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IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 05.03.2021]

[JUDGMENT PRONOUNCED ON : 30.06.2021]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.207 of 1998
and
C.M.P.No.2126 of 1998

Guru Auto Works represented
by its Partner S.Bhoopathy

...Appellant/Respondent/
Plaintiff

.. Vs ..

Devika

...Respondent/Appellant/
Defendant

Prayer:- Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 25.01.1995, passed by the learned Additional District Judge, Erode, in A.S.No.114 of 1994, reversing the judgment and decree dated 24.01.1994 passed by the learned First Additional District Munsif, Erode, in O.S.No.726 of 1992.

For Appellant : Mr.B.Kumarasamy

For Respondent : Mr.A.Thiyagarajan

JUDGMENT

The unsuccessful plaintiff is the appellant herein, challenging the judgment and decree dated 25.01.1995, passed by the learned Additional District Judge, Erode, in A.S.No.114 of 1994, reversing the judgment and decree dated 24.01.1994 passed by the learned First Additional District Munsif, Erode, in O.S.No.726 of 1992.

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

3. The appellant partnership firm has filed a suit in O.S.No.726 of 1992 before the First Additional District Munsif



Court, Erode, for the relief of bare injunction against the defendant from evicting the plaintiff without due process of law.

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4. The case of the plaintiff in short is as follows:-

(i) The plaintiff partnership firm is a tenant in respect of the suit property. Originally, the tenancy was in respect of the land and building and the same was in favour of one Periyanna Gounder. Thereafter, the plaintiff along with Periyanna Gounder had formed partnership firm in the suit property since 1983. After the death of the said Periyanna Gounder, his wife and daughter have been included in the plaintiff partnership firm and presently, they are continuing in possession of the suit property. As a statutory tenant, the plaintiff is entitled for statutory protection under the Tamilnadu City Tenants Protection Act and hence, the plaintiff seeks the relief of injunction.

(ii) The defendant had filed written statement inter-alia contending that what was leased out to one Periyanna Gounder was land and building. The suit property and the door number are different and the partnership firm alleged to have been carried on by the plaintiff is based on a forged document and the suit is barred for non joinder of necessary party. Even as per the pleadings, the present owner of the property viz., the son of the defendant is not added as a party.

5. Before the trial Court, on behalf of the plaintiff, the plaintiff examined himself as P.W.1 and marked documents Exs.A.1 to A.24 and one Tmt.Meenatchi was examined as P.W.2, who is said to be the wife of the Periyanna Gounder, the original tenant. On behalf of the defendant, one Ramanujam (Manager) was examined as D.W.1 and no document has been marked on her side. Advocate Commissioner's report was marked as Ex.C.1 and sketch was marked as Ex.C.2.

6. The trial Court, on consideration of both oral and documentary evidence adduced on either side, has decreed the suit by observing that the plaintiff is a tenant and he can be evicted only by due process of law and cannot be evicted without due process of law.

7. Aggrieved against the said judgment and decree passed by the trial Court, the defendant has filed an appeal in A.S.No.114 of 1994 before the Additional District Court, Erode and the said appeal filed by the defendant was allowed and consequently, dismissed the suit in O.S.No.726 of 1992 filed by the plaintiff and hence, the plaintiff has preferred the above Second Appeal before this Court.

8. At the time of admitting the above second appeal, the



following substantial question of law was framed for consideration:-

(i) Whether in law the plaintiff firm is entitled to permanent injunction as prayed for when it is the tenant holding over in respect of the suit property and carrying on business in the suit properties when the defendant threatened to dispossess the plaintiff forcibly without due process of law?

9. Heard the learned counsel for the appellant and the learned counsel for the respondent.

10. The case of the plaintiff partnership firm is that they have filed the suit in O.S.No.726 of 1992 against the defendant for injunction restraining her from interfering with the peaceful possession and enjoyment of the suit property on the ground that originally, the land was leased out to one Periyanna Gounder and he was paying the rent. He had entered into a partnership deed and the plaintiff is the partnership firm and thereafter, they are paying the rent and now, the defendant is trying to interfere with the peaceful possession and hence, the suit.

