

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.12.2019

Date of Verdict : 07.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.Nos.345 & 671 of 2005

SA.No.345 of 2005

T.S.Prabhakaran ...Appellant/Defendant

Vs.

1.K.Ramachandran (deceased)

2.Usha

3.R.Vinodhkumar

4.R.Sharmila

...Respondents

(RR2 to 4 brought on record as LR's of the deceased sole respondent vide order of court dated 02.03.2018 made in CMP.No.2441 to 2443 of 2018 in SA.No.345 of 2005(PVJ))

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.09.2004, in A.S.No.155 of 2004 on the file of the VII Additional Judge (Appellate Authority) confirming the decree and judgment dated 17.12.2003 in O.S.No.7952 of 1997 on the file of the XVII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.N.Sathyamoorthi

For Respondents

For R2 to R4 : Mr.K.Prabhakaran

: R1 - died

SA.No.671 of 2005

1.K.Ramachandran (deceased)

2.Usha

3.R.Vinodhkumar

4.R.Sharmila

...Appellants

(Appellants 2 to 4 brought on as LR's of the deceased sole appellant vide order of court dated 26.06.2014 made in CMP.Nos.824 & 825 of 2013 in SA.No.671 of 2005)

Vs.

T.S.Prabhakaran

...Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.09.2004, in Cross Appeal No.203 of 2004 on the file of the VII Additional Judge, City Civil Court, Chennai confirming the decree and judgment dated 17.12.2003 in O.S.No.7952 of 1997 on the file of the XVII Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.K.Prabhakaran

For Respondent : Mr.N.Sathyamoorthi

COMMON JUDGMENT

Both the second appeals are arising out of appeal suit in AS.No.155 of 2004 and Cross Appeal No.203 of 2004. Therefore it is appropriate to pass common judgment in both the appeals.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiff in brief is as follows:-

3.1 The plaintiff is the chief tenant of the house, ground and premises situated at No.10, Ebrahim Sahib Street, GT, Madras. The property belongs to Sri Mahalakshmi Amman Temple. By virtue of the power to sub-lease the property, the plaintiff has sub-leased a portion of the property to the defendant for non residential user. The defendant is in occupation of the portion for the monthly rent of Rs.450/-. Since the plaintiff is in need of the portion, he issued notice to the defendant for surrendering the vacant possession and also filed a petition for eviction in RCOP.No.439 of 1996 before the Court of Small Causes, Madras. The defendant contested the same and raised ground that as per GO.Ms.No.2000 dated 16.08.1976, the building does not come within the purview of the Rent Control Act and as such the learned Rent Controller has no jurisdiction to entertain the petition for eviction and try the same. Therefore, the plaintiff was constrained to withdraw the said RCOP with liberty to file a suit. Thereafter the plaintiff also caused notice to the defendant on 03.01.1997 and thereby terminated the tenancy of the defendant and called upon the defendant to quit, vacate and deliver vacant possession of the said portion. Even then, the defendant did not vacate the premises in spite of his tenancy having been terminated by the end of January 1997. Therefore, the plaintiff filed the suit as against the defendant to quit, vacate and deliver the vacant possession of the schedule portion of the house, ground and premises situated at No.10, Ebrahim Sahib Street, GT, Madras and also prayed for damages for his wrongful use and occupation at

Rs.900/- per month from the date of the suit until he vacates and delivers the vacant possession to the plaintiff.

4. Resisting the same, the defendant filed written statement and stated that the plaintiff already filed eviction petition before the learned Rent Controller in RCOP.No.439 of 1996 against the defendant for eviction on the ground of bonafide requirement of the suit premises for extension of his school, in which he categorically admitted that the building belongs to the temple and public charitable trust. The defendant is not aware as to who is the real owner of the suit property. Since the suit premises belong to public charitable trust under G.O.Ms.No.2000 dated 16.08.1976, the building exempted from the provisions of Rent Control Act and as such eviction petition itself is not maintainable. On that ground, the eviction petition was withdrawn. Now the defendant has come to understand that the suit premises is not owned by the public trust or public charitable trust. It is a property belongs to private temple and as such G.O.Ms.No.2000 dated 16.08.1976 is not applicable to the suit premises. Therefore, the plaintiff is not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 and P.W.2 were examined and ten documents were marked as Ex.A.1 to Ex.A.10. On the side of the defendant, D.W.1 was examined and Ex.B.1 and Ex.B.2 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit in favour of the plaintiff and ordered to hand over the vacant possession of the suit premises within a period of three months and also ordered to pay damages at Rs.450/- per month payable by the defendant to the plaintiff till the hand over of the vacant possession. Aggrieved over the judgment and decree of the trial Court, the defendant filed appeal suit in AS.No.155 of 2004, and the plaintiff filed Cross Appeal No.203 of 2004 as against the judgment and decree insofar as the awarding of compensation of Rs.450/- per month payable by the defendant to the plaintiff and claiming a sum of Rs.900/- per month. The first appellate Court on appreciating the materials placed on records, dismissed both the appeals by confirming the judgment and decree passed by the trial Court. Aggrieved by the same, the defendant has filed second appeal in SA.No.345 of 2005 and the plaintiff has filed second appeal in SA.No.671 of 2005.

