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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.1018 of 2013

and

M.P.Nos.1 of 2013 and 1 of 2014

1.Kandaswamy Mudaliar (died)

2.Sundari

3..Kudiyarasu

4.Malathi

5.Kumar

6.Kuzhanthaivelu

...Appellants/Plaintiff

[Appellant Nos.2 to 6 brought into record as legal heirs of the deceased sole appellant viz., Kandaswamy Mudaliar vide Court order dated 18.02.2022 made in CMP.Nos.13559, 13562 and 13564 of 2021 in S.A.No.1018 of 2013]

Vs.

1.K.Manikandan

..1st Respondent/2nd Defendant

2.M.Sumathi

3.R.Haneef

...Respondents 2 & 3/1 & 3 Respondent

PRAYER: Second Appeal is filed under Section 100 of C.P.C., to set aside the Judgment and Decree made in A.S.No.99 of 2011 on the file of the II Additional Subordinate Court, Cuddalore, dated 23.07.2013 reversing the Decree and Judgment made in O.S.No.304 of 2005 on the file of the Additional District Munsif Court, Cuddalore, dated 31.03.2011.



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For Appellants : Mr.K.A.Ravindran
For R1 : M/s.P.Veena Suresh
For R2 : Exparte
For R3 : No appearance

J U D G M E N T

The plaintiff is the appellant in this second appeal. During the pendency of the the second appeal, the plaintiff expired and appellants 2 to 6 who are the legal representatives have been impleaded as the appellants.

2. The case of the plaintiff is that he was a tenant in the suit property for more that 30 years under one Kalyani who was owning the property at that point of time. Thereafter, the suit property was purchased by the father of the 1st defendant and thereafter the 1st defendant became the owner of the suit property. It is further stated that there was a oral agreement between the 1st defendant and the plaintiff, whereby the 1st defendant agreed to sell the suit property to the plaintiff for a total consideration of Rs.1,50,000/- and the 1st defendant also received an advance of a sum of Rs.21,000/- from the plaintiff. Accordingly, a document was executed on 17.02.2002 which is Bogiam deed, marked as Ex.A1. This was executed by the 1st defendant in favour of the plaintiff acknowledging the receipt of a sum of Rs.21,000/- from the plaintiff. It was further agreed by the 1st defendant that the plaintiff will continue to enjoy the property for a period of 11 months in lieu of interest for the sum of Rs.21,000/- paid by the plaintiff to the 1st defendant. The further case of the plaintiff is that even after the expiry of the period of 11 months, he continued to be in possession and enjoyment of the property and was running the shop.

3. The plaintiff claims that the 1st defendant was not coming forward to execute the sale deed in his favour and perform his part of the contract. When the plaintiff was insisting for execution of the sale deed, there was a misunderstanding between the parties and the 1st defendant started taking steps to forcibly take over the property from the plaintiff. In the mean time, the 1st defendant sold the property in favour of the 2nd defendant through a registered sale deed dated 04.05.2005, marked as Ex.B5. Since there was a threat of dis-possession of the plaintiff through force, the suit came to be filed seeking for the relief of permanent injunction.



4. The 1st defendant filed a written statement and took a defence that the plaintiff is in possession of the suit property only in lieu of interest under the un-registered bogiam deed dated 17.02.2002 and on the re-payment of the said amount, the plaintiff has to vacate the property. It was further stated that the plaintiff had executed a letter dated 30.04.2005, marked as Ex.B4 whereby he had undertaken to vacate the property on 01.09.2005 on payment of a sum of Rs.21,000/-. The 1st defendant has taken a further stand that the plaintiff was not interested in purchasing the property hence she proceeded further and sold the property in favour of the 2nd defendant. Accordingly, the 1st defendant had sought for dismissal of the suit.

5. The 2nd defendant filed a written statement and a counter claim. The 2nd defendant toed the line on the 1st defendant and took a stand that he is prepared to re-pay back the sum of Rs.21,000/- to the plaintiff. Thereby he made a counter claim for a direction to the plaintiff to surrender possession of the suit property to the 2nd defendant.

6. The trial Court after considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence decreed the suit in favour of the plaintiff and dismissed the counter claim filed by the 2nd defendant through judgment and decree dated 31.03.2011. Aggrieved by the same, the 2nd defendant filed an appeal in A.S.No.99 of 2011 before the II Additional Sub-Court, Cuddalore. The lower appellate Court on re-appreciation of the oral and documentary evidence and after considering the findings of the trial Court, through judgment and decree dated 23.07.2013 allowed the appeal and as a result of the same, the decree that was passed in favour of the plaintiff was set aside and the counter claim that was made by the 2nd defendant was allowed and the 2nd defendant was directed to deposit the sum of Rs.21,000/- within 15 days and the plaintiff was directed to surrender vacant possession of the suit property to the 2nd defendant within a month. Aggrieved by the same, the plaintiff has filed the present second appeal.

