



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.1111 of 2013
and MP No.1 of 2013

T. Goraknathan .. Appellant/ Respondent/Plaintiff

Vs.

1. S.N.Kulothungam

2. K.Malarkodi .. Respondents/Appellants/Defendants

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 21.03.2013 made in A.S.No.62 of 2011 on the file of the Principal District Court, Tiruvallur reversal of the judgement and decree dated 28.02.2007 made in O.S.No.78 of 2001 on the file of the District Munsif Court, Ambattur.

For Appellant : Mr.C.A.Ramanan
for Mr.N.Manokaran

For Respondents : R1 and R2 Notice served

JUDGMENT

The plaintiff is the appellant in this second appeal.

2.The case of the plaintiff is that he is the absolute owner of the subject property which was purchased by him through a registered sale deed dated 23.05.1993. The further case of the plaintiff is that the defendant who is the owner of the property situated on the eastern side of the suit property, attempted to trespass in to the suit property. Hence, the plaintiff filed the suit seeking for the relief of permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property.

3.The Trial Court by judgement and decree dated 28.02.2007 decreed the suit as prayed for. Aggrieved by the same, the defendants filed an appeal in A.S No.62 of 2011 before the Principal District Judge, Thiruvallur.



4.The Principal District Judge, Thiruvallur, apart from considering the facts of the case, took note of certain vital subsequent developments that had taken place during the pendency of the appeal and proceeded to allow the appeal and set-aside the judgement and decree passed by the Trial Court. Aggrieved by the same, the present second appeal has been filed by the plaintiff.

5.The learned counsel for the appellant submitted that the 2nd defendant had purchased the property under Ex.A2 only in the year 1994 much after the sale deed was executed in favour of the appellant. The learned counsel further submitted that the Appellate Court relied upon an exparte decree that was obtained by the defendant in O.S.No.246 of 2007 and according to the learned counsel, this decree has not attained finality. It was further submitted that even though the property was sold, that will not in any way take away the cause of action that was available when the suit was filed in the year 2001. The learned counsel therefore submitted that the judgement of the Lower Appellate Court requires the interference of this Court.

6.This Court has carefully considered the submissions made by learned counsel for the appellant and also the findings of the Lower Appellate Court. It must be borne in mind that the suit was filed by the plaintiff seeking for the relief of permanent injunction against the defendants. The Appellate Court found that the suit property was sold in favour of one Murali Nallaiah and the appellant was no more the owner of the property. That apart, the subsequent purchaser was also not made a party to the proceedings. The Lower Appellate Court also took note of the fact that the 2nd defendant filed a comprehensive suit against the appellant, his wife and the subsequent purchaser Murali Nallaiah in O.S.No.246 of 2007 and this suit was decreed by the Principal District Court, Thiruvallur, by Judgement and decree dated 22.02.2011. In view of these subsequent developments, the Lower Appellate Court found that the relief sought for by the appellant can no more be granted in favour of the appellant.

7.While exercising the Appellate jurisdiction, the Court can certainly take into consideration the subsequent events which will have a direct bearing on the reliefs sought for in the suit. For proper appreciation, the earlier judgements which dealt with this issue can be taken note of. This Court in [Mottaiyandi Chettiyar (died and others Vs. Saroja (Died) and others] reported in 2017 1 MLJ 630 held as follows :-

