

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09/12/2019
Delivered on	03/01/2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.No.3145 of 2009 &

C.R.P.No.3278 of 2019 &

S.A.No.869 of 2012 &

Connected miscellaneous petitions

Angammal (Deceased)

S.A.Sudandiram

.. Petitioner/2nd Defendant in

C.R.P.Nos.3145 of 2009 & 3278

of 2019 &

Appellant in S.A.No.869 of 2012

Versus

1.Tmt.Savithiriammal

..Ist Respondent/Plaintiff in

CRP.3145/09 & 3278/2019

Plaintiff in SA.869/2012

2.S.A.Bakyalakshmi @ Pappathi

..2nd Respondents/3rd defendant

C.R.P.Nos.3145 of 2009 & 3278

of 2019 &

S.A.No.869 of 2012

Prayer in C.R.P.No.3145 of 2009: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 09.04.2007 in C.M.A.No.96 of 2006, on the file of Principal Subordinate Judge, III Additional Subordinate Judge, (Incharge), Coimbatore, confirming the fair and decreetal order dated 05.08.2005 passed in I.A.No.1234 of 1994 in O.S.No.81 of 1988, on the file of II Additional District Munsif, Coimbatore.

Prayer in C.R.P.No.3278 of 2019: Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 18.01.2007 passed in C.M.A.No.115 of 2005, on the file of Appellate Authority and II Additional Subordinate Judge, Coimbatore, reversing the fair and decreetal order dated 05.08.2005 passed in I.A.No.1234 of 1994 in O.S.No.81 of 1988, on the file of II Additional District Munsif, Coimbatore.

Prayer in S.A.No.869 of 2012: Second Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 09.04.2007 passed in A.S.No.163 of 2006 on the file of

Appellate Authority-cum-III Additional Subordinate Judge, Coimbatore, confirming the Judgment and Decree, dated 05.08.2005 passed in O.S.No.81 of 1988, on the file of II Additional District Munsif, Coimbatore.

For Petitioner in
C.R.P.Nos.3145 of 2009 &
3278 of 2019 &
Appellant in S.A.No.869 of 2012 : Mr.R.Bharath Kumar

For first Respondent in
C.R.P.Nos.3145 of 2009 & 3278
of 2019 & S.A.No.869 of 2012: Mr.AR.L.Sundaresan
Senior Counsel for
Mr.Ashwin Premsundar R1
for
No Appearance for R2

C O M M O N J U D G M E N T

Since the issues involved in Second Appeal and Civil Revisions Petitions are same, they have been taken up together and disposed of, by this common judgment.

2. The second defendant in O.S.No.81 of 1988 on the file of II Additional District Munsif, Coimbatore is the appellant in the Second Appeal and petitioner in Civil Revision Petitions. The first respondent, as plaintiff, filed the suit originally against one Angammal and the appellant herein S.A.Sudanthiram, praying for delivery of vacant possession of the suit property and for recovery of rental arrears and future damages. After demise of the first defendant-Angammal, the third defendant / second respondent-S.A.Bakyalakshmi @ Pappathi was impleaded as a party.

3. It is the case of the plaintiff that the suit vacant land and other properties were originally owned by her grandfather S.N.Narayanasami Naidu and he settled the property in favour of the plaintiff, by a registered settlement deed, dated 15.04.1968. The plaintiff leased out the land described in the suit schedule to one S.A.Anga Naicker, by a registered lease deed, dated 12.12.1968, for fifteen years on a monthly rent of Rs.60/- and Rs.4,000/- was paid as a refundable deposit.

4. The plaintiff further stated that original lessee S.A.Anga Naicker died and the defendants are his legal-heirs. After expiry of the lease on 30.11.1983, the defendants failed to surrender possession and hence a lawyer's notice, dated 07.10.1987 was issued calling upon the defendants to vacate the land by end of October 1987. The defendants 1 and 2 sent a reply, dated 12.10.1987 with false allegations and hence, the suit.

5. The said suit was resisted by the second defendant by filing a written statement, contending that his father Anga Naicker took vacant site of the land under lease deed, dated 19.11.1947, measuring an extent of 40 cents, including the suit property from Chinnasamy Naidu. Thereafter, he put up construction and was running a theatre in the name and style of "Ambal Theatre". Hence, the plaintiff is not entitled to seek possession of the property and the defendants are entitled to benefit under the City Tenants Protection Act and prayed for dismissal of the suit.