6. At the time of admission of the second appeals, the following substantial questions of law were framed respectively:-

SA.No.345 of 2005

a) Whether the appellate Court is right in ordering eviction even without considering the vital

question as to whether the plaintiff is entitled to seek eviction after the termination of tenancy by the Executive Officer of the temple?

b) Whether the Courts below are right in ordering eviction of the appellant without considering the notice of the Executive Officer demanding the rent from the appellant?

c) Whether the Courts below are right in ordering eviction in favour of the respondent whose lease is against law, and invalid?

d) Whether the Courts below are right in ordering eviction without deciding the maintainability of the suit itself?

SA.No.671 of 2005

a) Whether the courts below are right in refusing to grant damages for use and occupation even though the respondent / defendant was admittedly in possession after termination of his tenancy and in wrongful possession?

7. The learned counsel appearing for the plaintiff and the defendant are present and they reiterated the averments set out in the plaint as well as the written statement.

8. Heard, the learned counsel appearing for the plaintiff and the learned counsel appearing for the defendant.

9. This Court considered the rival submissions made by the learned counsel on either side.

10. There is no dispute that the suit premises belongs to Arulmighu Sri Mahalakshmi Amman Temple, in which the plaintiff is the chief tenant and a portion of premises is rented out by the plaintiff to the defendant for the monthly rent of Rs.450/- Thereafter the plaintiff filed petition for eviction in RCOP.No.439 of 1996 as against the defendant. In the counter filed by the defendant in RCOP.No.439 of 1996, he specifically contended that the suit premises is a public temple and the temple is coming under the purview of Hindu Religious and Charitable Endowments Department and as per G.O.Ms.No.2000 dated 16.08.1976, the learned Rent Controller has no power to try the petition, since the petition premises is not coming under the said Act. Therefore, the plaintiff had withdrawn RCOP.No.439 of 1996 and filed the present suit for eviction and also claimed damages against the defendant. In fact, the plaintiff also caused legal notice thereby terminated the tenancy of the defendant by the end of January 1997 and called upon the defendant to vacate and hand over the suit premises. The legal notice is marked as Ex.A.1. and the reply notice is marked as Ex.A.2. Though the defendant refused to vacate the premises, the defendant did not mention any reason for not vacating the suit premises. In the written statement, the defendant categorically stated that the suit

premises belong to private temple called Sri Mahalakshmi Amman Temple and as such G.O.Ms.No.2000 dated 16.08.1976 is not applicable, and hence the suit is also not maintainable. It is pertinent to note here that in the counter filed by the defendant before the Rent Controller, he stated that the premises is a public premises and the Rent Control Act is not applicable to the petition premises as per G.O.Ms.No.2000 dated 16.08.1976. In pursuant to the same, the plaintiff was constrained to withdraw the said RCOP and filed the present suit for eviction.

10.1 In the suit, the defendant has taken different plea that the suit premises is not a public premises and it belongs to private temple. Therefore the attitude of the defendant is only to drag the proceedings from vacating him from the suit premises and as such he is estopped from taking that stand before the trial court.

10.2 Sri Mahalakshmi Amman Temple is a public temple and the property which belongs to the said temple is under the plaintiff as a chief tenant. Therefore as per G.O.Ms.No.2000 dated 16.08.1976, RCOP is not maintainable and the plaintiff rightly filed the present suit for eviction. Insofar as the damage is concerned, admittedly the plaintiff fixed monthly rent of Rs.450/-, in which also no quarrel by the defendant. Ex.A.1 dated 03.01.1997, the legal notice issued by the plaintiff is duly received by the defendant and though the defendant issued reply notice and refused to vacate the premises, he did not state any specific reason for not vacating the premises and also admitted the monthly rent of Rs.450/-. At the same time, there is no document produced by the plaintiff claiming damage at the rate of Rs.900/- per month from the defendant, since admittedly the rent payable by the defendant is at Rs.450/- per month. Hence, the plaintiff cannot claim damage more than Rs.450/- per month from the defendant. In fact, the defendant was paying rent of Rs.450/- per month and as such the plaintiff is entitled for damage at the rate of Rs.450/- per month till the defendant vacates the suit premises.

10.3 The learned counsel for the defendant contended that the suit premises belong to Sri Mahalakshmi Amman Temple and the plaintiff has no locus standi to file petition for eviction. In fact, the plaintiff himself is facing the eviction proceedings by the temple and it is pending in a civil suit. Further submitted that the suit premises is very small premises admeasuring 200 sq.ft. and as such it would not be helpful for the plaintiff to expand his school premises since already the school premises is under the dilapidated condition and there is no chance for renovating the said school. Though the defendant raised this ground, no documents were marked to show that the eviction proceedings is pending

as against the plaintiff initiated by the temple, and also did not produce any piece of evidence to show that the school premises itself is under dilapidated condition and there is no possibility for renovating the school premises.

11. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons and concluded rightly. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in these second appeals. Be that as it may. All the substantial questions of law, formulated by this Court in these Second Appeals, are answered in favour of the respondents.

12. Accordingly, these Second Appeals are dismissed. No order as to cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The VII Additional Judge,
City Civil Court, Chennai

2.The XVII Assistant Judge,
City Civil Court, Chennai.

3.The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

सत्यमेव जयते

S.A.Nos.345 & 671 of 2005

VG II(CO)
CB(16/09/2020)

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