13. It is a well settled proposition that the



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appellate Court, while exercising its appellate jurisdiction, is entitled to take into consideration the subsequent events for the purpose of molding the relief as envisaged under Order VII, Rule 7 read with Order 41 Rule 33 of C.P.C. Since the suit properties would revert to the heirs of the plaintiff's father, the cause of action does not survive on the second respondent upon the death of plaintiff. Since it is admitted that the plaintiff who is the first respondent in this Appeal died intestate and without any issues, I have no other option but to hold that the whole properties can only be inherited by the heirs of the plaintiff's father. It is not in dispute that the appellant is the son of the sister of Ramanathan Chettiar. Hence, he is also one of the heirs of the plaintiff's father. This Court is not in a position to ascertain whether there are other heirs in the line of succession to the plaintiff's father. At this stage, it is not necessary to go into the issue as the husband of the plaintiff and the person claiming under him including the third respondent is not entitled to any declaratory relief as against the appellants. Hence, this appeal is allowed and the judgment and decree of the trial Court in O.S. No. 66 of 1992, dated 21.12.1993 by the Subordinate Court, Ramanathapuram, is set aside. Having regard to the facts and circumstances of the case, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

8.The next judgement is [M.Ramakrishnan (Died) Vs. Hindustan Petroleum Corporation Ltd.,] reported in 2018 1 CTC 876. The relevant portions in the judgement are extracted hereunder :-

32. The Hon'ble Supreme Court in the case of Atma S. Berar v. Mukhtiar Singh reported in AIR 2003 SC 624 acknowledged the power of appellate Court to take note of subsequent events as a well settled and undoubted proposition.

33. In the case of Ramesh Kumar v. Kesho Ram AIR 1992 SC 700, the Hon'ble Supreme Court held as follows:

"6. The submissions of learned Counsel are only partly correct. While it is true that a distinction must be made between pleading and proof, the further submissions that these must necessarily be in two



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successive sequential stages need not always be so and particularly when dealing with pleas of subsequent events in appeals and revisions. If the allegations of facts made in support of such a plea are denied then alone the question of their proof in an appropriate way arises. If those allegations of facts are admitted, there is no need to prove what is admitted or must be deemed to be admitted. There can be admissions by non-traverse. The High Court proceeded to accept the allegations as proved presumably in view of the fact that appellant's learned Counsel did not even appear, let alone challenge the allegations. But there might also be cases in which, having regard to the nature of the circumstances, the Court may insist upon proof independently of such admission by non-traverse.

When subsequent events are pleaded in the course of an appeal or proceedings of revision, the Court may, having regard to the nature of the allegations of fact on which the plea is based, permit evidence to be adduced by means of affidavits as envisaged in Rule 1 of Order 19, C.P.C. The Court may also treat any affidavit filed in support of the pleadings itself as one under the said provision and call upon the opposite side to traverse it. The Court, if it finds that having regard to the nature of the allegations, it is necessary to record oral evidence tested by oral cross-examination, may have recourse to that procedure. It may record the evidence itself or remit the matter for an enquiry and evidence. All these depend upon the factual and situational differences characterising a particular case and the nature of the plea raised. There can be no hard and fast rule governing the matter. The procedure is not to be burdened with technicalities."

34. Again in the case of Mohanlal v. Tribhovan AIR 1963 SC 358, the Constitutional Bench of Supreme Court has reiterated the duty of appellate Court to decide the appeal having regard to the subsequent events or change of law and para 7 of the judgment is extracted below:

"7. It would thus appear that when the matter was still pending in the Court of Appeal, the judgment of the lower Appellate Court being dated September 27,