6. For the sake of convenience, parties are hereafter referred as landlady and tenants. It is not disputed that the tenants filed I.A.No.1234 of 1994 in the above suit under Section 9 of the City Tenants Protection Act for sale of the minimum extent of the land for the price to be fixed by the Court. By an order dated 13.08.1998, the Trial Court held that the tenants are entitled for a relief under Section 9 of the City Tenants Protection Act. In the application, a dispute arose as to whether the lease is for 15 cents or for 24 cents. According to lessor, it was 24 cents, but the lessee took a stand it was only 15 cents.

7. In the application, parties let in oral and documentary evidence. Upon consideration of the evidence, the trial Court came to the conclusion that the leased out area was 24 cents and calculated the value of the land as Rs.576/- per sq.ft. and determined the total value of the land at Rs.60,27,264/- and directed the tenants to deposit the amount within a period of three months, failing which, the landlady is entitled for vacant possession of the land. The trial Court further held that the tenant is liable to pay the arrears of rent and damages. Accordingly, the application and the suit were disposed of.

8. Aggrieved over the same, the tenant preferred C.M.A.No.96 of 2006 and A.S.No.163 of 2006 while the landlady filed C.M.A.No.115 of 2005. The appellate Judge, after independently analyzing entire facts, dismissed the appeals

preferred by the tenant and allowed the appeal filed by the landlady.

9. Assailing the orders / judgment, the tenant has come up before this Court.

10. Mr.R.Bharathkumar, learned counsel appearing on behalf of the tenant would submit that the Courts below have committed an illegality in relying upon the reports of the Advocate Commissioner, which have been marked as Exs.C11 to C13. It is contended that the Advocate Commissioner, viz., Mr.N.Balasubramaniam, who has filed the report Ex.C4 and annexures Exs.C5 to C9, wherein, he came to the conclusion that the tenant has taken lease of 15 cents of land, but gave a different report in Ex.C13, stating that the land was 24 cents. Hence, the Advocate Commissioner's report has to be rejected and it shall be held that the minimum extent necessary for the tenant would be 15 cents. It is further contended that the value of the land has been fixed without taking note of the Memo of objections filed by the appellant. He further added that the tenant is ready to purchase the vacant land of 15 cents as per the actual value stated in the Memo of objections given by the tenant.

11. Per contra, Mr.AR.L.Sundaresan, learned Senior Counsel appearing on behalf of the landlady would argue that admittedly, the tenancy commenced on the basis of a lease deed, dated 12.12.1968 and after expiry of the lease on 30.11.1983, a notice was issued on 07.10.1987, directing the defendants to vacate the premises, by 12.10.1987. It is further contended that after scrapping of the report of the first Advocate Commissioner, the second Advocate Commissioner was appointed and he gave a report, stating that the land occupied by the tenant was 15 cents and 422.sq.ft and the value of the land was fixed at Rs.4,17,000/- as on 1998. A Memo of Objection was filed by the landlady stating that the property in actual possession of the tenant was 24 cents, but the Advocate Commissioner wrongly mentioned it as 15 cents and the market value per cent was Rs.5,00,000/-. Thereupon, the third Advocate Commissioner was appointed and he rightly measured the property at 24 cents. It is also contended that the lease deed and the planning approval granted to the plaintiff would show that 24 cents of land was leased out to the defendant and it was necessary for running the theatre. According to the learned Senior Counsel, the Courts below have rightly come to the conclusion that the actual land was 24 cents and the market value was fixed on the basis of the guideline value and hence, the finding do not require any interference by this Court.

12. Heard the rival submissions and carefully perused the materials available on record.

13. In the case on hand, it is not disputed that the suit vacant land was originally belonged to S.N.Narayanasami Naidu and by a registered settlement deed, dated 15.04.1968, it was settled in favour of the landlady. Admittedly, under Ex.R1 lease deed, dated 12.12.1968, the landlady leased out the property to the husband of the first defendant and the father of the second defendant-S.A.Anga Naicker for a period of 15 years. Subsequently, the lessee had constructed the building therein and was running a theatre in the name and style of Ambal Theatre. After terminating the tenancy, a suit was filed by the landlady for delivery of vacant possession of the suit property and she also claimed arrears of rent and future damages.

14. It is not disputed by the tenant that the monthly rent was Rs.60/-. According to the landlady, there was arrears of rent of Rs.2,160/-. With regard to the arrears of rent, the tenants contended that the entire rent was paid, but no proof was filed in support of their case. Hence, the Courts below held that the landlady is entitled for arrears of rent, as claimed in the suit.

