



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

S.A(MD).No.662 of 2014 and
M.P(MD).Nos.2 of 2014 and 1 and 2 of 2015

Srirengam Club
rep. by its Secretary,
Gandhi Road,
Srirengam,
Tiruchirappalli.

: Appellant / Defendant

Vs.

Municipal Council,
Srirengam,
rep. by its Executive Authority,
Gandhi Road,
Srirengam,
Tiruchirappalli - 620 006.

: Respondent / Plaintiff

PRAYER: Second Appeal filed under Section 100 CPC against the Judgment and Decree, dated 17.06.2013 in A.S.No.168 of 2011, on the file of the I Additional Subordinate Judge, Tiruchirappalli confirming the Judgment and Decree, dated 28.04.2011 made in O.S.No.3077 of 2004, on the file of the Principal District Munsif Court, Tiruchirappalli.

For appellant : Mr. K.S. Sankar Murali
For respondent : M/s. N.S. Karthikeyan

J U D G M E N T

The Second Appeal is preferred against the Judgment and Decree, dated 17.06.2013 made in A.S.No.168 of 2011, on the file of the I Additional Subordinate Judge, Tiruchirappalli, confirming the Judgment and Decree, dated 28.04.2011 made in O.S.No.3077 of 2004, on the file of the Principal District Munsif Court, Tiruchirappalli.

2.The respondent / plaintiff filed a suit for delivery of possession and payment of damages for use and occupation of the suit property from the date of expiry of lease till the date of the suit. The appellant / defendant had defended the suit on the ground that the rent demanded by the respondent / plaintiff is un-reasonable and that the plaintiff has been estopped from demanding the delivery of



the possession in violation of the promise that they will not be evicted. On the basis of that promise, they had put up the construction and invested the amount.

3. At the time of trial, the trial Court has framed the following issues:

- "1) Whether the lease came to end on 23.06.1979?
- 2) Whether the plaint is hit by the doctrine of acquiescence ?
- 3) Whether the Superstructure was built with the permission of the plaintiff?
- 4) Whether the plaintiff is entitled to damages at the rate of Rs.1,000/- per month?
- 5) Whether the notice of termination of tenancy is valid?
- 6) Whether the plaintiff is entitled to possession as prayed for?
- 7) What other relief? "

After that, the following Additional question of issue has been raised :

- " (i) Whether the plaintiff is entitled to damages?
"

4. On the side of the respondent / plaintiff, the Revenue Divisional Officer was examined as PW.1 and 14 documents were marked as Exs.A1 to A14. On the side of the appellant / defendant, Secretary of the Club examined himself as DW.1 along with two other witnesses and marked 22 documents as Exs.B1 to B22. The Advocate Commissioner's Report, Sketch and report of the Engineer were marked as Court Exhibits viz., Exs.X1 to X3.

5. After elaborate analysis of oral and documentary evidence, the Trial Court has decreed the suit in favour of the respondent / plaintiff and ordered Rs.1,000/- towards damages from 23.06.1979 to till the date of payment. Aggrieved over the same, the appellant / defendant preferred an appeal, in which, the First Appellate Court has framed the following point for consideration:-

"Whether the plaintiff is entitled to possession?

After considering the materials, the point was decided in favour of the plaintiff and the order passed by the Trial Court was confirmed. Aggrieved over the same, the appellant / defendant preferred the present Second Appeal.

6. The Second Appeal was admitted on the following substantial questions of law:

- "1) Whether the Courts below are not right in concluding the suit when the entity, which filed the



suit, became nonexistence pursuant to the inclusion of the area within Tiruchirappalli City Municipal Corporation Limit under Act, 27 of the 1994, without the City Municipal Corporation of Tiruchirappalli being substituted for the Municipal Council of Srirengam?

2) Whether the suit instituted without issuing a notice strictly in compliance with Section 11 of the City Tenants Protection Act, 1921 is maintainable?

3) Whether the appellant's act of denying the title of the respondent in view of the order passed by the appellate Authority / Sub Court, Tiruchirappalli in Inam CMA.No.59 of 1977, is a bonafide one, to rule out the application of Equitable Estoppel against the appellant?

7. There is no dispute over the facts stated above. Insofar as the first substantial question of law is concerned, it is the contention of the learned counsel appearing for the appellant that the Trichy Municipality had filed a suit and thereafter, by Act 27 of 1994, the Municipality was abolished and Tiruchirappalli City Municipality came into existence. Therefore, the Municipality which is not existing, cannot maintain a suit. But without advertting to the issue, the Trial Court has decreed the suit in the year 2011, which is illegal.

