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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

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THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

SA.No.477 of 1993 & CRP.NPD.No.1216 of 1993 and
CMP.No.5885 of 1993

SA.No.477 of 1993:

Dr.Sumathi

...Appellant/Defendant

Vs.

1.R.Rathinasamy
2.R.Marudhachalam

...Respondents/Plaintiffs

PRAYER:

The Second Appeal is filed under Section 100 of Code of Civil Procedure against the judgment and decree in AS.No.219 of 1991 dated 27.11.1992 on the file of the Principal Subordinate Judge, Coimbatore confirming the judgment and decree dated 05.08.1991 in OS.No.2306 of 1986 on the file of the I Additional District Munsif, Coimbatore.

For Appellant : Mr.A.S.Vijayaraghavan

For Respondents

For R1

: Mr.R.Bharathkumar

For R2

: Mr.R.Jayaprakash

CRP.NPD.No.1216 of 1993

Dr.Sumathi

...Petitioner/Appellant/Tenant

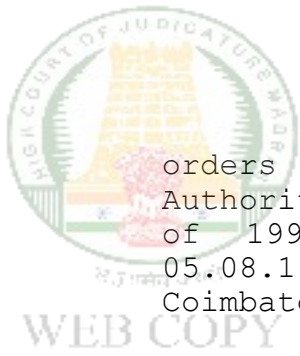
Vs.

1.R.Rathinasamy
2.R.Marudhachalam

...Respondents/Defendants/Landlord

PRAYER:

The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the



orders and decreetal order dated 24.02.1993 of the Appellate Authority Second Additional Sub Judge, Coimbatore in RCA.No.102 of 1991 confirming the order and decreetal order dated 05.08.1991 of the Rent Controller I Additional District Munsif, Coimbatore in RCOP.No.166 of 1987.

For Appellant : Mr.A.S.Vijayaraghavan

For Respondents

For R1 : Mr.R.Bharathkumar

For R2 : Mr.R.Jayaprakash

COMMON JUDGMENT

The second appeal in SA.No.477 of 1993 is directed as against the judgment and decree in AS.No.219 of 1991 dated 27.11.1992 on the file of the Principal Subordinate Judge, Coimbatore confirming the judgment and decree dated 05.08.1991 in OS.No.2306 of 1986 on the file of the I Additional District Munsif, Coimbatore.

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

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

3.1 The plaintiffs filed suit for permanent injunction. The case of the plaintiffs is that they are brothers and the suit property is absolutely belong to them. Originally the suit property was owned by grand father of the plaintiffs. After demise of their grandfather and father, family members partitioned the property on 21.08.1985. On the same day, the sisters have relinquished their right and executed release deed in favour of the plaintiffs. While being so, the respondent is a practising Doctor and also she is a tenant under the plaintiffs for the premises bearing Door No.177. She purchased the portions of the property in Door No.179, 185 and 186. The plaintiffs owned portions at Door No.179, 182, 183, 185 and 186 They are carrying on chit business in the name and style of Sri Ganapathy Chit Funds. The entire portions, both that of the plaintiffs and the defendant are a "Thottikattu house". The entire properties are having common roof with a common beam. There are rafters situated to the length of the property. All the buildings are connected with common wall. Therefore, the entire superstructures are very old and are in dilapidated condition. Therefore, any alteration to the physical features of the portions purchased by the defendant will jeopardise the superstructural soundness of the portions belonging to the plaintiffs. If the beams and rafter or walls are disturbed in the defendant's portion, the portion belonging to the plaintiffs



would collapse. Therefore, the plaintiffs filed suit for permanent injunction restraining the defendant from in any way altering the physical features of the building comprised in Door No.179, 185, and 186 in any manner whatsoever affecting the superstructural soundness or weakening or disturbing the portions owned by the plaintiffs i.e. Door No.180, 181A.

4. The defendant resisted the plaintiffs' case stating that she is a doctor and she is doing her professional activities in rented premises at Door No.177. Therefore she wanted to shift her practice to her own building to the Door Nos.185 and 186. Since it is in a very bad condition, she wanted to demolish and reconstruct a pucca building. Further stated that the plaintiffs asked her to vacate the premises at Door No.177. She further stated that on one hand, the plaintiffs ask her to vacate the premises and on the other hand, they is not permitting her to put up pucca construction in the portion purchased by her. She has got every right to demolish and reconstruct her own building. She can construct the building without any damage causing to the portions owned by the plaintiffs. She also undertook to repair any damage caused to the portions belong to the plaintiffs. Therefore, the plaintiffs are not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiffs case, P.W.1 and P.W.2 were examined and three documents were marked as Ex.P.1 to Ex.P.3. On the side of the defendant D.W.1 and D.W.2 were examined and no documents 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 plaintiffs. Aggrieved over the judgment and decree of the trial Court, the defendant preferred an appeal suit in AS.No.219 of 1991 before the file of the Principal Subordinate Judge, Coimbatore. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgement and decree passed by the trial Court. Challenging the same, the defendant has come forward with the present second appeal.

