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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.08.2021
Delivered on : 16.09.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.185 of 2021
&
C.M.P.No.3758 of 2021

1.M/s.Bharat Petroleum Corporation Ltd.,
Represented by its Senior Manager - Legal (South)
Having its Office at
No.1, Ranganathan Gardens,
Off 11th Main Road, Anna Nagar,
Chennai - 600 040.

2. M/s.Bharat Petroleum Corporation Ltd.,
Represented by its Territory Manager (Retail)
Having its office at No.35, Vaidyanathan Street,
Tondiarpet,
Chennai - 600081.

...Appellants/Defendants

Vs

M/s.ATM Constructions (P) Ltd.,
Represented by its Chairman,
Mr.C.M.Ibrahim,
Having its office at
No.288, Lloyds Road, Royapettah,
Chennai - 600014.

...Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the CPC against the Judgement and Decree passed in A.S.No.361 of 2010 dated 08.01.2021 passed by the XVIII Additional Judge, City Civil Court, Chennai, confirming the Judgement and Decree dated 30.04.2010 made in O.S.No.711 of 2006 passed by the III Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.Krishna Srinivas
for M/s.Ramasubramaniam Associates
For Respondent : Mr.R.Balachandaran
For Intervenor : Mr.S.S.Rajesh

(As per order dated 27.07.2021 in C.M.P.No.10571 of 2021)



JUDGMENT

WEB COPY The case on hand demonstrates how an unscrupulous litigant continues litigating although he is aware that he is fighting a losing battle. The poor landlord is up against a public sector undertaking which has the wherewithal to litigate continuously and the instant litigation is over 15 years old. The defendants before the Courts below had invoked the Jurisdiction of this Court under Section 100 of the Code of Civil Procedure challenging the Judgement and Decree of the XVIII Additional City Civil Court, Chennai in A.S.No.361 of 2010 in and by which the learned Judge confirmed the Judgement and Decree passed by the III Assistant City Civil Court, Chennai in the suit O.S.No.711 of 2006. The parties are referred to in the same rank as before the Trial Court.

2. The suit revolves around the property bearing Door No.282 (Old No.1/87-L) Mount Road, Teynampet, Chennai, measuring an extent of 4 grounds 2330 Sq.ft. The plaintiff had filed the afore mentioned suit seeking a direction to the defendants to deliver vacant possession of the above property in which the defendants had been inducted as a tenant under a registered lease deed dated 08.01.1958.

Plaintiff's case:

3. The plaintiff would submit that the property in question was originally owned by three brothers, Padmanabhan, Sethuraman and Gopinathan, who were the sons of Dr.T.Thambiah. They had entered into a lease deed with the defendant company which was then known as M/s.Burma Shell (Oil Storage & Distribution Company) Limited. The lease was for a period of twenty years commencing from 01.01.1958.

4. The essential provisions of the lease deed were as follows:

(i) The lease would be for a period of 20 years commencing from 01.01.1958.

(ii) The rent payable would be a sum of Rs.350/- per month, to be paid on or before the 10th day of every succeeding month.

(iii) The demised premises was to be returned in the same condition as it had been leased out on the determination of the tenancy.



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5. The lease was for the purpose of the defendants to carry on the business of sale of petrol and diesel. The property was handed over as a vacant site. Thereafter, the defendants had put up structure for the purpose of storing and for distributing petrol and diesel.

6. It appears that the original owners, namely, Padmanabhan and others had borrowed money from Egmore Benefit Society and had mortgaged the above property, which is herein after referred to as the suit property. The Society had exercised their rights under Section 69 of the Transfer of Property Act and had brought the suit property to sale through public auction. In the auction that was conducted on 24.05.1978, one Mrs.S.Bharwani had emerged successful and a sale deed dated 24.06.1978 was executed by the Egmore Benefit Society in her favour.

7. Meanwhile, the original lease executed in favour of the defendants had determined by efflux of time on 31.12.1977. Therefore, by their letter dated 06.07.1978 the defendants had requested the new owner Mrs.Bharwani to extend the lease in respect of the suit property for a further period of 20 years. The request for extension was made on the basis of the provisions of Burma Shell Acquisition of Undertakings in India Act, hereinafter called the Act.