8. To answer this question of law, it is beneficial to refer the order passed by this Court, in C.R.P (PD).(MD).No.833 of 2013 dated 03.04.2014, wherein, the very same issue was raised by the very same appellant and answered in paragraph Nos.13 to 28 as follows:

"13. In this connection, it may be relevant to make reference to Section 9(4) of the Tiruchirappalli City Municipalities Corporation Act No.27 of 1994, which enacts as under:-

"(4) All proceedings taken by or against, the council or authority or any person under the District Municipalities Act, may be continued, or against, the corporation, authority or person as if the said proceedings has been commenced under the provisions of this Act."

14. In this connection, he would submit that in pursuant to the provision of Clause 4 of Section 9 of the Act 27 of 1994 of the Tiruchirappalli City Municipalities Corporation Act, 1994, Trichy Corporation had been stepping into the shoes of Srirengam Municipality and executing the decree as



of the formation of the Corporation, it did not require to amend all the decrees made in favour of Srirangam Municipality and that the Corporation of Trichy was bound by the decree passed against Srirangam Municipality.

15. It may also be relevant to make reference to sub Clause (h) and (i) of Section 373 of the Tamil Nadu District Municipalities Act, 1920.

16. Sub Clause (h) contemplates that:-

"All proceedings pending immediately before the specified date before the township committee shall be deemed to be transferred to and be continued before the municipality or (Third Grade Municipality);

17. Sub Clause (i) envisages that:-

"All appeals pending immediately before the specified date before the township committee shall, so far as may be practicable, be disposed of as if such local area had been included in the municipality or (Third Grade Municipality) when they were filed."

18. On taking into consideration of cumulative effects of facts and the submissions of both the learned counsels, this Court would like to have reference to Section 99 as well as 152 of the Code of Civil Procedure.

19. Section 99 contemplates that:-

"No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder (or non - joinder) of parties or causes of action or any any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court."

20. Similarly Section 152 also says that:-

"Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Court either of its own motion or on the application of any of the parties."

21. From the language of Section 152 of the Code of Civil Procedure Code, it is thus made clear that the Court is empowered to correct its own error in a Judgment, decree or order from any accidental slip or omission. The principle behind the said provision is *actus curiae neminem gravabit* i.e., nobody shall be prejudiced by an act of Court. This proposition is laid down in *Tiyanat Ali Nolla Vs.*



Sonargon HSG Co-op Society Ltd., (2008(1) CTC 161 (SC); 2007(13) SCC 421; AIR 2008 SC 225; 2008 (1) MLJ 1268 (SC)]

22. The above said provisions of Sections 99 and 152 of the Code of Civil Procedure have crystallized that any error or irregularity never cause great impact to reverse or modify the decree.

23. Mr. T.A. Punithan, learned counsel appearing for the petitioner has also pointed out that as envisaged under Rules 143 CPC, if any question arises for the determination of the Court executing a decree, the name shall be heard and determined upon the hearing of the petitions or on application made therein and if evidence is taken orally, the Court shall record the evidence of the witness and mark all exhibits admitted in evidence in accordance with Rules 4 and 9 of order XVII of the Code and that the Court shall in any case, record its judgment and draw up its order, in the same manner as upon the hearing of the suit.

24. On coming to the instant case of the hand, the court of first instance has rejected the application in EASR No.1462 of 2013 on a single line that the decree passed in O.S.No.3077 of 2014 could not be termed as nullity or on technical ground and therefore, the provisions of 47 of the Code of Civil Procedure could not be taken umbrage.

25. It is revealed from the records that the Execution Petition in EASA No.1462 of 2013 was rejected on 15.04.2013 and delivery was ordered on 15.04.2013 in E.P.No. 280 of 2011.

26. It is also brought to the notice of this Court that eviction was ordered in the year 2001 and delivery was ordered in the year 2010 and delivery was effected on 12.09.2013.

27. Mr. S.L. Madhusuthanan, learned counsel appearing for the respondent has also placed reliance upon the decision of this court in Padmavathi Vs. Kaveriammal (2009(1) CTC 58), wherein, it is held that it is well settled that executing Court cannot go behind the decree, unless the court which passed decree suffered by lack of jurisdiction, which will make it a nullity. Even if the decree is considered to be an illegal one, remedy open to party aggrieved is to approach higher forum, if same was passed by the court of competent jurisdiction.

28. On coming to the instant case on hand, this Court finds that impugned order is found to be

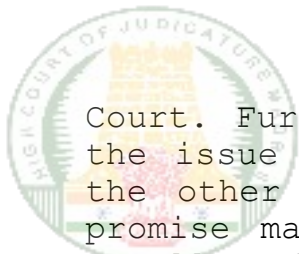


intact and in accordance with the law and therefore, it does not require any interference of this Court as the court of first instance cannot go behind the decree, as the revision petitioner / Judgment Debtor cannot question the decree on the ground of nullity taking umbrage under Section 47 of the Code of Civil Procedure."

9.This Court has categorically held that by statutory approval the Municipal Corporation step into the shoes of the Srirengam Municipality as successor of the plaintiff. Therefore, I need not elicit this question any further as the order passed by this Court has become final and has a binding on the appellant herein.