7. Heard Mr.K.A.Ravindran, learned counsel for the appellant and Ms.P.Veena Suresh, learned counsel for the 1st respondent. This Court also carefully considered the materials available on record and the findings of both the Courts below.

8. There were two main issues that were taken into consideration by both the Courts below. The first issue is with



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regard to the pecuniary jurisdiction of the trial Court to deal with the counter claim made by the 2nd defendant since according to the plaintiff, the total value of the counter claim exceeded the pecuniary jurisdiction of the District Munsif Court, Cuddalore. The second issue pertained to the nature of possession of the plaintiff in the suit property qua the bogiam deed marked as Ex.A1.

9. Insofar as the issue of pecuniary jurisdiction is concerned, the trial Court took into consideration the sale deed that was executed by the 1st defendant in favour of the 2nd defendant and the sale consideration mentioned therein and also the offer made by the 2nd defendant to pay a sum of Rs.21,000/- to the plaintiff to vacate and handover the property and thereby, the trial Court arrived at the total value of the suit at a sum of Rs.1,06,000/-. The trial Court also took into consideration the evidence of DW2 and DW3 in this regard and found that the counter claim made by the 2nd defendant is beyond the pecuniary jurisdiction of the Court and held that the counter claim of the 2nd defendant is not maintainable.

10. The trial Court also took into consideration the nature of possession of the plaintiff and found that the plaintiff was occupying the property in his capacity as a tenant and hence held that he cannot be evicted unless and otherwise by due process of law and accordingly granted the relief of permanent injunction in favour of the plaintiff. While dealing with this issue, the lower appellate Court considered the evidence available on record and also the findings of the trial Court.

11. Insofar as the issue of pecuniary jurisdiction is concerned, the lower appellate Court found that Ex.B5 sale deed that was executed by the 1st defendant in favour of the 2nd defendant only revealed a total sale consideration of Rs.85,000/-. The 2nd defendant while seeking for the counter claim against the plaintiff had valued the suit at Rs.87,500/-. The lower appellate Court found that the trial Court had unnecessarily clubbed two independent transactions and arrived at the total counter claim value as Rs.1,06,000/-. While dealing with this issue, the lower appellate Court found that the offer made by the 2nd defendant to pay a sum of Rs.21,000/- to the plaintiff in order to vacate and handover possession, was an independent transaction and it did not form part of the sale consideration under Ex.B5. It was therefore held that Ex.B5 sale deed is a separate transaction and the sum of Rs.21,000/- that was received by the 1st defendant from the plaintiff under



Ex.A1 was a separate transaction and both these transactions should not be clubbed. Therefore, it was held that the counter claim was very much within the pecuniary jurisdiction of the trial Court. This Court does not find any perversity in the findings of the lower appellate Court. The conclusion arrived at by the lower appellate Court has been properly reasoned and there is no ground to interfere with the same.

12. Insofar as the nature of possession of the plaintiff in the suit property is concerned, the trial Court had found that he was in possession of the property in his capacity as a tenant. While dealing with this issue, the lower appellate Court took into consideration Ex.A1. The lower appellate Court also took into consideration the evidence of the plaintiff who was examined as PW1. On a cumulative consideration of the oral and documentary evidence and on going through the pleadings, the lower appellate Court found that the plaintiff was enjoying the suit property only in the strength of Ex.A1 and he is not a tenant in the suit property. The lower appellate Court found that the plaintiff was enjoying the property in lieu of interest that was payable for the sum of Rs.21,000/- that was paid by the plaintiff to the 1st defendant. In view of this finding, the lower appellate Court reversed the findings of the trial Court and held that the plaintiff is not a tenant in respect of the suit property and no notice is required to be issued under Section 111(a) of the Transfer of Property Act. The lower appellate Court also found that the 2nd defendant had the right to recover possession of the suit property since he had offered to pay the liability of Rs.21,000/- to the plaintiff. Insofar as the claim made by the 2nd defendant for mesne profits, both the Courts found that the 2nd defendant is not entitled for the same.

13. The findings of the lower appellate Court is based on appreciation of oral and documentary evidence and the lower appellate Court while reversing the findings of the trial Court has assigned proper reasons as mandated under Order 41 Rule 31 of the Code of Civil Procedure. This Court does not find any perversity in the findings of the lower appellate Court. In any event, this Court does not find any substantial question of law involved in the second appeal.

14. In the result, the second appeal stands dismissed. If the 2nd defendant has not deposited the sum of Rs.21,000/- as directed by the appellate Court, the said amount shall be deposited within a period of 15 days from the date of receipt of a copy of this judgment to the credit of the suit in O.S.No.304



of 2005. The plaintiff is directed to vacate and handover possession of the suit property to the 2nd defendant within a period of three months from the date of receipt of a copy of this judgment. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1.The II Additional Subordinate Judge,
II Additional Subordinate Court,
Cuddalore.

2.The Additional District Munsif,
Additional District Munsif Court,
Cuddalore.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to M/s.P. Veena Suresh, Advocate sr 19068.

S.A.No.1018 of 2013

BS (CO)
SP(10/06/2022)