

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.NO.415 OF 2014
& M.P.NO.1 OF 2014

M.Ponnusamy

..Defendant/Appellant/
Appellant

Vs.

G.Vijayalakshmi

..Plaintiff/Respondent/
Respondent

PRAYER:

Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the learned Principal District Judge, Erode, dated 22.11.2013 in A.S.No.79 of 2013, confirming the judgment and decree of the learned Subordinate Judge, Perundurai, dated 05.04.2011 in O.S.No.415 of 2009.

For Appellant : Mr.K.Sivasubramanian

For Respondent : Mr.K.A.Vimalkumar

J U D G M E N T

The defendant in O.S.No.415 of 2009 on the file of Subordinate Court, Perundurai having suffered a decree for recovery of possession concurrently at the hands of the Courts below has come up with this second appeal.

2. The suit was laid by the plaintiff claiming that the suit property was allotted to her and she was carrying coir business in the name and style of "D.B.Fibering". She could not continue the business due to lack of cooperation from her son and the business suffered loss. Therefore, according to the plaintiff, she had allowed the defendant who is her son in law, to run the business and to pay the bank dues also. The alleged attempt made by the defendant to remove the machinery from the mill resulted in a Police complaint being lodged against the defendant. The defendant also filed a suit in O.S.No.409 of 2005 seeking an injunction, based on a lease deed dated 18.01.2002 said to have

been executed by the plaintiff contending that the lease is for the period of 5 years and the plaintiff attempted to dispossess him without following due course of law and an ex parte decree came to be passed in the suit. Claiming that the possession of the defendant is illegal, the plaintiff has also issued a notice under Section 106 of the Transfer of Property Act, terminating the tenancy, the said notice was acknowledged by the defendant on 24.11.2008. He neither chose to comply with the notice nor he sent a reply. Therefore, the plaintiff would seek a decree for delivery of possession and for injunction restraining him from inducting any person into the suit property as a sub-tenant.

3. The suit was resisted by the defendant contending that he is in possession of the lessee under the lease deed 18.01.2002 for a monthly rent of Rs.10,000/-, he has also paid an advance amount of Rs.2 lakhs. He would contend that he had paid the monthly rent regularly. He denied the claim of the plaintiff that he was put in possession as a care taker and not as tenant. A new plea was taken at the time of trial, claiming that the defendant is a tenant carrying on a manufacturing process in the suit property, hence, 6 months time notice is necessary to terminate the lease as per Section 106 of the Transfer of Property Act. Therefore, the defendant sought for dismissal of the suit.

4. At trial, the plaintiff has examined herself as P.W.1 and one Gopalakrishnan was examined as P.W.2. Exs.A1 to A6 were marked. On the side of the defendant, he himself was examined as D.W.1 and no documents were marked on his side.

5. The trial Court on a consideration of the evidence on record, concluded that the notice issued under Ex.A2 is valid since the defendant has admitted that the tenancy is a monthly tenancy. The trial Court also faulted that the defendant for non production of the lease deed though the plaintiff has pleaded that the lease deed is a forged one. The trial Court discountenanced to the said plea of the plaintiff on the ground that she admitted the lease and issued a notice of termination. The trial Court also found that the case of the plaintiff that there was no lease and the defendant was put in possession as a care taker cannot be believed. The trial Court however decreed the suit for possession on the finding that the defendant had admitted the tenancy and the tenancy has also expired by efflux of time. Aggrieved, the defendant preferred an appeal in A.S.No.79 of 2013.

6. The lower appellate Court concurred with the conclusions of the trial Court. The lower appellate Court further found that even though the lease deed has not been produced from the evidence let in, it could be gathered that it is a unregistered

instrument. The lower appellate Court found that the unregistered lease deed for a period of 5 years cannot be admitted in evidence to prove the said lease. The lower appellate Court rejected the claim of the defendant that there should be 6 months notice for termination of the tenancy in view of its finding that the lease itself being unregistered is invalid. The lower appellate Court also took note of the admissions made by the defendant in his evidence that the lease has expired in 2007. He is occupying the property without paying the rent. On the above conclusions, the lower appellate Court dismissed the appeal, confirming the judgment and decree of the trial Court.

