.11.2003 till date of delivery of possession.

7. Aggrieved, the defendants preferred an appeal in A.S.No.7 of 2010 on the file of the learned Additional District Judge, Ponneri. The lower appellate Court upon reconsideration of the evidence on record concurred with the finding of the trial Court. The lower appellate Court also pointed out that the lease has expired on 31.03.2003 and the request for renewal having been rejected by the plaintiff who is the land owner, the defendants possession being illegal cannot be continued.

8. On the question of damages, the lower appellate Court confirmed the decree of the trial Court. It appears that during the course of arguments, a claim was made regarding the absence of notice, terminating the tenancy after the expiry of the lease period. The learned appellate Judge rejected the contention stating that in view of the admitted case of the parties that the lease agreement was renewed only till the year 2003 and the plaintiff having signified his intention of not renewing the lease in his letter dated 10.09.2003 and had required the defendants 1 and 2 to hand over the possession of the property on the expiry of the lease concluded that no notice of termination was required. On the aforesaid finding, the learned Additional District Judge dismissed the appeal. [Pending appeal, the original plaintiff / 1st respondent in the appeal had died and his legal representatives have brought on record as respondents 3 to 10] Aggrieved, the defendants 1 and 2 have come up with the second appeal.

9. Notice of motion was ordered on 17.03.2016. Pursuant to the notice, Mr.D.Kanagasundaram appears for R6 and Mr.V.R.Kamalanathan, appears for R4. The other respondents have been given up on the ground that the respondents 4 to 6 got the property under the Will executed by the original plaintiff R.R.S.Dhanapal Chettiar.

10. Mr.S.V.Jeyaraman, learned Senior Counsel appearing for the appellants would contend that the Courts below were not

justified in decreeing the suit in view of the specific admission made by P.W.1 in his evidence, particularly in his cross examination which reads as follows:

“இன்றைய தேதி வரை தொடர்ந்து இந்த குத்தகை காலம் எங்கள் இருதரப்பாருக்கும் இடையில் வாய்மொழியாகவே நீட்டிக்கப்பட்டு வருகிறது”

11. Relying upon the aforesaid evidence, the learned Senior Counsel would contend that the lease has been renewed orally hence a notice under Section 106 of the Transfer of Property Act is necessary. In the absence of notice, the suit should not have been decreed.

12. I am unable to accept the said contention of the learned Senior Counsel for the reason that the oral renewal of a lease which is required to be in writing is not recognized in law. Moreover on facts, it is seen that the defendants 1 and 2 by their letter dated 22.08.2003 sought for renewal of the lease and the plaintiff by his letter dated 10.09.2003 marked as Ex.A2 rejected the request for renewal and has demanded possession. This was reiterated in the lawyer's notice dated 18.10.2004. Therefore, in my considered opinion, that the above said admission alone would not confer the right on the defendant, being a lessee in occupation of the property. It is also seen from the pleadings and evidence, the plaintiff has not received any rent after the expiry of the lease.

13. Therefore, I do not think that it will be safe to rely upon the stray admission made in the cross examination to conclude that there was a valid extension of the lease which would entitle the defendants to a notice under Section 106 of the Transfer of Property Act. If the entire evidence of P.W.1 is read, it is clear that the intention of the parties was not to renew the lease and there was no understanding to the effect that the lease will stand renewed. Apart from the above, I do not see any question of law much less a substantial question of law to enable me to entertain the second appeal.

14. Hence, the second appeal is dismissed. However, in the circumstances, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (ADI MDU)

//True copy//

Sub Assistant Registrar

vum

To

1. The IV Additional District Judge,
Ponneri

2. The Subordinate Judge,
Ponneri

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

+1cc to Mr.P.S.Sivasubramaniam, Advocate SR.No.98308

+2cc to Mr.D.Kangasundaram, Advocate SR.No.98308

S.A.No.207 of 2016 and
C.M.P.No.4321 of 2016

VSN II (CO)
GMY (19/08/2020)



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