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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

S.A.NO.508 OF 2021

&

C.M.P.NO.10157 OF 2021

Shanthi

.. Appellant/
Defendant

Vs.

V.M.Gurumathan

.. Respondent/
Plaintiff

Prayer:

Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 to set aside the judgment and decree in A.S.No.16 of 2018 on the file of Court of Subordinate Judge, Tiruttani dated 18.12.2020 confirming the decree and judgment passed in O.S.No.28 of 2017 on the file of the Court of District Munsif-cum-Judicial Magistrate, Pallipattu dated 29.06.2018.

For Appellant : Mr.S.Vijay Anand

JUDGMENT

Lis which has given rise to the captioned second appeal is four years old, as a plaint was presented by the 'lone respondent' in the captioned second appeal (hereinafter 'plaintiff' for the sake of convenience and clarity) on 20.02.2017 and this plaint was taken on file as O.S.No.28 of 2017 on the file of 'District Munsif-cum-Judicial Magistrate's Court, Pallipattu' (hereinafter 'trial Court' for the sake of convenience and clarity).

2. Schedule in the aforementioned plaint is description of an immovable property and the same is 'Old Door No.3/111, New Door No.3/192, Chinna Pillaiyar Koil Street, Vanganoor Village, Pallipattu Taluk, Tiruvallur District' (hereinafter 'suit property' for the sake of convenience). The description of suit property in the plaint schedule also says that land admeasures 21 feet East to West, 22 feet North to South and it has a country tiled house (superstructure) standing on the same. In



effect, the land extent is about 462 sq.ft, the superstructure is a country tiled house and this constitutes the suit property. The lone appellant in the captioned second appeal was the sole defendant in the aforementioned suit and therefore, 'appellant' in captioned second appeal shall hereinafter after be referred to as 'defendant' for the sake of convenience and clarity.

3. Facts are fairly straight and simple. Facts essential for appreciating this judgment are that plaintiff sought ejectment of defendant from the suit property besides a prayer limb for monthly rent at the rate of Rs.300/- per month (arrears according to plaintiff) for May 2015 to February 2017 and future rent; that the usual costs limb and a residuary limb also form part of the prayer in the plaint; that the defendant, on being served with suit summons, entered appearance through counsel and filed a written statement dated 23.08.2017; the most clinching aspect of defendant's pleading is, the defendant admitted the tenancy; that pleadings of the defendant in the written statement is to the effect that she is a tenant in the demised property from the year 1997 and she has paid certain sums as advance. However, defendant denied that she is in arrears of rent.

4. After full contest, trial Court in and by judgment and decree dated 29.06.2017 decreed the suit with regard to ejectment i.e., recovery of possession of suit property, but dismissed the suit regarding prayer for arrears of rent. This Court is informed that plaintiff did not carry the matter in appeal with regard to dismissal of recovery of arrears of rent limb of the prayer. In other words, this Court is informed that plaintiff has given legal quietus to dismissal of the recovery of arrears of rent limb of the prayer. This Court is also informed that suit property is situate in a hamlet to which erstwhile 'The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (Tamil Nadu Act XVIII of 1960)' ['Rent Control Act' for brevity] had not been extended by notification. This submissions is recorded.

5. Mr.S.Vijay Anand, learned counsel for defendant, who is the lone appellant in the captioned second appeal, notwithstanding very many averments, grounds and questions that have been proposed as substantial questions of law in the memorandum of grounds of appeal, focused his submission on a technical aspect of the matter and made a pointed submission. That technical aspect is regarding framing of issues. Learned counsel submitted that trial Court has not followed the guidelines for framing issues i.e., the principle laid down by Hon'ble Supreme Court in Makhan Lal Bangal Vs. Manas Bhunla and others reported in 2001(1) SCR 17. To be noted, Makhan Lal Bangal principle is to the effect that each material proposition



affirmed by one party and denied by the other party should constitute a distinct issue and evidence has to be adduced only in respect of the controversies covered by the issues and pleadings. There will be a little more discussion on this infra elsewhere in this judgment.

6. This straightaway takes this second appeal Court to the issues that have been framed by the trial Court. Issues framed by the trial are three in number and the same are as follows:

- '1. Whether the defendant has been residing in the suit property for 20 years?
2. Whether suit property was in dilapidated condition or not?
3. Whether the plaintiff is entitled for the relief of ejectment against the defendant from the suit property?'

