



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

S.A.(MD) No.596 of 2019

and

C.M.P(MD)No.12093 of 2019

WEB COPY

1.S.Amutha
2.S.Veeraperumal
3.S.Sundaramoorthy
4.S.Chandramohan
5.S.Thangapandi
6.S.Rajapandi
7.S.Suganya

... Appellants/Appellants/Defendants
vs.

S.Venkatachalam ... Respondent/Respondent/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.20/2017 on the file of the Sub Court, Aruppukottai, dated 29.08.2019, confirming the judgment and decree in O.S.No.106/2003 on the file of the Principal District Munsif Court, Aruppukottai, dated 05.06.2017.

For Appellants : Mr.S.Natarajan

JUDGMENT

The defendants 2 to 8 having suffered a decree for eviction and payment of arrears of rent have come up with this appeal.

2. The plaintiff / respondent laid a suit for eviction and arrears of rent claiming that the deceased first defendant became a tenant under the plaintiff about 20 years ago in respect of first schedule property on the monthly rental of Rs.100/- and the same was gradually increased and he is paying a sum of Rs.500/- per month as rent. According to the plaintiff, the defendant has stopped paying rent from 31.08.2002. As regards, the second item of suit schedule property, it is the contention of the plaintiff that the first defendant became a tenant on monthly rent of Rs.300/- some time in the year 2002. Since the deceased first defendant stopped payment of rent, the plaintiff by notice dated 07.02.2003 terminated the tenancy and required the defendant to vacate and hand over the possession of the property.

3. The deceased first defendant resisted the suit contending that he was not the tenant under the plaintiff. It was the case of the first defendant that, he was cultivating agricultural lands of an extent of five acres belonging to the plaintiff and therefore, he was allowed to occupy the house shown as suit schedule property



belonging to the plaintiff. Therefore, he was a permissive occupant and not the tenant. A suit in O.S.No.31 of 2003 was filed by the deceased first defendant seeking permanent injunction from interfering with his possession except by due process of law. Both suits were tried together. The plaintiff in O.S.No.106 of 2003, namely, the respondent herein in his evidence conceded the possession of the defendant and stated that he is not objecting for grant of decree of injunction as prayed for in O.S.No.31 of 2003.

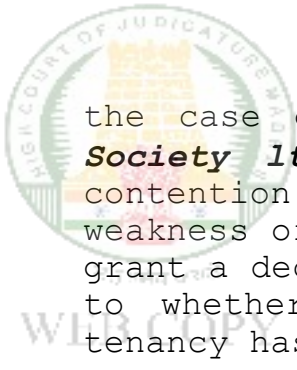
4. The plaintiff therein / the deceased first defendant in O.S.No.106 of 2003 was examined as P.W.1. Exs.A1 to A4 were marked. The defendant in O.S.No.31 of 2003 (plaintiff in O.S.No.106 of 2003) was examined as D.W.1 and Exs.B1 to B6 were marked.

5. The title of the plaintiff in O.S.No.106 of 2003 is admitted. The defence of the defendant therein was that he is not a tenant and such suit for eviction against him would not be maintainable. The Courts below on consideration of the evidence, particularly, the evidence, in cross examination, of P.W.1 / deceased first defendant in O.S.No.106 of 2003, concluded that he had admitted the tenancy and therefore, he cannot be claim to be a permissive occupant. On the said finding, the trial Court decreed both the suits granting permanent injunction restraining the defendant in O.S.No.31 of 2003 from evicting the plaintiff expect in accordance with law and granting a decree for eviction and for payment of arrears of rent in O.S.No.106 of 2003.

6. Pending the suits, the first defendant in O.S.No.106 of 2003 died and his legal representatives were impleaded as defendants 2 to 8. They however did not file a fresh written statement or lead any evidence. They have adopted the pleadings and evidence of the first defendant. Aggrieved by the judgment and decree of the trial Court, the legal representatives of the deceased first defendant, filed an appeal in A.S.No.20 of 2017. The lower appellate Court on consideration of the evidence on record, concurred with the findings of the trial Court and concluded that the plaintiff in O.S.No.106 of 2003 is entitled to a decree for eviction and arrears of rent. On the said finding, the lower appellate Court dismissed the appeal. Aggrieved the legal representatives of the deceased first defendant in O.S.No.106 of 2003 have come up with this appeal.

