

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 862 of 2014

K.V.M.Abdul Kareem(died)

1.K.T.M.A.Habeeb Aysha

2.A.Althaf Hussain

3.A.Javeed Hussain

4.Thasneem

5.A.H.Mazia

6.A.H.Sheerin Farhana

..Appellants/Appellants/Defendants

Vs.

Chennai Triplicane Zambazaar Market Merchants,
Welfare Association, represented by its Secretary,
Mr.G.Ramachandran, having office at Zambazaar
Market No.231, Pycrofts Road, now known as
Barathi Salai, Triplicane, Chennai - 600 005.

..Respondent/Respondent/Plaintiff

Prayer: Memorandum of Second Appeal filed under Section. 100 of
C.P.C. against the judgment and decree dated 18.11.2013 passed
in A.S.No. 404 of 2011 by the 1st Additional City Civil Court at
Chennai and in O.S.No.7513 of 2006 on the file of the XV
Assistant Judge, City Civil Court dated 13.12.2010.

For Appellants : Mr.P.M.Subramanian

For Respondent : Mr.H.Adaikala Arockiaraj

J U D G M E N T

This second appeal is at the instance of the defendants in
O.S.No.7513 of 2006 which was filed by the respondent herein
seeking a permanent injunction restraining the defendants /
appellants from interfering with their possession as licensees
except under due process of law.

2. The suit property that was subject matter of the suit is
a market area which originally belonged to Phil and Mary
Clubwala Jadhav Trust. The defendants purchased the suit
property from the said trust under a sale deed dated 20.01.1993.

The market place which was near Zambazaar market was used by several vendors trading vegetables, fish and other goods. It is claimed that these vendors pay a monthly license fee to the owners of the market area in order to establish their stalls to sell their goods in the market area. Claiming that the defendants, after their purchase are attempting to evict the vendors illegally by the use of force, the plaintiffs came forward with the above suit for permanent injunction.

3. The suit resisted by the defendants contending that the earlier suit filed by the very same association with a different name in O.S.No.3251 of 1998 was dismissed and therefore, the present suit is not maintainable. It was also contended that the members of the plaintiff association are only licensees and therefore they cannot seek a decree for permanent injunction. The non-payment of license fee by the members of the plaintiff association was also projected as a reason for dis-entitling the plaintiffs from maintaining the suit for injunction. The Courts below, upon a consideration of the evidence on record concluded that the members of the plaintiff association are entitled to a decree for permanent injunction restraining the defendants from evicting them except under due process of law. The Courts below also concluded that the members of the plaintiff association are licensees who are carrying on business as a small vendors in the market area and hence they cannot be evicted by the use of force. Aggrieved by the said decree and judgment, the defendants have come forward with this second appeal. Notice of motion was ordered on 11.09.2014.

4. I have heard Mr. P.M.Subramanian, learned counsel appearing for the appellants and Mr. H.Adaikala Arockiaraj, learned counsel appearing for the respondent.

5. Mr.P.M.Subramannian, learned counsel appearing for the appellants would vehemently contend that since the members of the plaintiff's association, being licensees, failed to pay license fee they are not entitled to a decree for permanent injunction. He would also submit that since the license period had expired and in the absence of renewal, the licensees' possession became illegal and therefore, the same cannot be protected by a decree for permanent injunction. I have considered the rival submissions of the learned counsel appearing for the appellants.

6. No doubt true that the members of the respondent association were licensees under the original owner and they were paying particular amount towards licence fee to enable them to carry on business by putting up stalls in the market area. The appellants had purchased the property sometime in 1993 under various sale deeds which have been marked as Exs.B2 to B10 dated

20.01.1993, 19.02.1994 and 21.05.1995, claiming that upon their purchase, the appellants attempted to evict the vendors, the association of the vendors filed a suit in O.S.No.3251 of 1998. Though interim injunction was granted initially, subsequently, the suit was dismissed for default on 11.09.2001. The present suit has been laid by a different association. Both the suits being one for injunction and the earlier suit has not been dismissed for default, I do not think the bar under Order 9 Rule 9 could be invoked by the appellants / defendants in the present suit, since the dismissal of a suit for an injunction will not bar another suit for injunction on a different cause of action.

7. On the second contention of the learned counsel appearing for the appellant namely, the failure on the part of the licensees to pay the license fee, Mr.P.M.Subramanian would invite my attention to the evidence of P.W.1 wherein, he had said that some of the licensees have not paid the license fee. The portion of the evidence referred by the learned counsel also states that since the defendants / appellants demanded higher rent some of them had not paid the same. It is also not in dispute that there was an attempt by the appellants to evict the respondents by use of force and the same was widely published in various newspapers. Therefore, it cannot be said that there is no cause of action in the present suit. The possession of the members of the plaintiffs/ respondent sangam is not disputed. The only contention of the learned counsel appearing for the appellant is that since they have not been paid the license fee and the licenses have not been renewed, their possession is not entitled to be protected by a decree for injunction.

8. The learned counsel would also relied upon the judgment of this Court in The Managing Director, Tamilnadu Tourism Development Corporation and Others Vs. R.Manoharan wherein, this Court had held that once the license period had expired, licensee has no right to retain possession of the property. The facts therein are slightly different. There, the licensee was allowed to carry on restaurant within the premises of a hotel building belonging to the Tamilnadu Tourism Development Corporation. When the licence period expired, he was not allowed to continue the business. It was in those circumstances, this Court held that the licensee cannot have right to continue the business in a building belonging to the Corporation, after the licence period had expired. I do not think, the said judgment can be relied upon as a precedent for the proposition for all licensees. The Hon'ble Supreme Court of India has repeatedly held that even a trespasser in settled possession cannot be evicted except under due process of law. Even while, granting injunction in M.P.No.387 of 2016, this Court has referred to the judgment of the Supreme Court in 2004 1 SCC 769 wherein the Supreme Court held that even a trespasser

in settled possession cannot be evicted except under due process of law. In the case on hand, the possession of the members of the association is admitted. The fact that they were licensees under the previous owners is also admitted. The grievance of the appellants is that the members of the respondent association have not even paid the license fee. It was open to them to have sued for recovery of licence fee, and for recovery of possession. The decree in the suit itself is a qualified decree, which only injuncts the appellants from evicting the licencees except under due process of law and the same cannot prevent the appellants from seeking to recover the license fee or seeking to recover possession from the members of the plaintiffs association individually. Therefore, I do not see any question of law much less a substantial question of law in order to enable me to entertain this appeal. It is made clear that this decree will not in any manner prevent the appellants from seeking to recovery of arrears licence fee or seeking to recovery of possession from the members of the respondent association. With the above observation, this second appeal is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:-

1. 1st Additional City Civil Court, Chennai.

2.XV Assistant City Civil Court, Chennai.

+lcc to M/s.H.Adaikala Arockiaraj, Advocate, sr no.18150

+lcc to Mr.A.R.Shamsudeen, Advocate, sr no.18109

S.A.No. 862 of 2014

BS(CO)
RMP(18/12/2020)