7. The plaint dated 20.02.2017 and the written statement dated 23.08.2017 are before this second appeal Court. A careful perusal of the pleadings in the plaint and the written statement i.e., rival pleadings make it clear that the trial Court has clearly excluded diversions and departures qua core of the lis, narrowed down the points which constitute the nucleus of the lis or in other words, cleared not so necessary parts of the rival pleadings and has framed issues. The reason is, issue No.3 is the crux and gravamen of the lis. Issue No.3 turns on whether the plaintiff is entitled for relief of ejectment against defendant qua the suit property. In a suit of this nature, may be the question as to whether the plaintiff is residing in the suit property for 20 years and as to whether the suit property was in a dilapidated condition may really not be of significance as these are not Rent Control proceeding under the erstwhile Rent Control Act as in a simple proceeding between lessor and lessee under 'The Transfer of Property Act, 1882' ('TP Act' for the sake of brevity) a lessor need not give reasons for terminating a lease. In this view of the mater, this Court is unable to persuade itself to believe that, trial Court has committed a very serious error in framing issues, that too an error so serious that it warrants interference in a legal drill under Section 100 CPC as there is nothing to demonstrate that framing of issues, if it had been done in a particular manner would have led to a bipolar opposite conclusion in terms of decree. There is nothing demonstrable before this Court to show that recasting of issues was sought for by the defendant or for that matter by the plaintiff. The parties went for trial on the aforementioned issues. As already mentioned supra, Issue No.3 is the critical issue which constitute the crux and gravamen of the lis of ejectment between the parties. Therefore, though issue Nos.1 and 2 may not really matter, this



Court in this Section 100 CPC legal drill is unable to persuade itself to believe that trial Court has caused infraction of Makhan Lal Bangal principle which can in turn cause an infraction qua a second appeal legal drill under Section 100 CPC. As already alluded to supra elsewhere in this judgment, Makhan Lal Bangal principle is to the effect that each material proposition affirmed by one party and denied by the other should constitute a distinct issue and evidence has to be adduced by the adversaries only in respect of issues and pleadings. Makhan Lal Bangal case law was rendered by Hon'ble Supreme Court in the light of an Election Petition and in addressing the scope of an Election Petition, Hon'ble Supreme Court held that an Election Petition is not just a dispute between a petitioner and respondent therein, but the fate of the constituency is on trial. Thereafter, Hon'ble Supreme Court had also held that Election Petition is like a civil trial and therefore the stage of framing the issues is an important one as the scope of the trial is determined by laying the path on which the trial should proceed excluding the diversions and departures therefrom. It may not be necessary to delve further into this aspect of the matter in the case on hand, as issue No.3 in the trial Court clearly covers the most important material proposition affirmed and denied by the adversaries and it is nobody's case that evidence was not adduced in respect of the controversy captured in this issue as this is a simple suit for recovery of possession under the TP Act with no application of Rent Control proceedings. In other words, issue No.3 which talks about relief of ejectment from the suit property is decisive, comprehensive and issue Nos.1 and 2 turning on length of defendant's residence in the suit property and as to whether the suit property was in a dilapidated condition really do not matter as these are not Rent Control proceedings. To put it differently, that such issues which were not really germane were framed does not mean that the most germane issue has been omitted. There is nothing to demonstrate that any germane issue has been omitted much less is there anything demonstrable before this Court to say that if such germane issue has been framed and if evidence had been let in on the same, the decree would have been a bipolar opposite. Therefore, this argument predicated on Makhan Lal Bangal principle does not really aid the protagonist of captioned second appeal in the case on hand. This draws the curtains on the lone point that is canvassed in the hearing before this second appeal Court.

8. This Court now turns to arrears of rent. Trial Court has made it clear that there is no document or no evidence to show that the defendant is in arrears and on that ground negatived that limb of the prayer. Though this has been given legal quietus by plaintiff, the first Appellate Court has dealt with this issue also, more particularly in paragraph 16 of its



judgment and held that the trial Court was correct in negating the prayer for arrears of rent limb of the prayer. There is nothing demonstrable before this Court to show any perversity or error in this regard.