8. On receipt of the above letter Mrs.S.Bharwani had issued a legal notice dated 27.07.1978 requesting the defendants to vacate the suit property and expressing her refusal to extend the lease. This was followed by another legal notice dated 18.10.1978 by Mrs.S.Bharwani calling upon the defendants to vacate and handover vacant possession of the suit property by the end of November, 1978, after removing all their fixtures. The defendants through their lawyer's notice dated 17.11.1978 declined to vacate the premises since they had exercised their option for renewal as provided under Section 5 (2) and 7 (2) of the Act.

9. The plaintiff herein had joined issue after the property was purchased by their promoter S.Altaf Ahmed from the said Bharwani under a sale deed dated 31.07.1997. The plaintiff would submit that once they had purchased the property the promoter of the plaintiff company had called upon the defendants to vacate and handover the vacant possession of the suit property by 31.12.1997. The defendants had responded to this request by sending a reply dated 09.01.1998 attorning tenancy and seeking renewal of the lease for a further period of 20



years with effect from 01.01.1998. This was turned down by a letter dated 10.01.2000.

10. The plaintiff would submit that after the parties had exchanged correspondence, the lawyer's notice was issued on 23.07.2005 by the plaintiff calling upon the defendants to surrender possession of the suit property by the end of 31.10.2005. For the first time after receiving this notice, the 1st defendants had issued a reply dated 02.08.2005 stating that the property had been purchased by S.Altaf Ahmed, only in his individual capacity and denied the ownership of the plaintiff. They, therefore, refused to surrender vacant possession citing the rights available to them under the Tamil Nadu City Tenants Protection Act.

11. The plaintiff would submit that after the first statutory renewal the continued possession of the suit property by the defendants was only in the capacity of a trespasser and therefore they had come forward with the instant suit.

Written statement of the defendants:

12. The defendants have filed a written statement contending that even when they had attorned tenancy in favour of Altaf Ahmed they had requested for a renewal of the lease. They would further submit that they have been paying the rents regularly without any default and further they had put up a building and installed equipment all of which involved huge expenditure and which they were entitled to protect. The defendants would submit that they are discharging a public duty and therefore their possession needs to be protected since their eviction would mean that the consumers would be put to a lot of hardship. They would also state that they were entitled to protection as per Section 9 of the City Tenants Protection Act. They would therefore seek to have the suit dismissed.

13. Pending the suit the defendants had filed I.A.No.6009 of 2006, under Section 9 of the City Tenants Protection Act, 1921 to appoint an Advocate Commissioner to inspect and survey the suit property and to decide on the extent of the land that the defendants would require to carry on the smooth functioning of its activities and to sell the land to that extent to them. This application was taken up and dismissed by orders of the Court dated 27.11.2009.

14. The defendants had challenged the said order in C.M.A.No.20 of 2010 on the file of the III Additional City Civil Court, Chennai. The learned Judge also confirmed the order of



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the learned III Assistant City Civil Judge, Chennai in I.A.No.6009 of 2006 in O.S.No.711 of 2006 by his order dated 29.04.2010. Challenging the above order, the defendants had moved this Court by filing C.R.P.No.610 of 2011. It was also dismissed by orders of this Court dated 09.01.2012.

15. Meanwhile, the suit O.S.No.711 of 2006 came to be decreed by the Judgement and Decree of the III Assistant City Civil Judge, Chennai. Challenging the same, the defendants had filed A.S.No.361 of 2010 on the file of the XVIII Additional City Civil Judge, Chennai which also ended in a dismissal.

16. The defendants had challenged the orders of this Court in C.R.P.No.610 of 2011 before the Hon'ble Supreme Court in S.L.P.No.17435 of 2012, which was taken on file as C.A.No.769 of 2020. By order dated 28.01.2020, C.A.No.769 of 2020 also stood dismissed. Thereafter, the appellant has filed the present Second Appeal on the file of this Court.