11. In the written statement, the defendant has taken a definite stand that the suit property belongs to her son and hence, the suit is not maintainable and the suit is bad for non joinder of necessary party and Periyanna Gounder has taken the property, land and building and not the land alone as projected by the plaintiff and neither the plaintiff partnership firm is the tenant nor the defendant is the owner of the property and thus, prayed for dismissal of the suit.

12. After hearing the rival submissions made on either side and also perusing the documents, it appears that the plaintiff partnership firm is alleged to be the tenant in respect of the suit property and they derived that there was a tenancy in favour of Periyanna Gounder and the said Periyanna Gounder had formed the plaintiff partnership firm in the suit property since 1983 and after his demise, his wife and daughter have been included in the plaintiff partnership firm and hence, the plaintiff partnership firm is entitled to remain in possession of the suit property as a statutory tenant.

13. The Lower Appellate Court has allowed the appeal on the ground that even as per the pleadings, the defendant's son namely, Venkatakrishnan is looking after the properties including the suit property and hence, non impleading of said Venkatakrishnan is fatal to the suit and the original lessee



viz., Periyanna Gounder, even during his life time, was paying the rent and therefore, the suit itself is filed against the wrong person. Furthermore, the Lower Appellate Court has held that there is a discrepancy in the door number.

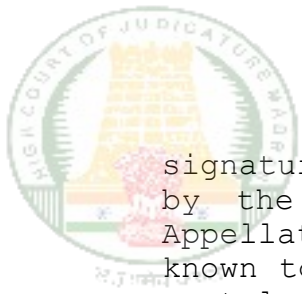
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14. On a perusal of the documents Exs.A.6 to A.20, which are described as rent receipts for the building, I find that the contention of the learned counsel for the plaintiff that what was leased out is only a vacant site falls to ground and the same is against the documentary evidence filed before the trial Court. Even assuming for argument sake there was a oral agreement of lease on 24.04.1968 and when the building was leased out, the plaintiff cannot claim the benefit of protection under the Tamil Nadu City Tenants Protection Act. In Exs.A.17 to A.20, (upto 04.01.1992), the name of the land owner is mentioned as G.Venkatakkrishnan, who is not impleaded as a party defendant.

15. According to the plaintiff partnership firm, what was leased out is only the vacant site. In the description of the property, both vacant site and building with door number were mentioned.

16. It is the specific case of the defendant that the land and building was leased out to Periyanna Gounder and he died on 14.01.1992 as could be seen from Ex.A.24-Death Certificate and thus, I find that Ex.A.5 dated 08.04.1992 is created after the death of the Periyanna Gounder and hence, whether the said Periyanna Gounder, during his life time, has created the partnership firm is under cloud. The Lower Appellate Court has also arrived at a similar finding that after the death of Periyanna Gounder i.e., on 14.01.1992, Ex.A.5-Partnership Firm dated 08.04.1992 appears to have been created and the same is an unregistered partnership deed and the plaintiff has not taken any steps to prove the genuineness of the partnership deed and also to prove the signature as that of the Periyanna Gounder and hence, such a finding rendered by the Lower Appellate Court appears to be just.

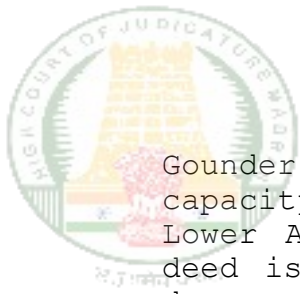
17. On a combined reading of the oral evidence of P.W.1 coupled with the documentary evidence Ex.A.4, registered partnership deed dated 18.04.1988, it is seen that though the plaintiff could depose that the signature contained in Ex.A.4 is that of Periyanna Gounder, he has not adduced any evidence to substantiate the same and the plaintiff has not chosen to examine the attester of the alleged Ex.A.4-partnership deed. Even in Ex.A.4 in the stamp papers, the name of the purchaser of the stamp paper is also absent and thus, it creates a sea of suspicion over the genuineness of the plaintiff's claim of alleged creation of partnership firm on 18.04.1988. The