6. At the time of admission of the second appeal, on 23.04.1993 the following substantial questions of law were framed :-

(i) Whether the courts below are right in accepting the evidence of PW2 in preference to the evidence given by DW2 while DW2 alone is an Chartered Engineer and Approved Valuer who inspected the premises and submitted a report upon the instructions



by the Advocate Commissioner appointed by the court, whereas PW2 is not a Chartered Engineer and approved valuer?

(ii) Whether the courts below are right in rejecting the testimony of DW2 in preference to the interested testimony of PW2?

(iii) Whether courts below are right in decreeing the suit when the evidence of PW1 cannot be taken into consideration and in that event when there is absolutely no evidence to support the contentions of the plaintiffs/ respondents?

7. The learned counsel for the petitioner would submit that PW1 categorically admits that he does not have any objection for demolishing the portion purchased by the defendant and to reconstruct the same. At the instance of the defendant, Advocate Commissioner was appointed, and with the help of engineer, he filed his report and stated that by giving proper supports to the main rafters and the roof, the portion can be newly constructed without causing any damage to the roofs, rafters as well as other portions belonging to the plaintiffs. The defendant purchased property in comprised in Door Nos. 179, 185 and 186 and she sought to carry out repair by making proper constructions and in order to shift her clinic from the portion at Door No.177 belonging to the plaintiffs. In fact now eviction was also ordered against the defendant and she has to shift her clinic to the portion which was purchased by her. Admittedly, the said portion is in dilapidated condition and without putting pucca construction she cannot shift her clinic. In fact the defendant also undertook to carryout repairs and construction in her portion of the property without causing any damage to the walls, rafters and roofs and portions belonging to the plaintiffs. In fact, if any damage caused, she can very well rectify the said damages to the portions of the plaintiffs.

8. Per contra, the learned counsel for the respondents contended that admittedly all the portions belonging to the plaintiffs and the defendants are under one roof. There are common walls between the plaintiffs and the defendant portions. The beams put up for roof laid in the common wall. If the walls of the portions removed, the entire roof will be collapsed. Even according to the defendant, the entire building is in a dilapidated condition. If touched one wall, the entire building will be collapsed. At the same time, the portion which is occupied by the defendant belongs to the plaintiffs and they are in dire need of the portion to conduct their own business, since the plaintiffs have no other property to run their business. Therefore, the court below rightly decreed the suit and prayed for dismissal of the appeal.



9. Heard Mr.A.S.Vijaya Raghavan, the learned counsel for the petitioner, Mr.R.Bharathkumar, the learned counsel for the first respondent and Mr.R.Jayaprakash, the learned counsel for the second respondent.

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10. The defendant purchased the portions comprised in Door No.179, 181a, 185 and 186. She is a doctor and running a clinic in a portion comprised in Door No.177 which is belonging to the plaintiffs. The other portions i.e. comprised in Door No.178, 180, 180a and 181 are owned by the plaintiffs. Admittedly, the portions comprised in Door Nos.182, 183, 180a, 181a, 185 and 186 are under same roof. The portions comprised in Door No.185, 186 and 181a situated between the common wall. Likewise, the portion comprised in Door No.179 and 180 situated with common wall. Further, the defendant is a tenant in a portion comprised in Door No.177 which is belonging to the plaintiffs. The portions comprised in Door No.177,178, 179, 180 are under same roof. Admittedly all the constructions are very old and some of the walls already collapsed and other portions are in dilapidated conditions. The plaintiffs are running their business in the name and style of Sri Ganapathy Chit Funds. After purchase of the portions by the defendant, she intended to put up new construction in the portions comprised in Door No.179, 185 and 186.