7. The following questions of law were framed at the time of admission:

- i) Whether the plaintiff is not required to succeed on the strength of her case and are the Courts below right in granting a decree on a finding destructive of the plaintiff case?
- ii) Whether the plaintiff has denied the Lease deed as forged and fabricated, are the Courts below right in decreeing the suit, describing the defendant as a tenant by inference?
- iii) Assuming that the finding of the Courts below that the appellant is a tenant is right, is the suit for possession before the Civil Court maintainable?
- iv) Assuming that the finding of the Courts below that the appellant is a tenant is right, is not the notice to quit defective as admittedly the lease is for manufacturing purpose?

8. I have heard Mr.K.Sivasubramanian, learned counsel appearing for the appellant and Mr.K.A.Vimalkumar, learned for the respondent.

9. Elaborating on the questions of law, Mr.K.Sivasubramanian learned counsel for the appellant would contend that the plaintiff who has come to the Court claiming that the lease deed is a forged document cannot be favoured with the decree for possession, particularly, when the Courts below are found the lease deed to be valid. No doubt, the plaintiff has come to Court with the specific case that the lease deed is a forged instrument. But the Courts below have found that the case of the plaintiff that the lease deed is a forged instrument is

false. Even assuming that the lease deed has been executed by the plaintiff, the lease period is only for 5 years. The lease period has expired in 2007 itself. From the expiry of the lease, the defendant's possession is only as that of a trespasser. The plaintiff's suit is not one for ejection but it is one for recovery of possession. Therefore, de hors the execution of the lease deed, if the defendant's possession is found to be illegal, the plaintiff would be entitled to a decree for possession. The finding of the lower appellate Court that the lease deed itself is invalid, in my opinion derails the defence. Admittedly, the lease period is for 5 years and it is not shown that the lease deed is a registered instrument, therefore, the lease deed cannot be relied upon to prove the lease for a period of 5 years in favour of the defendant. Even assuming that the lease was for 5 years, the 5 years period expired in 2007 itself. Hence, the questions of law Nos.1 and 2 answered against the appellant. On the 3rd question of law, Mr.K.Sivasubramaniam, learned counsel for the appellant would contend that the suit filed before the Civil Court is not maintainable. Such a plea was not taken before the Courts below. The maintainability of the suit before the Civil Court would depend on the fact whether the property is situated in a notified area as shown in Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. In order to attract the provisions of the said Act, it must be shown that the property is situated within a notified area and the evidence to the effect is totally lacking. The issue of jurisdiction of the Civil court has been taken for the first time in this second appeal by the appellant, I do not think that this Court can entertain such a plea as the same would depend determination of certain question of fact. Therefore, the 3rd question of law answered against the appellant.

10. As regards notice period, the lower appellate Court has found that the lease deed is invalid, even assuming the lease was valid, it is only for a period of 5 years. The lease has expired in 2007 itself. Further, there is no plea on the requirement of 6 months notice period as per Section 106 of Transfer of property Act in the written statement or in the evidence of the defendant. It is seen from the judgment of the Courts below, such a plea came to be raised only at the time of arguments of the suit. The Courts below have considered the evidence on record and come to the conclusion that 6 months notice period is not necessary to evict the defendant. It is not made out that such factual finding of the Courts below are perverse to enable me to interfere with them particularly sitting in second appeal.

11. Hence, the questions of law raised are answered against the appellant. The appeal fails and it is dismissed. However, considering the relationship of the parties, there will be no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar
vum

To

1. The Principal District Judge,
Erode.
2. The Subordinate Judge,
Perundurai.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1cc to Mr.K.A.Vimalkumar, Advocate, S.R.No.92576
+1cc to Mr.T.M.Hariharan, Advocate, S.R.No.92793

S.A.No.415 of 2014
& M.P.No.1 of 2014

RP(CO)
CS/11/03/2020

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