10.The second substantial question of law is as to whether the suit is instituted by the respondent / plaintiff without issuing notice strictly in compliance with Section 11 of the City Tenants Protection Act, 1921 is maintainable or not? is concerned, even though the appellant had taken up the plea that he is entitled to City Tenants Protection Act and thereby, entitled to damages for the superstructure put up by him, he had not taken any action under Section 9 of the City Tenants Protection Act, 1921 neither raised any plea in that regard before the trial Court. Apart from that, the Municipalities and local bodies are exempted from the purview of the said Act by virtue of Tamil Nadu Act 13 of 1960. Even assuming Srirengam Devasthanam is the landholder, the temples are also exempted as per Act 2/1996. Hence, the appellant is not entitled to any relief under Madras City Tenants' Protection Act. Therefore, the second substantial questions of law is answered against the appellant herein.

11.The third substantial question of law is with regard to the denial of title, in view of the order passed by the Inam Abolition Tribunal against the respondent Municipality in C.M.A.No. 59 of 1977 dated 11.01.1979. From the pleadings, I could see that in the written statement filed by the defendant, the title of the respondent / plaintiff has been categorically admitted. In paragraph No.2 of the written statement, the appellant / defendant has categorically averred that "this defendant is not disputing the title of the plaintiff, to the suit suit property till the Devasthanam initiate proceedings against the defendant for eviction". The evidence of DW.1, Secretary of the Club is that the defendant was inducted as a tenant only by the respondent / plaintiff and that he is bound to pay rent to the plaintiff and none else. Further, if Srirengam Devasthanam, who claims ownership takes any action against the defendant, they are liable to prove the title before the Court of Law and if the Court comes to a different conclusion, the defendant will be bound by the decision of the



Court. Further, the pleading and the oral evidence was confined to the issue of fixing a fair and reasonable rent in comparison with the other club in the locality and not to evict them as per the promise made by the respondent / plaintiff. Other than this, the appellant has not taken even a single step towards establishing his right or title by operation of Sections 3, 8 and 13 of Act, 1963 nor denied the title of the respondent / plaintiff. It is well settled that lorry load of evidence without pleadings is a waste. In the instant case, even in the pleadings, the appellant / defendant has not taken a stand that by operation of Act 13 of 1963 and by virtue of the order passed in Inam CMA.No.59 of 1997, by the Inam Abolition Tribunal, Ryotwari patta was issued to Srirengam Temple and the defendant is a tenant under Srirengam Devasthanam. On the other hand, it had taken a stand that the respondent / plaintiff is a title holder and if at all Srirengam Devasthanam claims title by virtue of the order passed in Inam CMA.No.59 of 1977, they have to establish the title and the defendant will abide by the decision of the Court.

12.Pursuant to the introduction of Inam Abolition Act, all lands and buildings thereon vested with the Government - free of encumbrance. The land holders, whoever in possession shall apply for a Ryotwari Patta with the Settlement Officer within the time specified under the Act. But, it is not the case of the appellant, he applied for Ryotwari patta for the land and for the building under his possession, nor he was recorded as a tenant under Srirengam Devasthanam. Admittedly, from the beginning the appellant has been a lessee under the respondent and was continuously paying rentals till it was refused to be received. Therefore, the contrary stand taken by the defendant without any pleadings or acceptable evidence is not substantiated by any legal evidence. Therefore, the suit itself is not maintainable cannot be accepted for the reason that it is not the case of the appellant/defendant that the plaintiff temple has demanded the amount as the owner of the land and that the respondent/plaintiff has lost the title. Contrary to the same, it is reiterated that the title of the respondent/plaintiff is admitted and that he is liable to pay rent only to the respondent/plaintiff and in that event, there cannot be any equitable estoppel without pleadings and evidence for the same.

13.In that view of the matter, the third substantial questions of law is also answered against the appellant.

14.It is not open to the appellant to canvass any new point in the present appeal without any pleading or evidence. If advised, the appellant can work out his remedy in the manner known to law for the benefits under the Act 30 of 1963.

15.Accordingly, the decree and judgment passed in A.S.No.168 of 2011, dated 17.06.2013, by the learned I Additional Subordinate Judge, Tirunelveli confirming the judgment and decree passed in



O.S.No.3077 of 2004, dated 28.04.2011, by the learned Principal District Munsif, is confirmed and the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

trp/tk

To

1.The I Additional Subordinate Judge, Tiruchirappalli.

2.The Principal District Munsif Court, Tiruchirappalli.

3.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1CC to K.S. Sankar Murali, Advocate, SR.No. 25914 of 2021

+1CC to N.S. Karthikeyan, Advocate, SR.No. 26344 of 2021

S.A(MD).No.662 of 2014 and
M.P(MD).Nos.2 of 2014 and 1 and 2 of 2015
16.12.2020

AM(CO)

KB(28.02.2022) 8P 7C