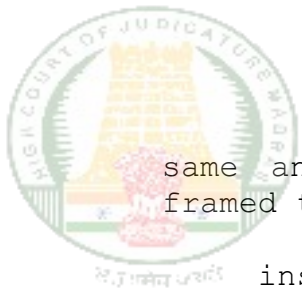
17. The Second Appeal was admitted on the following Substantial Questions of law:

"a) Whether the Appellate Court was justified in dismissing the appeal when the Appellants' rights under Section 9 of the Tamil Nadu City Tenants Protection Act, were yet to be decided by the Hon'ble Supreme Court in Review Petition Nos. 1063-1067/2020? |

b) Whether the Appellate Court could have overlooked the fact that the trial court had passed a decree for eviction of the Appellants from the suit premises when an appeal against an interim order on the valuable rights of the Appellants was to be determined by the appellate court in CMA.No.20 of 2010?"

18. Thereafter, the defendants / appellants had filed C.M.P.No.13973 of 2021 for framing additional Substantial Questions of Law. The defendants had come forward with the application though the Court had already framed the Substantial Questions of Law by order dated 26.02.2021.

19. In the course of his arguments, the learned counsel appearing for the defendants had submitted that only one substantial question of law would arise in the instant case and arguments would only be addressed with reference to this substantial question of law. The learned counsel appearing for the plaintiff / respondent did not have any objection to the



same and therefore by order dated 26.08.2021 this Court had framed the following Substantial Question of Law:

"Whether the plaintiff has the locus standi to institute the proceedings since the Sale Deed stands in the name of Mr.Althaf Ahmed and not in the name of the plaintiff?"

20. Mr.Krishna Srinivasan, learned counsel appearing on behalf of the defendants would submit that the plaintiff herein did not have locus standi for filing the above suit since the sale deed in respect of the suit property did not stand in the name of the plaintiff but that it stood in the name of Altaf Ahmed. He would refer to Ex.A.7, which is the agreement of sale entered into between Bharwani and the promoter of the plaintiff's company Altaf Ahmed on 14.11.1996. He would submit that the agreement of sale was entered into only between the said Altaf Ahmed and Bharwani. He would draw the attention of the Court to recitals in the said agreement wherein the said Altaf Ahmed has been described as "Promoter of M/s.ATM Private Limited, company under in-incorporation".

21. Thereafter, the company has been incorporated on 07.04.1997, which is evident from a perusal of Ex.A.14 declaration deed dated 04.03.2003. Though, the company had been registered on 07.04.1997, the sale deed has not been taken in the name of the plaintiff's company but once again in the name of Altaf Ahmed, although the sale had been registered and executed on 31.07.1997. He would therefore submit that the intention was only to purchase the property in the name of Altaf Ahmed.

22. He would argue that thereafter the plaintiff and the said Altaf Ahmed had entered into a deed of declaration dated 04.03.2003, which is marked as Ex.A.14, in and by which the said Altaf Ahmed had declared that he had entered into an agreement of sale with Bharwani only on behalf of the plaintiff company, since the plaintiff company was then pending incorporation.

23.However according to the learned counsel as per Section 54 of the Transfer of Property Act, any transfer of a tangible immovable property of value of Rs.100/- and above can only be made by a registered instrument. Therefore, it is his contention that in the instant case the deed of declaration cannot be considered to be a registered instrument under Section 54 of the Transfer of Property Act. Further, the said document has not been registered as contemplated under Section 17 of the Registration Act.



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24. The learned counsel would further submit that a transfer of property from one to another can only be by way of deed of sale and not by deed of declaration as done in the instant case. He would submit that it is only Section 14 of the Partnership Act, which permits the property of a partner to be brought in as the property of the firm. The defendants had questioned the right of the plaintiff even under Ex.A.16 which was in response to the plaintiff's legal notice dated 23.07.2005. Under Ex.A.16, the defendants had in very clear terms stated that the owner of the property was only Altaf Ahmed and not the plaintiff company.

25. To buttress his arguments that the transfer of property can only be by a registered document, the learned counsel would rely on the Judgement reported in 1997 (1) SCC 496 - State of UP Vs. District Judge and others, and would rely on the following observations therein:

" It is obvious that an Agreement to Sell creates no interest in land. As per Section 54 of the Transfer of Property Act, the property in the land gets conveyed only by registered Sale Deed. It is not in dispute that the lands sought to be covered were having value of more than Rs.100/-. Therefore, unless there was a registered document of sale in favour of the proposed transferee agreement holders, the title of the lands would not get divested from the vendor and would remain in his ownership."

