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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.09.2021
Pronounced on	08.10.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

S.A.No.1492 of 2008

T.Selvamani @ Sivasubramaniam ... Appellant/2nd defendant

Vs.

1.H.Abdul Khader ... Respondent/Plaintiff

2.The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 3. ... Respondent/3rd defendant

Prayer: This Second Appeal is filed under Section 100 of Code of Civil Procedure to set aside the judgement and decree made in A.S.No.202 of 2007 dated 08.02.2008 on the file of the II Additional Judge, City Civil Court, Chennai as confirmed in O.S.No.1858 of 2003 dated 22.08.2005 on the file of the VII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.N.Mariappan

For Respondents: No appearance

JUDGEMENT

(Heard through video conferencing)

This Second Appeal has been preferred against the judgement and decree dated 08.02.2008 passed by the II Additional Judge, City Civil Court, Chennai in A.S.No.202 of 2007.

2. The appellant was the second defendant. The first defendant died during the pendency of the suit and his legal representatives are not impleaded. For the sake of convenience, the parties are referred as plaintiff and defendants.

3. The short averments:-

The suit property is shop No.16-B, Lilly Pond shopping complex at New Moore Market, Chennai, belongs to the third defendant/Corporation. Due to some financial crisis, the first defendant had let out the shop to the plaintiff. The



plaintiff being the tenant of the first defendant is conducting the shop and paying rent to the Corporation. The second defendant is the power agent of the first defendant through whom the plaintiff was paying the rent. As there was no tenancy agreement entered into between the plaintiff and the first defendant, the defendants were not issuing any receipts for the rent paid by the plaintiff. Taking advantage of the situation, the defendants are causing troubles to the plaintiff to conduct his business at the said shop. Hence, the plaintiff has come forward with the suit for permanent injunction.

3.1 The second defendant has filed a written statement stating that the suit shop and another shop were allotted to one Arinandan Shah; the said Arinandan Shah along with first defendant and second defendant's father was running a partnership business in those two shops; after the fire accident occurred in the Old Moore Market, with the help of funds granted by the World Bank, new shops were built in the New Moore Market Blocks, Alikullam; in the said shops, two shops bearing shop Nos.16-B and 597-B were allotted to Arinandan Shah and the business was running in the same pattern as it was run earlier; though the second defendant's father was also the partner in the said two shops, both the shops were allotted only in the name of the first defendant; after sometime, the first defendant did not show any interest to run the suit shop and wanted to conduct the business separately in shop No.597-B; so, he gave an application to third defendant/Corporation to effect name transfer in favour of the second defendant in respect of shop No.16-B and the same is pending; the second defendant is not the power agent of the first defendant. They have business transactions between themselves and hence, the plaintiff cannot file this suit considering the second defendant as stranger.

3.2. Though the third defendant appeared through his counsel, no statement seems to have been filed.

4. Basing on the pleadings, the trial Court has framed the following issues:-

1. Whether it is true to contend that the plaintiff is a tenant under the first defendant in the suit shop?
2. Whether it is true to contend that the plaintiff and second defendant are partners in respect of suit shops?
3. Whether the plaintiff is entitled to the relief of permanent injunction?
4. To what else relief is the plaintiff entitled?

5. During the course of the trial, on the side of the plaintiff, one witness was examined as P.W.1 and Exs.A1 to A15 were marked. On the side of the defendants, two witnesses were examined as D.W.1 & D.W.2 and Exs.B1 to B13 were marked.



Judge has decreed the suit and granted the relief of permanent injunction. Aggrieved over that, the defendant has preferred the first appeal before the II Additional Judge, City Civil Court, Chennai. The First Appellate Court confirmed the judgement of the trial Court and dismissed the first appeal. Aggrieved over that, this Second Appeal has been preferred by the second defendant and the Second Appeal has been admitted on the following substantial questions of law:-

1. Whether the judgement and decree of the courts below are sustainable in law, after having found that the plaintiff failed to establish the case pleaded in the plaint and when the plaintiff has not proved the assignment order said to have been obtained under Ex.A.12 from the 2nd respondent/Corporation, without amending the pleading?