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1954, the notification cancelling the previous notification was issued. The suit had, therefore, to be decided on the basis that there was no notification in existence under s. 88(1)(d), which could take the disputed lands out of the operation of the Act. This matter was brought to the notice of the learned Assistant Judge, who took the view that though, on the merger of Baroda with Bombay in 1949, the defendants had the protection of the Act, that protection had been taken away by the first notification' which was cancelled by the second. That Court was of the opinion that though the Appellate Court was entitled to take notice of the subsequent events, the suit had to be determined as on the state of facts in existence on the date of the suit, and not as they existed during the pendency of the appeal. In that view of the matter, the learned Appellate Court held that the tenants-defendants could not take advantage of the provisions of the Act, and could not resist the suit for possession. In our opinion, that was a mistaken view of the legal position. When the judgment of the lower Appellate Court was rendered, the position in fact and law was that there was no notification under cl. (d) of s. 88(1) in operation so as to make the land in question immune from the benefits conferred by the Tenancy Law. In other words, the tenants could claim the protection afforded by the law against eviction on the ground that the term of the lease had expired. But it was argued on behalf of the appellants that the subsequent notification, cancelling the first one, could not take away the rights which had accrued to them as a result of the first notification. In our opinion, this argument is without any force. If the landlords had obtained an effective decree and had succeeded in ejecting the tenants as a result of that decree, which may have become final between the parties, that decree may not have been re-opened and the execution taken thereunder may not have been recalled. But it was during the pendency of the suit at the appellate stage that the second notification was issued cancelling the first. Hence, the Court was bound to apply the law as it was found on the date of its judgment. Hence, there is no question of taking away any vested rights in the landlords. It does not appear that the second notification, cancelling the first notification, had been brought to the notice of the learned Single Judge, who heard and decided the



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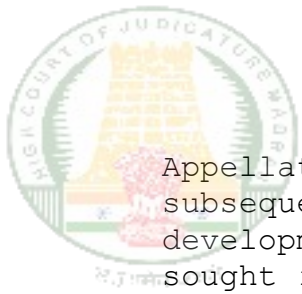
second appeal in the High Court. At any rate, there is no reference to the second notification. Be that as it may, in our opinion, the learned Judge came to the right conclusion in holding that the tenants could not be ejected, though for wrong reasons. The appeals are accordingly dismissed, but there would be no order as to costs in this Court, in view of the fact that the respondents had not brought the second notification cancelling the first to the pointed attention of the High Court."

35. In a subsequent judgment of Hon'ble Supreme Court, in the case of Shadi Singh v. Rakha AIR 1994 SC 800 it has been held as follows:

"7. It is settled law that subsequent events can be taken note of and the relief would be moulded suitably, vide Hasmat Rai and Anr. v. Raghunath Prasad, and M/s. Variety Emporium v. V.R.M. Mohld. Ibrahim Naina MANU/SC/0332/1984 : [1985] 2 SCR 102 at 110. Therefore, the appellate authority (District Court) is well justified in its conclusion that the cause of action for eviction of the appellant no longer subsisted after the tenant effected repairs and replaced that part of the fallen roof and the order of eviction, thereafter became unnecessary and wrong."

36. Having regard to the principles reiterated by Hon'ble Supreme Court, the fact that the lease has come to an end in 2013 can be taken into account in this case to sustain the suit in order to shorten the litigation and to secure the ends of justice. The right of respondent to claim the benefits of City Tenants Protection Act can be considered only if the respondent proves that it is in physical possession and not through a dealer or agent. It is true that an opportunity should be given to the respondent that it is entitled to the rights conferred under the Madras City Tenants Protection Act by proving the fact that the respondent is in actual physical possession as on the date when the suit was filed for possession.

9. It is clear from the above that this Court after considering the earlier judgements of the Hon'ble Supreme Court has held that where an Appellate Court finds that because of the altered circumstances, the original relief has become inappropriate or cannot be granted due to the subsequent events, the Court can take notice of such subsequent events and accordingly, mould or refuse to grant the relief. The Lower



Appellate Court was perfectly right in taking note of the subsequent developments in this case. Those subsequent developments had a direct bearing on the main relief that was sought for by the plaintiff and the Appellate Court was not in a position to grant any relief even if the case was found in favour of the plaintiff.

10. In the considered view of this Court, the findings of the Lower Appellate Court does not warrant any interference. That apart, no substantial question of law is involved in the present second appeal. In the result, this second appeal is dismissed and taking into consideration the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Tiruvallur.

2. The District Munsif,
Ambattur.

Copy To:-

The Section Officer
VR Section, High Court
Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.9697

SA.No.1111 of 2013

SJ(CO)
GN(10/03/2022)