26. He would also rely upon the Judgement reported in 2004 (8) SCC 614 - Rambhau Namdeo Gajre Vs. Naryan Bapuji Dhotra, in support of his contentions that an agreement of sale does not create an interest of the proposed vendee in the suit property, since, as per Section 54 of the Transfer of the Property Act, title to the immovable property of a value of more than Rs.100/- can only be by way of registered sale deed. The learned counsel would submit that in the instant case there is no agreement between the plaintiff and the original owner and neither is there a sale deed as contemplated between the plaintiff and the said Altaf Ahmed.

27. The other case which the learned counsel would rely upon is the Judgement of the Hon'ble Supreme Court reported in AIR 2012 SC 206 - Suraj Lamp and Industries Pvt Ltd., Vs. State of Haryana and others, where the learned Judges had discussed the scope of an agreement of sale and held that a transfer of



immovable property can only be by way of deed of conveyance and in the absence of such deed no right, title or interest can be transferred.

28. The next Judgement which the learned counsel had relied upon is the Judgement reported in 2017 (15) SCC 316 - Greater Bombay Cooperative Bank Limited Vs. Nagraj Ganeshmal Jain and others, where the provisions of Section 54 and 55 of the Transfer of property had been evaluated. The Bench had reiterated the proposition that an immovable property can be transferred only by way of a registered document and the transfer cannot be effected in any other manner.

29. The learned counsel would rely upon the Judgement reported in 2019 (10) SCC 229 - Shiv Kumar and another Vs. Union of India and others. This was the case where the Bench was considering whether a purchaser of the property after the issuance of notification under Section 4 of the Land Acquisition Act, can invoke the provisions contained in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act. The Bench had gone on to discuss the fact as whether the agreement of sale, general power of attorney or Will would convey any title or create interest in the immovable property. The learned Judges had held that these documents do not create a right / interest in the immovable property.

30. Per contra, Mr.R.Balachandran, learned counsel for the plaintiff / respondent would submit that this argument is being addressed for the first time before this Court and has not been raised as a defense in the written statement. He would submit that on the contrary the defendants had filed a Section 9 application for the sale of the land in their favour by recognizing the plaintiff as the landlord.

31. The learned counsel would submit that during the pendency of the suit, the arguments were addressed only with reference to the Section 9 application and the defendants had challenged the decree right upto the Hon'ble Supreme Court. Even during the pendency of the First Appeal before the XVIII Additional City Civil Court, the defendant had only stated that the appeal should await the orders that had to be passed by the Supreme Court in the SLP filed challenging the order of this Court in C.R.P.No.610 of 2011. Even as late as in the year 2012 this defense had not been raised. That apart, the defendants



attorned tenancy in favour of the plaintiff. Having done so the defendants are estopped from questioning the locus standi of the plaintiff to file the suit.

32. The learned counsel would also refer to Ex.A.10, letter in which the plaintiff's have attorned tenancy. The learned counsel would submit that the defendants had recognised the plaintiff as their lessor and once they have so recognised they cannot turn around and question the right of the plaintiff. Further, under Section 108 of the Transfer of Property Act, on the determination of the lease, the lessee was bound to put lessor back in possession of the property. The original lease had been determined on 31.12.1977 and thereafter by statute it was extended for a period of 20 years which ended on 31.12.1997. The defendants have successfully continued in possession to date i.e., for over 24 years. He would submit that no exception can be taken to the Judgement and Decree of the Courts below and the substantial questions of law has to be answered against the defendants and the Second Appeal be dismissed.

Discussion:

33. Heard the learned counsels and perused the evidence both oral as well as documentary.

34. The plaintiff in their pleadings had clearly narrated how the plaintiff had come into ownership of the suit properties in paragraph no.19 of the plaint. This has not been refuted / rebutted by the defendants in their written statement. The defendants who had questioned the locus of the plaintiff under their reply marked as Ex.A.10 did not choose to raise this issue in the suit and therefore no issue with reference to above had been raised.

35. An additional typed set of papers has been filed by the plaintiff, which had also referred to by the defendants. In this there is a counter of the defendants in A.No.650 of 2020. In the counter the defendants have made the following statement in paragraph no.10 of the counter, "Thereafter, defendants vide its letter dated 07.10.2005 attorned the tenancy in favour of the plaintiff". Therefore, on their own making, the defendants had accepted the plaintiff as their landlord.

