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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 21.02.2022

PRONOUNCING ORDERS ON : 23.02.2022

CORAM:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Second Appeal Nos.568 and 1006 of 2014

S.A.No.568 of 2014

1.D.Thiruvengadam

2.D.Parankusam

3.D.Purushothaman

4.D.Parthiban ..Nil/Appellants 2 to 4/Appellants 1 to 4

..Vs..

1. Thiruvannamalai Kundrakudi Atheenam,

Rep.by Atheena Karthar Shrimath

Deivasigamani Ponnammalam Desikar

Thiruvannamalai Kundrakudi Atheenam,

Thirupathur Taluk,

Sivaganga District.

..Plaintiff/Respondent/1st
Respondent

2. D.Balakrishnan

..Defendant/1st Appellant/2nd Respondent

Prayer in S.A.No.568 of 2014: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 29.11.2013 made in A.S.No.548 of 2005 on the file of XVII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 06.04.2004 made in O.S.No.4798 of 1997 on the file of I Asst.Judge, City Civil Court, Chennai.

S.A.No.1006 of 214

D.Balakrishnan

..1st Defendant/1st
Appellant/Appellant

.Vs.

1. Thiruvannamalai Kundrakudi Atheenam,

Rep.by Atheena Karthar Shrimath

Deivasigamani Ponnammalam Desikar

Thiruvannamalai Kundrakudi Atheenam,

Thirupathur Taluk,

Sivaganga District.

..Plaintiff/Respondent



2. D.Thiruvengadam

3. D.Parankusam

4. D.Purushothaman

5. D.Parthiban

..Defendants/Appellants 2 to
5/Respondents

Prayer in S.A.No.1006 of 2014: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 29.11.2013 made in A.S.No.548 of 2005 on the file of XVII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 06.04.2004 made in O.S.No.4798 of 1997 on the file of I Asst.Judge, City Civil Court, Chennai.

For Appellants

in S.A.No.568/2014

R2 to R5 in S.A.No.1006/2014: Mr.R.Thiagarajan

in S.A.No.1006/2014

: Mr.T.Dhanasekaran

For Respondents

in S.A.No.568/2014

: Mr.T.Dhanasekaran for R 2

in S.A.No.568/2014

: Mr.K.V.Ananthakrushnan

in S.A.No.1006/2014

for R1

COMMON JUDGMENT

The 1st defendant in the suit is the appellant in S.A.No.1006 of 2014. The appellants 2 to 4 before the lower Appellate Court are the appellants in S.A.No.568 of 2014.

2.The 1st respondent/plaintiff filed a suit seeking for the relief of a direction to direct the defendants to vacate and handover the vacant possession of the suit property. The case of the plaintiff is that they are the owners of the land measuring about 3010 Sq.ft., which is more fully described in the suit schedule. According to the plaintiff, the suit schedule property was originally leased out to the father of the 1st defendant through a lease agreement dated 16.10.1954 (Ex.A5). It is stated that the suit property was supposed to be maintained as a cattle shed and no permanent structure was permitted to be put up in the suit property. In spite of such a restriction, the father of the 1st defendant proceeded to put up a construction and aggrieved by the same, the plaintiff filed O.S.No.2645 of 1963 for the relief of permanent injunction and the said suit was



decreed by a judgment and decree dated 25.10.1966. An appeal was preferred in A.S. No.24 of 1966 and during the pendency of the appeal, there was a compromise and the father of the 1st defendant agreed to pay a sum of Rs.100/- per month as rent from 25.10.1966 onwards.

3.The further case of the plaintiff is that after the demise of the original tenant, the 1st defendant continued to occupy the property. However, he was not regular in paying the rent and as a result of the same, he accumulated huge arrears. The plaintiff also realised that a very low rent has been fixed and hence, enhanced the rent to Rs.500/- per month. This once again became a subject matter of challenge before the Civil Court.

4.The plaintiff wanted to put the property for proper use in line with their requirement and hence caused a notice dated 05.12.1996 (Ex.A3) asking the defendant to handover vacant possession. This notice was purportedly issued in compliance with Section 106 of the Transfer of Property Act, 1882 (hereinafter called as "the Act"). Since the defendants did not handover the vacant possession, the suit came to be filed.