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9. To be noted, plaintiff had issued legal notice on 17.01.2016 (Ex.A3) and there is nothing to demonstrate that this legal notice terminating tenancy suffers from any infirmity. To be noted, this is a oral tenancy. For the purpose of completion of facts it is necessary to record that the defendant had filed a prior suit in O.S.No.83 of 2015 to protect her possession. Copy of plaint and written statement in those proceeding were marked as Exs.A1 and A2 in the trial Court. Pending that suit, plaintiff caused aforementioned legal notice (Ex.A3) dated 17.01.2016 followed by another legal notice dated 20.10.2016 terminating the tenancy. This legal notice dated 20.10.2016 (Ex.A4) has been duly served on the defendant vide postal acknowledgment card which was marked as Ex.A5 and the defendant neither replied nor complied. There is nothing to demonstrate that there is any infirmity in this termination of lease.

10. Therefore, in the light of narrative, discussion and dispositive reasoning set out supra, this Court has no difficulty in coming to the conclusion that no substantial question of law arises in the captioned second appeal. In saying that no substantial question of law arises in the captioned second appeal, this Court deems it appropriate to mention /reminds itself that the expression 'substantial question of law' occurring in Section 100 of 'The Code of Civil Procedure, 1908' ('CPC' for the sake of brevity) has been elucidatively explained in a long line of authorities / catena of case laws starting from Sir Chunilal Mehta's case [Sir Chunilal V.Mehta and Sons Ltd., Vs. Century Spinning and Manufacturing Co. Ltd., reported in AIR 1962 SC 1314] . Suffice to say that in Sir Chunilal Mehta's case a Constitution Bench of Hon'ble Supreme Court affirmed the view taken by a Hon'ble Full Bench of this Court (Madras High Court) in Rimmalapudi Subba Rao's case [Rimmalapudi Subba Rao Vs. Noony Veeraju And Others reported in AIR 1951 Madras 969 (FB)]. It would also suffice to say that these principles are governing the field and are holding the field as Hon'ble Supreme Court has reiterated these principles as recently as on 27.08.2020 in Nazir Mohamed case [Nazir Mohamed Vs. J.Kamala reported in 2020 SCC OnLine SC 676]. Relevant paragraphs in Nazir Mohamed case are paragraphs 29, 30, 35 to 37 and the same read as follows:

' 29. The principles for deciding when a question of law becomes a substantial question of law, have been enunciated by a Constitution Bench of this Court in Sir Chunilal v. Mehta & Sons



Ltd. v. Century Spg. & Mfg. Co. Ltd.¹, where this Court held:-

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

30. In Hero Vinoth v. Seshammal , this Court referred to and relied upon Chunilal v. Mehta and Sons (supra) and other judgments and summarised the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.'

35. Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. The paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This proposition finds support from Santosh Hazari v. Purushottam Tiwari .

36. In a Second Appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact is not open to challenge in second appeal, even if the appreciation of evidence is palpably erroneous and the finding of fact incorrect as held in Ramchandra v. Ramalingam . An entirely new point, raised for the first time, before the High Court, is not a question involved in the case, unless it goes to the root of the matter.

37. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is



(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the wellrecognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.'

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100 CPC. Therefore, it is deemed appropriate to make it clear that the lone point for determination in the captioned second appeal is whether there is error in framing of issues by the trial Court leading to a substantial question of law arising in the captioned second appeal and this lone point for determination is answered in the negative owing to the narrative, discussion and dispositive reasoning supra.

12. This takes us to the Kirpa Ram principle being principle laid down by Hon'ble Supreme Court in Kirpa Ram Vs. Surendra Deo Gaur and others reported in 2020 SCC Online SC 935 wherein Hon'ble Supreme Court reiterated the obtaining position that a second appeal can be dismissed at the admission stage if no substantial question of law arises .

13. Following Kirpa Ram principle, captioned second appeal is dismissed at the admission stage holding that no substantial question of law arises. Consequently, C.M.P.No.10157 of 2021 is also dismissed. Considering the nature of the matter, the focussed and pointed fair submission made in the hearing at the admission stage, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Subordinate Judge
Tiruttani.
2. The District Munsif-cum-Judicial Magistrate
Pallipattu.

+2ccs to Mr.S.Vijay Anand, Advocate, S.R.No.32504.

S.A.No.508 of 2021 &
C.M.P.No.10157 of 2021

SJ(CO)
PM/30/11/2021