11. As stated supra, the portion comprised in 179 and 180 are under same roof with the common wall. Likewise, the portion comprised in Door No.185, 186 and portion 181a are under common roof and also with common wall. Now the common wall of the portion comprised in Door No.185 and 186 and the common wall of the portions 179 and 180 intended to be demolish by the defendant to put up pucca constructions. Considering the above circumstances, this Court appointed Advocate Commissioner to take assistance of the engineers attached to the PWD, Coimbatore and to get the report. The Advocate Commissioner inspected the property with the help of the PWD engineer and filed report for following purpose:

1. to inspect premises Nos.179, 185 and 186 and premises Nos.180 and 181A forming the subject matter of OS.No.2306 of 1986 on the file of District Munsif
2. the advocate commissioner is directed to take the assistance of an engineer attached to the Public Works Department of Coimbatore City Division while he makes the inspection
3. the learned advocate commissioner is directed to get a report from the engineer referred to above on the following points
 - a. the nature and construction of premises Nos.179, 185, 186, 180 and 181A referred to above



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b. whether demolition and reconstruction of premises Nos.179, 185 and 186 is not at all possible or is it possible? And

c. if so, the possibility and feasibility of the defendant undertaking construction work in premises Nos.179, 185 and 186 and if such construction activities are permitted, what would be the nature and extent of the impact of such construction on premises Nos.180 and 181A?

4. the report of the commissioner /PWD engineer shall be accompanied by a plan drawn by him;

5. Mr.D.Rajendran, the advocate commissioner had fixed 1.4.1999 as the date of inspection by him of the suit property at Coimbatore. The advocate commissioner shall intimate the parties to the suit well in advance the place of his stay at Coimbatore

6. the advocate commissioner, if need arises shall be at Coimbatore between 1.4.1999 and 4.4.1999 to complete the work Accordingly, the Commissioner inspected the entire suit property and filed report and the relevant portion is extracted as follows:

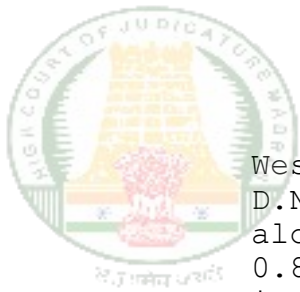
4. The property is facing south and the subject matter of the suit property is situated in Ganapathy within the limits of the Coimbatore City Municipal Corporation and the property situated to the North of Raja street and the property is facing south and the in between road and the premises there is a drainage channel running East to West and there is a common entrance from the Raja Street and I measured the entrance which comes to 3 feet East to West. To the West of the entrance, there are two doors No.178 and 177. Both door numbers are respondent's property. I found a Board namely 'Plasto Chemicals' in Door No.178 and in Door No.177 the appellant is running her clinic and I also found a Board 'Dr.Sumathy'. These two door numbers are roofed with Mangalore tiles. To the East of the common entrance, there are two Door Nos.185 and 186 and East of Door No.186 the property belongs to third party which is called "Gauthem complex". I have measured the North South of the Door No.185 and 186 which comes to 16.4 feet which includes 2 feet common wall between Door No.181-A and 185, 186. At the time of my inspection the said common wall is not in existence and the Door No.185, 186 do not have its backside wall and it is also almost fallen and the Door No.185, 186 is without any backside wall and roof is hanging without support of the said wall. The door



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No.181-A to the North of the Door No.185 & 186 belongs to the first respondent and further North premises bearing Door No.180A was told that it belongs to the first respondent's mother. There is no common wall between D.No.180A and 181A. No partition wall and roof stands only in support of wooden Beam and there is thatched partition between the premises. The appellant's counsel represented that except the 180-A and 181-A all other premises are not connected with the suit. To the North of 180-A there is another portion which is door No.183. Respondent's Counsel represented there is a verandah in front of all these Door No.181A,180A and 183 but there is no wall between verandah and house. But only thatched portion and from the thatched portion 4.3 feet space in front of the house is there that is the veranda as per the respondent's Advocate including this space of 4.3 feet, measurement of D.No.180A and 181A is 10.5 feet. There is another D.No.182 which faces the South and all the other D.No.181A, 180A & 183 premises faces west. To the west of the D.No.182 the common pathway goes to the Backyard and to the further East there is another D.No.181 is there and only in this portion alone a tenant namely Durai is residing and there is an electric service connection in D.No.181.

5. I further state to the West of the front common entrance in D.No.178 & 179 is situated and those portions are found white washed and in good condition and at the end of the backside wall of D.No.178, 177 the portion of the D.No.179 starts i.e. Norther side of the D.No.178, 177 is D.no.179. there is a damaged wall to the length of 4.8 feet towards and North South 2 feet. To the north of the D.No.179 is D.No.180. Both portions are facing East. In front of the Door No.179 and 180 there is veranda which continues upto D.No.182 in L Shape, In between D.No.179 and 180 there is common wall constructed only with mud and both the portions are constructed only with mud and no bricks used and there are 3 wooden beams on which the roof stands and the 3rd beam is on the common wall. The roof was also in damaged condition and entire roof is covered with country titles (Nattu Odu). The entire roof of D.No.179 and 180 stands in the support of wooden beam and common wall. Except the common wall between D.No.179, 180 no wall is in existence either in North side or on the Southern side of the common wall. The D.No.179 and 180 do not have the closing wall and except the North South Wall in front side and backside there is no East



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West wall to the D.No.179 and 180. The South North of D.No.179 measure 24.4 feet including the common wall alone and the common wall was measured which comes to 0.8 feet. The D.No.180 was closed at the time of my inspection since the backside wall was already collapsed there is no difficulty to go inside the premises.