36. A reading of Section 2 (3) of the Tamil Nadu City Tenants Protection Act refers only to the landlord and not to an owner of the land. The Act defines the land lord as follows:

"'landlord' means any person owning any land,
and includes every person entitled to collect the rent



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of the whole or any portion of the land, whether on his own account or on behalf of, or for the benefit of, any other person, or by virtue of any transfer from the owner or his predecessor in title or of any order of a competent Court or of any provision of law;"

37. Tenant under the City Tenants Protection Act, means a person liable to pay rent in respect of such land, under a tenancy agreement express or implied. Therefore, going by the definition, the plaintiff falls within the definition of landlord as the defendants have attorned tenancy in favour of the plaintiff and the defendants is the tenant as described therein.

38. Even under the Transfer of Property Act, the lesser is not defined as the owner of the land. Section 105 of the Transfer of Property Act would define a Lease, Lessor, Lessee, Premium and Rent as follows:

"Lease defined.—A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

39. The defendants / appellants has proceeded right upto the Hon'ble Supreme Court without questioning locus standi of the plaintiff to file the suit. This issue has been raised for the first time in the arguments in the Second Appeal and was not even the Substantial Question initially framed. The arguments of the learned counsel for the defendants that this argument is a legal issue which can be raised at any time is incorrect. The defendants recognised the plaintiff as their landlord and filed the application under Section 9 of the City Tenants Protection Act. They have also acknowledged that they have attorned tenancy to the plaintiff.

40. In fact, it was not even a substantial question of law raised in the memorandum of grounds of the Second Appeal. The argument only exposes the ingenuity of the defendants and their desire to continue to squat on the property despite



determination of the lease. This is totally unbecoming on the part of a public sector undertaking who pleads that they are involved in public service.

41. The defendants had contended that the sale was executed only in favour of Altaf Ahmed and not in favour of the plaintiff though the sale deed was entered into after the plaintiff company had been incorporated. The plaintiff has elaborately given reasons for the same in their plaint. Since the company had not been incorporated the original no objection from the Appropriate Authority under the Income Tax Act was obtained in the name of the individual.

42. Thereafter, on 31.03.1997, the said Altaf Ahmed had written a letter to the appropriate authority seeking an amendment of the no objection granted on 19.03.1997 in the name of the plaintiff company. However, since time for executing the sale deed was due to expire they were forced to go ahead with the sale deed in favour of the said Altaf Ahmed. Narrating the above circumstances, the deed of declaration had been entered into between the said Altaf Ahmed and the plaintiff company and under this deed the said Altaf Ahmed had declared that he had no individual interest in the suit property but only in his capacity as promoter and Managing Director of the plaintiff's company. The declaration deed also sets out that the entire consideration had been paid only by the plaintiff's company and not by Altaf Ahmed. Therefore, the plaintiff has clearly established their right to institute the suit. These contentions of the plaintiff was not rebutted or refuted by the defendants.

43. The Substantial Questions of Law is therefore answered against the defendants / appellants and the Second Appeal stand dismissed with costs throughout.

44. The dealer, M/s.Aswini Automobiles has filed an affidavit stating that they are vacating the premises. They have stated as follows in the affidavit dated 01.09.2021:

"I submit that since I am the Dealer in occupation of the premises, I pray that this Hon'ble Court may be pleased to record my undertaking to vacate the premises within a time limit of 8 months from the date of order and also further reserve my right to negotiate the purchase of the property, if the landlord is agreeable"



45. Considering the fact that the appellants' terms of lease had come to an end on 31.12.1997 and these proceedings have been pending since the year 2006 and they have managed to stay on in the premises for over 24 years the appellants / dealer are granted six months time to vacate the premises from the date of receipt of a copy of this order. Consequently, connected Civil Miscellaneous Petition is also closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The XVIII Additional City Civil Court,
Chennai.

2.The III Assistant City Civil Court,
Chennai.

Copy to

The Section Officer,
VR Section, High Court,
Madras.

+2cc to Mr.S.S.Rajesh, Advocate SR.47062
+1cc to M/s.Ramasubramaniam, Advocate Sr.47095
+1cc to Mr.R.Balachandran, Advocate Sr.47324

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