signature of Periyanna Gounder in Ex.A.4 is specifically denied by the defendant assumes significance and hence, the Lower Appellate Court has held that Ex.A.4 is not proved in the manner known to law. Furthermore, as per the evidence of P.W.2, in the rental receipts, Periyanna Gounder had signed in his individual capacity and hence, whether Periyanna Gounder is the tenant in his individual capacity or the plaintiff partnership firm is the tenant in their individual capacity, the burden is solely upon the shoulders of the plaintiff partnership firm. For the reasons best known, the plaintiff partnership firm has not adduced any positive evidence much less any evidence to show that the plaintiff partnership firm is the tenant and in the absence of registration of Ex.A.4 and also in the absence of any other positive evidence to prove that the signature found in Ex.A.4 is that of the Periyanna Gounder, who died much earlier to the document Ex.A.5, the Lower Appellate Court has rightly come to the conclusion that Ex.A.4 cannot be admissible in evidence and contents cannot be taken note of.

18. When it is the admitted case of the plaintiff that the Periyanna Gounder died on 14.01.1992 and Ex.A.4-partnership deed dated 18.04.1988 was came into existence during the life time of the said Periyanna Gounder, there is no evidence available on record to substantiate the plea that Periyanna Gounder has created the partnership firm and the said partnership firm is the tenant under the original owner of the property. Exs.A.6 to A.20 goes to show that Periyanna Gounder has paid the rent in his individual capacity and not as projected by the plaintiff also assumes significance.

19. The oral evidence of P.W.1 and P.W.2 as to the formation of the partnership deed as if on the death of the Periyanna Gounder, his wife P.W.2 was made as a partner in the partnership firm and accordingly, they have projected Exs.A.1 and A.2. However, during the relevant point of time, viz., from 04.01.1992 till the date of filing of the suit viz., 15.06.1992, no rent has been paid from the partnership firm. Especially, under Ex.A.24-death certificate, it is clearly mentioned that Periyanna Gounder is died on 14.01.1992 and hence, I find that the case put forward by the plaintiff partnership firm that Periyanna Gounder, during his life time, was running the business in the name of the partnership firm and further case that after his death, the wife of the Periyanna Gounder was made as a partner appears to be afterthought. Since both the land and building were leased out, I find that the plaintiff partnership firm cannot seek the benefit of protection under the Tamil Nadu City Tenants Protection Act and thus, I find that the land and building were leased out to Periyanna Gounder as could be seen from the rent receipts mentioning the fact that the rent receipts were issued for building rent and the said Periyanna



Gounder has taken the building land for lease in his personal capacity and paid the rent in his personal capacity and the Lower Appellate Court has rightly held that Ex.A.4-Partnership deed is not proved in the manner known to law and further, no document has been produced to show or demonstrate that the rent was paid from the partnership firm and Ex.A.5 dated 08.04.1992 was created after the death of the Periyanna Gounder and the defendant arrayed is not the owner of the property and only her son is the owner of the property.

20. In spite of the specific written statement, the plaintiff partnership firm has not chosen to implead the original owner of the property and the plaintiff partnership firm is not the tenant in respect of the suit property and hence, viewing from any angle, the plaintiff partnership firm is not entitled for any relief of permanent injunction and the suit was filed only to drag on the proceedings and it is a vexatious litigation.

21. The substantial question of law is held in negation against the plaintiff. Accordingly, the Second Appeal is devoid of merits and the same is liable to be dismissed.

22. In the result,

[i] The Second Appeal is dismissed with cost of Rs.5,000/- [Rupees Five Thousand only] to be payable by the appellant/plaintiff to the respondent/defendant.

[ii] The judgment and decree dated 25.01.1995, passed by the learned Additional District Judge, Erode, in A.S.No.114 of 1994, reversing the judgment and decree dated 24.01.1994 passed by the learned First Additional District Munsif, Erode, in O.S.No.726 of 1992, is confirmed.

[iii] The connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

Jr1



To

1. The Additional District Judge,
Erode.

2. The First Additional District Munsif,
Erode.

+lcc to Mr.B.Kumarasamy, Advocate, S.R.No.30191
+lcc to Mr.A.Thiyagarajan, Advocate, S.R.No.30035

S.A.No.207 of 1998

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