6. I further submit that to the West of the D.No.177 there is a lane called Nadu Valavu Lane, The East & West wall of D.No.179 extends 10 feet and then goes North South till the end of D.No.180 and the measurement was taken and it comes 38.5 feet. North South. There is a door to come out from the backyard of the premises. With the above observation I completed my inspection and executed the warrant as per the directions issued by this Hon'ble Court.

7. Since the P.W.D. Engineer was not present at the time of my inspection I could not get a detailed report as per the order of this Hon'ble Court. As per the inspection made by me, D.No.179 and 180 is constructed with mud and in the D.No.185 and 186 except the front portion all the three side wall are not in existence and I found the fallen wall from which it is found that the wall would have been constructed with oddakal (Lime Stone) and D.No.181 A does not have any wall except the backside wall and other sides were covered with thatched partition. So far as the possibility of demolition is concerned the D.No.185 and 186 backside wall is not in existence and roof is also without tiles and there is nothing to demolish except the front side wall with doors which is also not in its good condition. Further, the demolition of 179 is not possible without demolishing the D.No.180 because both the portion are divided by common wall though the southern side and northern side wall is not in existence and both portions requires immediate demolition and the D.No.179 alone cannot be demolished separately the entire roof is continuous and running roof with country tiles which may fall at any time.

8. The construction seems to be very old. The D.No.185 and 186 can be easily demolished and can be constructed without disturbing the D.No.181A and 180A. because nothing exist in between these two portions. So far as D.No.179 and 180 is concerned the Appellant can put up a new wall in front of the common wall and demolish the D.No.179 alone leaving the common wall.



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The D.No.180 and 179 are not in good condition and even D.No.179 is not demolished the D.No.179 & 180 will not exist for long time and it may collapse at any time. Except the common wall and the roof which stands in support of wooden beam nothing is there to fall in both Door No.179 and 180, with these observation.

12. According to the Advocate Commissioner, the portion comprised in Door No.185 and 186 can be easily demolished and constructed without disturbing the portion comprised in Door No.181a, since nothing exists between these portions. Insofar as the Door No.179 and 180 is concerned, there is a common wall and without putting support wall adjacent to the common wall, it cannot be demolished, though both the portions are not in a good condition. Further the roof stands in support of wooden beam. Accordingly, the defendant can proceed with the renovation of her portion comprised in Door Nos.185 and 186 without causing any disturbance or damage to the portion comprised in Door No.181a. If any damage or loss cause to the portion comprised in Door No.181a, the defendant shall bear the cost of damage.

13. Accordingly, the second appeal in SA.No.477 of 1993 is disposed of and the judgment and decree dated 27.11.1992 passed in AS.No.219 of 1991 on the file of the Principal Subordinate Judge, Coimbatore and the judgment and decree dated 05.08.1991 passed in OS.No.2306 of 1986 on the file of the I Additional District Munsif, Coimbatore are set aside and the suit stands dismissed. The Advocate Commissioner's report and plan shall form part and parcel of the decree.

14. Insofar as the civil revision petition is concerned, the petitioner is a tenant under the respondents in a portion comprised in Door No.177. Admittedly, the respondents are running their chit business in the name and style of Sri Ganapathy Chit Funds. On perusal of the report submitted by the Advocate Commissioner appointed by this Court in Second Appeal in SA.No.477 of 1993, except the portion in Door.No.177, other portions are not in a position to use for any purpose. Admittedly, except the portions which is occupied by the petitioner, no other premises owned by the respondents herein. Therefore, the courts below rightly ordered eviction on ground of owner's occupation and the respondents filed petition for their bonafide requirement. As such this Court finds no irregularity or infirmity in the order passed by the court below.



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15. Accordingly, the civil revision petition in CRP.NPD.No.1216 of 1993 is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Coimbatore.

2.The I Additional District Munsif,
Coimbatore.

3.The II Additional Subordinate Judge,
Rent Control Appellate Authority,
Coimbatore.

4.The Rent Controller / I Additional District Munsif,
Coimbatore.

5.The Section Officer,
VR Section, High Court,
Madras-104.

+2cc to Mr.R.Jayaprakash, Advocate Sr.3349, 3350

SA.No.477 of 1993 & CRP.NPD.No.1216 of 1993

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srg 05/10/2021