5.The main defence that was taken in the written statement was that the notice has been issued with an incorrect description of the suit property and hence the very basis of the suit is unsustainable. Initially, the appellant in S.A. No.1006 of 2014 was the only defendant in the suit. After the decree was passed by the trial Court, the other legal heirs of the original tenant filed C.M.P.No.2023 of 2005 before the Appellate Court and impleaded themselves as appellants 2 to 5. They also toed the line of the first defendant.

6.Both the Courts below, on appreciation of the oral and documentary evidence and after considering the facts and circumstances of the case, found that the property has been properly identified by the plaintiff and a notice has been issued in accordance with the requirements of the Act and accordingly, allowed the suit in favour of the plaintiff and it was also affirmed by the lower Appellate Court. Aggrieved by the same, the present Second Appeal has been filed before this Court.

7.The Learned Counsel for the appellants submitted that the termination of the lease was not done in accordance with Section 106 of the Act, since it did not contain the proper description and identification of the property that was leased out to the appellants. It was submitted that there are two sets of properties and whereas the eviction notice was issued only for one property. It was further submitted that there were originally two lease deeds dated 02.10.1945 and 22.11.1950, marked as exhibits B1 and B2 which provided for two different door numbers and Ex.A5 cannot be held to be clubbing both the properties and therefore, the very basis of the findings of the



Courts below is erroneous. Hence, the learned counsel appearing on behalf of the appellants submitted that the findings of both the Courts below warrants the interference of this Court.

8. This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully considered the findings rendered by both the Courts below.

9. There is no dispute with regard to the fact that the plaintiff is the owner of the suit property and the defendants are tenants. According to the defendants, 1500 Sq.ft. was leased out as per Ex.B1 and it was subsequently renewed through Ex.B2 lease deed. Thereafter, no extension was granted. According to the defendants, the property involved in Ex.B1 and Ex.B2 are different from the property involved under Ex.A5.

10. Both the Courts below, after appreciating the oral and documentary evidence and after considering the defence raised by the defendants, found that a larger extent has been leased out to the father of the defendant through Ex.A5 and this extent was larger than the extent found under Exhibits B1 and B2. Both the Courts below took into consideration the survey numbers that were mentioned in exhibits B1, B2 and A5 and also the boundaries and came to a categorical conclusion that the property mentioned in exhibits B1 and B2 is also included under Ex.A5. Both the Courts below found that there are two door numbers since the property was facing two different streets and that by itself does not make the suit property into two distinct properties as claimed by the defendants. Both the Courts below in order to reach a proper conclusion also relied upon the judgment passed in S.A.No.349 of 1998 (Ex.A6). In the said judgment, the 1st defendant was the respondent and at that point of time, the defendant never raised any dispute with regard to the identity of the property.

11. There is no dispute with regard to the fact that two houses have been built in the land belonging to the plaintiff within the extent covered under Ex.A5. It is also an admitted fact that the plaintiff is the owner of the land and what was paid as a rent only pertained to the land. Therefore, just because there are two constructions with two different door numbers, that does not make the property into two distinctive properties. The defendants were desperately attempting to cause a confusion and both the Courts below have properly dealt with it and rendered their findings. Insofar as the bonafides of the plaintiff that was questioned by the defendants is concerned, both the Courts below have concurrently held that it is for the plaintiff to decide as to how they want to utilise the property and it cannot be dictated by the defendants.

12. In view of the above findings, both the Courts below



found that there is absolutely no defect in the eviction notice issued to the defendants.

13. In the considered view of this Court, the findings of both the Courts below cannot be termed as perverse since it is based on the evidence available on record. Hence, it does not warrant the interference of this Court. In any event, no substantial questions of law are involved in these Second Appeals.

14. In the result, both the Second Appeals are dismissed with cost and the judgments and decrees passed by both the Courts below are hereby confirmed. The appellants are granted three months time from today to handover the vacant possession of the suit property to the plaintiff.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

KP

To

1. XVII Additional Judge,
City Civil Court, Chennai.

2. I Asst. Judge,
City Civil Court, Chennai.

+2cc to Mr.R.Thiagarajan, Advocate, S.R.No.12105

+2cc to Mr.K.V.AnanthaKrushnan, Advocate, S.R.No.11722

Second Appeal Nos.568 and 1006 of 2014

EV(CO)

RGA(11/04/2022)