2. Whether the courts below are right in granting the discretionary equitable remedy of injunctions, when a false case of tendency right with the 2nd defendant and failed to establish the same as found by the trial Court?

3. Whether the courts below are correct in holding that the claim of the plaintiff is proved under Exs.A.12 and A.13, in the absence of any averment to these documents by suitably amending the plaint as per the order made in exhibits and in the absence of any confirmation of issuing such order following the procedure in accordance with law, by the 2nd defendant?

7. Admittedly, the suit in shop No.16-B was allotted to the first defendant. The case of the plaintiff is that he has been inducted into the shop as a sub-tenant by the first defendant and he is conducting a book shop therein. The contention of the second defendant is that his father along with the first defendant was conducting both the shops in shops No.16-B and No.597-B and later the second defendant was given with the shop No.16-B and first defendant retained shop No.597B.

8. It is to be noted that the claim to the premises where the book shop is conducted and the claim to the business are different from each other. This suit is in respect of the premise which was originally allotted to the first defendant and later it was allotted in the name of the plaintiff. Though it might be true that the second defendant's father had run the business along with the old allottee of the shop, the second defendant was not successful in getting the name transfer in his favour.

9. It is at the discretion of the third defendant/Corporation to allot the shops as per their own regulation. At the time when the suit was filed, the



plaintiff was in occupation of the shop and was conducting the book shop as the sub-tenant of the first defendant. The Courts below have appreciated the evidence on record and convinced with the fact that subsequent to the suit, the third defendant/Corporation has transferred the allotment in respect of suit shop No.16-B in favour of the plaintiff himself through Ex.A12 - proceedings dated 20.12.2004. Thereafter, the plaintiff continues to pay the license fee to the Corporation.

10. Any shops allotted to by the Corporation in the above fashion, is a right conferred on the allottees under license. Even if it is taken for the sake of argument that the first defendant was given with lease hold right in respect of the shops, the first defendant cannot sublet the same in favour of the third party without the knowledge of the third defendant. It is up to the third defendant either to approve or to reject anyone inducted into any shop subsequent to its allotment. In this case, the third defendant/Corporation was pleased to transfer the allotment of the shop in favour of the plaintiff, who was in fact inducted by the first defendant. If the second defendant is aggrieved due to the said action, he has to seek remedy against the third defendant/Corporation by way of filing a suit and establishing his claim. Since the third defendant being the owner of all the shops in the complex and the shops are given in license to third parties, it is the third defendant who has to regulate about the payment of license fee and other fees if any and to decide about the right of occupancy over the shops in accordance with the license given. Since the third defendant/Corporation has approved the plaintiff as his licensee by issuing a proceeding in his favour, the plaintiff has become the lawful licensee for the suit shop No16-B. This would show that the plaintiff was in possession and enjoyment of the suit shop even before Ex.A12 and that was subsequently ratified by the third defendant by giving the license in his favour. Under such circumstances, the second defendant is a stranger and he cannot stake any right over the premises where the plaintiff is conducting his business. The Courts below have rightly appreciated the evidence on record and rendered a finding in favour of the plaintiff.

11. It is the contention of the appellant that the genuineness of Ex.A12 - license has not been proved. Since the third defendant, who is the authority to issue license is also party to the proceedings and he does not dispute the genuineness of Ex.A12, that itself would prove that Ex.A12 was issued by the Corporation only to allot the shop in favour of the plaintiff.

12. The plaintiff has filed the suit for injunction and he has proved his possession over the property. Since Ex.A12 was issued to him only subsequent to the suit, it cannot be expected from him that he should have pleaded about it in his



plaint. But the fact remains that Exs.A12 & A13 have come into operation only in recognition of his possession on the suit property. Hence, the substantial questions of law are answered against the appellant/2nd defendant.

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In the result, this Second Appeal is dismissed and the judgement and decree dated 08.02.2008 passed by the II Additional Judge, City Civil Court, Chennai in A.S.No.202 of 2007 is confirmed. No costs.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

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

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

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

+1cc to Mr.N.Mariappan, Advocate, S.R.No.49876

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KK(CO)
GN(17/11/2021)