

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1119 of 2019

and

CMP.No.24247 of 2019

Sri Gayathiri Vidhyalaya, Portonovo,
represented by its Correspondent
Vasanthi, W/o. Asaithambi,
Vaduga Street,
Portonova and Post,
Chidambaram Taluk,
Cuddalore District.

..Appellant/Defendant

Vs.

Portonova Grama Meenava
Samudhaya Panchayat
represented by

- 1.K.Paramasivam, President
- 2.G.Sezhiyan, Vice-President
- 3.P.Subramanian, Secretary
- 4.K.Kesavaraj, Treasurer
- 5.N.Govindasami, Advisor
- 6.S.Ramadoss, Dharmakartha
- 7.N.Dharmalingam, Executive Member
- 8.S.Gopi, Executive Member
- 9.P.Kannan, Executive Officer
- 10.G.Arvidan, Executive Officer
- 11.G.Sekaran, Executive Member

..Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 13.03.2019 passed in A.S.No.102 of 2018 on the file of the learned II Additional District Judge of Chidambaram and reversing the judgment and decree dated 09.06.2015 passed in O.S.No.2 of 2013 on the file of the learned District Munsif-cum-Judicial Magistrate, Parangipettai.

For Appellant : Mr.D.Baskar

J U D G M E N T

The defendant in O.S.No.2 of 2013, who suffered a decree for ejectment at the hands of the lower appellate court has come up with this Second Appeal.

2. The plaintiffs as representatives of the Fisherman Community (Meenavar Samudhayam) filed a suit for ejectment contending that the defendant became a tenant on 01.06.2005 in respect of the building belonging to the Samudhayam on a monthly rent of Rs.600/- and has paid an advance of Rs.5,000/-. Claiming that the defendant is irregular in payment of rent and that the building in question is very old and dilapidated and have become unfit to house a School, the plaintiffs terminated the tenancy by a notice dated 04.06.2012 and sought for ejectment.

3. The defendant in defence contended that the President of the Samudhayam viz., one Vaidhyanathan had executed a registered lease deed, in which the lease created in favour of the plaintiff was for a period of 20 years and therefore, the plaintiffs have no right to terminate the tenancy. On the said claim, the defendant had sought for dismissal of the suit.

4. The trial court on an erroneous consideration of the evidence on record concluded that Vaidhyanathan had power to execute the lease deed and since the lease period has not expired, the plaintiffs are not entitled to a decree for ejectment. Aggrieved the plaintiffs preferred an appeal in A.S.No.102 of 2018.

5. The lower appellate court upon re-consideration of the evidence found that the plaintiff has established that Vaidhyanathan, the executant of the lease deed dated 22.06.2005 was not the President of the Samudhayam on the said date. Though, a resolution was passed by the Samudhayam to let out the property to the defendant, the resolution did not authorize Vaidhyanathan to execute the lease deed for a period of 20 years.

6. It was also found that one Gnanasekaran was the President of the Samudhayam on the material date viz., 22.06.2005. Vaidhyanathan who was examined as DW2 had specifically deposed that he was not the President of the Samudhayam on the date of execution of the lease deed. He has also deposed that he had described himself as temporary President and has executed the lease deed only in order to enable the defendant to obtain approval.

7. Considering the said evidence, the lower appellate court concluded that what was created was only a monthly tenancy as per the resolution of the Samudhayam which was marked as Ex.C1. Therefore, the lower appellate court concluded that the termination of the tenancy is valid and the defendant is bound to vacate and deliver vacant possession of the property. Aggrieved the defendant has come up on appeal.

8. I have heard Mr.D.Baskar, learned counsel appearing for the appellant.

9. Mr.D.Baskar, learned counsel appearing for the appellant would contend that the lower appellate court was not right in disbelieving the registered instrument of lease dated 22.06.2005 in concluding that the plaintiffs have right to terminate the tenancy.

10. Though the specific case of the plaintiffs was that Vaidhyanathan had no authority to execute the lease deed dated 22.06.2005, no material has been placed before the courts below to show that Vaidhyanathan was the President. Per contra Ex.C1, the Minute Book of the plaintiffs Samudhayam has been produced to show that one Gnanasekaran was the President at the relevant period of time.

11. Though a resolution was passed by the Samudhayam to let out the property to the defendant for running School, no specific period was fixed under the said resolution. The lease deed having been executed by a person who was not authorized, will not, in my considered opinion, confer any right on the defendant to claim that he should be allowed to be in possession till the expiry of the lease.

12. I do not think that the findings of the lower appellate court regarding the capacity of Vaidhyanathan to execute the lease deed could be termed as perverse. It is based on valid documentary evidence. I therefore do not think that I can interfere with the said findings which are based on evidence.

13. I do not find any question of law much less a substantial question of law in order to enable me to entertain this appeal. Hence, the Second Appeal fails and is accordingly dismissed without being admitted. No costs. Consequently, the connected miscellaneous petition is also closed.

14. The learned counsel for the appellant prays for grant of time for vacating the property. Considering the fact that the appellant is running a School in the building in question,

the appellant is granted six (6) months time to vacate and hand over vacant possession of the property subject to the condition that the appellant files an affidavit undertaking to vacate and handover possession of the property by 31st May 2020 without driving the respondents to execution proceedings. The affidavit shall be filed on or before 28.11.2019. If no affidavit is filed within the said date, the respondent will be free to execute the decree as if no time has been granted by this court.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

dsa

To

- 1.The II Additional District Judge, Chidambaram.
 - 2.The District Munsif-cum-Judicial Magistrate, Parangipettai.
 - 3.The Section Officer, V.R. Section,
High Court of Madras, Chennai 600 104.
- +1cc to Mr.R.Gururaj, Advocate SR.No.94822

S.A.No.1119 of 2019

GMV (09/01/2020)

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