15. The original lease agreement, dated 12.12.1968 was marked as Ex.R1. Copy of lease agreement was produced as Ex.R3. Ex.R2 is the rough sketch furnished for approval of the building. The first Advocate Commissioner Mr.R.Sundar inspected the suit property on 14.09.1999 and filed his report and plan as Exs.C1 to C3. In view of the objection raised by the landlady, another Advocate Commissioner Mr.N.Balasubramaniam was appointed and his report and plan were marked as Exs.C4 to C9. In Ex.C5, he has stated that the land was 15.422 cents. On further objection by the landlady, he was directed to measure the property with the help of Head Surveyor. The third Advocate Commissioner's reports and plan were marked as Exs.R11 to R13. After perusing both the reports, Exs.C4 to C9 and C11 to C13, the Trial Court found that the vacant land and other superstructures, such as toilet, water tank, canteen, generator room were not taken into consideration in the earlier reports. Based on the documents, the actual extent was arrived as 24 cents.

16. The materials available on record would show that the theatre was constructed in 15.422 cents of land and the open area was 8.14 cents. It is the case of the tenant that he is ready to purchase only the land, wherein the theatre was constructed and the other lands are not required for them. The

Courts below found that without the open land available in the area, the licensee / tenant is not entitled for license to run the theatre. It is further seen that the Advocate Commissioner's report Ex.C1 to C3 were scrapped in I.A.No.325 of 1996 and thereafter, another Advocate Commissioner was appointed. Ex.C10 is the guideline value furnished by the Sub Registrar office, Singanallur, for the period between 01.04.2001 and 01.04.2004. The guideline value in 2001, was Rs.457.20, per sq.ft, in 2002, it was Rs.522.00 and in 2003 & 2004, it was 603. After taking average from three years, the Court arrived at Rs.576/- per sq.ft and after multiplying with 436 sq.ft, it was determined at Rs.2,51,136/- per cent. Though the claim of the landlady that the market value per cent was Rs.7,00,000/-, but the Court fixed the market value of Rs.2,51,136/- per cent. On that basis, the value for the land was arrived at Rs.60,27,264/-.

17. The learned counsel for the appellant, by referring the objections filed to the Commissioner's report and the value given by one Mr.Syed Mahbool, has argued that the market value for the property per sq.ft was Rs.128.20/- in 2001, Rs.145/- in the year 2002 and Rs.162 in the year 2003 and hence, the average would come to Rs.145 per sq.ft. I do not find any substance in the contention, for the reason that Ex.C10 was furnished by the Sub Registrar Office, Singanallur, and the claim is based on the value furnished by the Engineer, which does not have any basis.

18. It is apposite to mention here that appellant and his father who have been running the theatre, since 1945, should be aware that for renewal of license, open space and other superstructures existed in the suit property are necessary, but contested the case as if they need the minimum extent of 15 cents of the land, in which, the theatre alone was constructed. This shows the attitude of the appellant to prolong the litigation without any merit. The value of the land was fixed based on the average guideline value for the year 2001 to 2004, but the amount was not deposited/paid in time. Therefore, at this length of time, in my considered opinion, it may not be appropriate to permit the tenant to deposit the land value as per his demand.

19. It is also argued by the learned counsel for the tenant that when the appeal preferred by the tenant was pending before the first appellate Court, the landlady filed C.M.A.No.115 of 2005, against the orders passed in the application filed under Section 9 of the City Tenants Protection Act, but the Court, without issuing notice, allowed the appeal. It is the submission of the learned counsel that no notice was served in the above C.M.A., but it was wrongly referred that

after hearing both the parties, the order was passed. It is evident from the order passed in C.M.A.No.115 of 2005 that since the tenant failed to deposit the value fixed by the trial Court, within a period of three months, the learned Judge, set-aside the order passed in I.A.No.1234 of 1994.

20. In the light of the above discussion and finding, this Court finds no valid ground to interfere with the concurrent findings of the Courts below. In such view of the matter, the Second Appeal in S.A.No.869 of 2012, C.R.P.No.3145 of 2009 and C.R.P.No.3278 of 2019 are dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

-sd/-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Principal Subordinate Judge,
III Additional Subordinate Judge, (Incharge),
Coimbatore.
- 2.The II Additional Subordinate Judge,
Coimbatore.
- 3.The Appellate Authority-cum-III
Additional Subordinate Judge,
Coimbatore,
- 4.The II Additional District Munsif,
Coimbatore.

5.The Section Officer
VR Section, High Court,
Madras

+3 cc to Mr.Ashwin Prem Sundar Advocate sr406
+1 cc to Mr.R.bharath kumar Advocate sr1431

C.R.P.No.3145 of 2009 &
C.R.P.No.3278 of 2019 &
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