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S.A.No.1191 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.1191 of 2011

Chinnasalem Weavers Co-Operative Society Limited,
E1349 represented by its Special Officer,
Chinnasalem.

... Appellant

- Vs -

1. Muniappan (died)
2. Tmt.Kamala
3. Mr.Nagaraj
4. Tmt.Nagalakshmi
5. Tmt. Nagasuriya

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.10/2008 on the file of Additional District & Sessions Court-cum-Fast Track Court No.3, Kallakurichi dated 29.06.2011 in reversing the judgment and decree in O.S.No.614 of 2000 on the file of 3rd Additional District Munsif Court, Kallakurichi dated 17.03.2005.

For Appellant : Ms.R.Abirami

For Respondents : R1-died

Mr.G.Mohammed Aseel for R2 to R5



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JUDGMENT

The plaintiff is the appellant and the defendant is the respondent before this Court.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant second appeal is that the suit property was assigned to the plaintiff's society by virtue of the Government Order. In pursuance of the said Government Order, the plaintiff have been in actual possession and enjoyment of the same. While so, the plaintiff have leased out the suit property to the defendant on a monthly rental of Rs.100/-. The lease is a oral lease. There was rental arrears for a period of 22 months. Since the defendant is defaulted in paying the rent, the defendant is liable to be evicted from the suit property and also prayed for a recovery of a sum of Rs.2,200/- towards the arrears of rent.

4. The suit was resisted by the defendant with the contention that they have been in physical possession and enjoyment of the property for more than 20 years, and that they have been given patta in respect of the suit property and there is also electricity connection in their name and that he has been carrying out a business of selling fire wood from the suit property. The



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defendant denies the assignment towards the Society and also disputes the landlord-tenant relationship. Hence, this defendant prayed to dismiss the suit.

Evidence, Documents and finding of the Court below:-

5. Before the Trial Court, the plaintiff examined two witness as PW1 and PW2 and marked as many as 22 documents as Exs.A1 to A22. On behalf of the defendant, one witness was examined as DW1 and 44 no documents have been marked as Exs.B1 to B44.

6. The Trial Court, after having considered both oral and documentary evidence decreed the suit as prayed for. Aggrieved with the said finding, the defendant approached the First Appellate Court. The First Appellate Court has found that the plaintiff has not established his title over the property and the landlord-tenant relationship, and ultimately allowed the appeal and thereby, dismissed the suit. Aggrieved with the said order, the plaintiff is before this Court by way of this Second Appeal.

Substantial Question of law:-

7. At the time of admission, this Court has formulated the following question of law:-

“1. Whether the first appellate court has committed an



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error in holding that the suit in the civil court is barred by Tamil Nadu Buildings (Lease and Rent Controls) Act, 1960 without there being any pleading and without an issue being framed?

2. Whether the first appellate court has committed an error in ignoring the Notification No.II (2)/HO/6060/76 dated 21.11.1974 exempting the buildings owned by Cooperative societies from the purview of Act XVIII of 1960?"

Submissions of either side counsel:-

8. The learned counsel for the appellant would submit that when the plaintiff has marked Exs.A1 and A2, being the assignment order, it is beyond the scope of jurisdiction of the Civil Court to go into irregularity and deviation of the assignment. The learned counsel would contend that, the order of the First Appellate Court holds title with the defendant based upon the Revenue records is contrary to the settled legal position. The learned counsel for the appellant would further contend that when the defendant has not set up any individual title and he relied upon the possessory title, it is the duty of the First Appellate Court to rely upon the documents submitted by the plaintiff and would have confirmed the decree of the Trial Court. Hence, prayed to allow the Second Appeal.



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9. Per contra, the learned counsel for the respondent would submit that the very condition by and in which the land was allotted to the plaintiff was not complied with and that the plaintiff has not established his title over the property. It is also the submission of the learned counsel for the respondent that the plaintiff did not adduce any evidence as to the landlord tenant relationship. The learned counsel for the respondent would submit that the very reversal order by the First Appellate Court is based upon the admissions made by the plaintiff's evidence. Therefore, would contend that the order of the First Appellate Court is liable to be confirmed.

10. I have given my anxious consideration to either side submissions.

Analysis:-

11. While considering the plaintiff's contention, his case rest upon the assignment, which had taken place through Exs.A1 and A2. In this regard, the learned counsel for the respondent would invite the attention of this Court in respect of the findings recorded by the First Appellate Court. Wherein the First Appellate Court has referred about OS.No.52 of 2000. Wherein, the plaintiff has filed a suit against the Government in respect of the title over the property. Today, by a separate order this Court has disposed of SA.No.823 of 2007 arising out of OS.No.52 of 2000. In the said



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judgment, this Court held that since the plaintiff has not complied with the conditions of assignment, the Government is entitled to resume the land. To put it in other words, this Court has confirmed the finding that the plaintiff has no right title over the suit property. Therefore, when the plaintiff has no right title over the suit property, naturally he cannot have any relief for possession against this defendant.

12. It is pertinent to mention here that even according to the admissions made by the plaintiff's witnesses, in respect of the suit property, patta was issued in the name of the defendant, and that he has been doing business in the suit premises and electricity service connection also stands in his name. Therefore, this Court is of the view that the defendant has established his possession over the suit property not only through the admission of the plaintiff, but independently based upon the Revenue records. Further, the finding of fact recorded by the First Appellate Court that there is no proof as to the landlord tenant relationship is well merited, since no documents and witnesses were examined to prove such relationship.

13. Therefore, this Court is of the firm view that in view of the judgment made in SA.No.823 of 2007, by and in which this Court confirms the finding of fact recorded by the First Appellate Court by holding that the



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plaintiff has no right title over the suit property. As such he is not entitled for the relief of possession. Thus, the order passed by the First Appellate Court is liable to be confirmed and the substantial question of law are answered in favour of the respondent.

14. In the result, this Second Appeal is dismissed by confirming the order of the First Appellate Court. There shall be no order as to costs.

02.11.2023
(2/2)

kmi

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

1. The Additional District & Sessions Court,
Fast Track Court No.3, Kallakurichi,
Kallakurichi.
2. The III Additional District Munsif,
Kallakurichi.



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C.KUMARAPPAN,J

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