7. I have heard Mr.S.Natarajan, learned counsel appearing for the appellants.

8. The learned counsel for the appellants vehemently contended that the Courts below having found that the plaintiff has not proved the tenancy ought not to have granted the decree in his favour. He would also submit that the evidence in cross examination relied by the Courts below has been misread / misinterpreted by the Courts below. According to him, there is no admission of tenancy. He



the case of **Union of India and others Vs. Vasavi Co-op Housing Society Ltd. and others** [2014 (4) CTC 471] in support of his contention that if the plaintiff failed to prove his case, the weakness of the defence cannot be taken into account by the Court to grant a decree in favour of the plaintiff. The only question is as to whether the Courts below were right in concluding that the tenancy has been proved.

9. The evidence of D.W.1 has been produced. The learned counsel for the appellant would contend that the Courts below have misread the evidence of P.W.1 particularly in cross examination. The portion of the evidence that has been relied by the Courts below reads as follows:-

“எனக்கும் வெங்கடாசலத்திற்கும் பேச்சு வார்த்தை உள்ளது. பகை ஏதும் இல்லை. நான் மாத வாடகை முதன் முதலில் ரூ.100 கொடுத்து துவ , என்.1/196 வீட்டில் குடியிருந்தேன். மேற்படி வாடகை தொகை படிப்படியாக உயர்த்து ரூ.500/- ரூபாய் இருந்தது. குதவு என்.1/198 வீட்டில் 2002ம் வாக்கில் மாத வாடகை ரூ.300 க்கு இருந்தேன் என்றால் சரியல்ல. நான் 31.08.2002 காலத்திற்கு வாடகை செலுத்தினேன் என்றும் அதற்கு பின் வாடகை செலுத்துவதில்லை என்றால் சரியல்ல.”

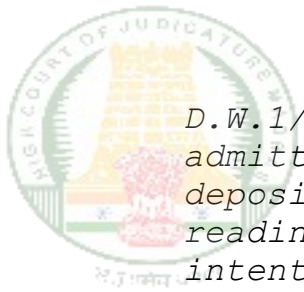
10. According to him, there is a misreading of the evidence by the Courts below. I am unable to accept the said contention of the learned counsel for the appellants. The trial Court has come to the conclusion on the basis of the deposition. I do not think that sitting in a second appeal I can substitute my own opinion in the place of the opinion arrived at by the trial Court as well as the lower appellate Court, even if any other infraction or any other view of the evidence of record is possible. The Courts below, upon appreciation of the evidence have come to a conclusion that tenancy has been proved. The Courts below have also pointed out that though the plaintiff, who had come to the Court with a specific cause of tenancy, has not been able to produce documentary proof of the same, the admission of tenancy by D.W.1 cannot be ignored. The issuance of notice for termination has also been taken note of by the Courts below. The learned counsel for the appellant has suggested the following questions of law.

“1.Whether the judgments and decrees of the Courts below are in consonance with the settled principle that the plaintiff, who seeks eviction against the defendant has to prove his case to get the decree sought for by him, even though the defendant has failed to prove his case?

2.When there is no other proof for the alleged tenancy, whether the Courts below are right in relying on the eviction notice under Ex.B2 itself as proof of tenancy, especially when that notice averments are denied in the reply Ex.B3 by this defendant?

3.Whether the Courts below are right in mistaking

and misreading the few lines from the deposition of



D.W.1/defendant and concluding as if the defendant admitted tenancy, ignoring the settled principle that depositions are to be read in whole, especially when reading the whole of D.W.1's depositions would reveal the intention of the defendant in absolutely denying the alleged tenancy?

4.Whether the view of the learned appellate Judge that the legal heir of the original defendant can not have any claim, even if the original defendant was in occupation, is sustainable under law, especially when these defendants / appellants have already been impleaded as LR of the sole defendant?

5.Whether the finding of the learned appellate Court that even if the tenancy and rent are not established, the plaintiff is in better position than the defendant and therefore, entitled to decree, is sustainable under law?

6.Whether the courts below are right in not appreciating the defence that for the plaint prayer the required court fee is not paid and court fee paid under Section 43(2) is not applicable?"

11.In view of the above discussions, I do not think any of the above questions of law would merit consideration in this appeal. Hence, this appeal is dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Aruppukottai.

2.The Principal District Munsif, Aruppukottai.

Copy to

The Section Officer, (2 copies)

Vernacular Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.S.NATARAJAN, Advocate (SR-104279[F] dated 10/12/2019)

S.A. (MD) No.596 of 2019

10.12.2019

VB (23.01.2020) 4P 6C