



WEB COPY



S.A.No.118 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2023

CORAM:

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

S.A.No.118 of 2021
and
C.M.P.No.2483 of 2021

K.Selvaraj

... Appellant

/versus/

1. Chitradevi

2. Mars Dye Chem, Erode,
A Partnership Firm by its
Partner, K.Selvaraj

3. P.Saravanakumar

.. Respondents

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, prayed to set aside the judgment and decree dated 28.01.2020 made in A.S.No.171 of 2018 on the file of the I Additional District Court, Erode, conforming the judgment and decree dated 26.10.2018 made in O.S.No.403 of 2010 on the file of the II Additional Sub Court, Erode by allowing the Second Appeal.

For Appellant : Mr.N.Manokaran

For R1 : Mr.R.Ganesh



S.A.No.118 of 2021

JUDGMENT

WEB COPY

Second defendant in the suit has filed the present Second Appeal against the judgment and decree passed by the I Additional District Judge, Erode in A.S.No.171 of 2018 dated 28.01.2020 dismissing the Appeal Suit filed by him confirming the Judgment and Decree passed by the Second Additional Sub Judge, Erode in O.S.No.403 of 2010 dated 26.10.2018.

2. For the sake of convenience, the parties are referred to as they were referred in the trial Court.

3. The plaintiff/first respondent herein has filed the suit contending as under:-

i) The suit property is located in Periasemur Village, Erode Taluk. The plaintiff is the absolute owner of the suit property which comprises of ground floor and two rooms in the first floor. The plaintiff's husband namely the third defendant had purchased the property and later made certain structural developments in the suit property and gifted the same to the plaintiff through a gift settlement deed dated 11.02.2009 duly



S.A.No.118 of 2021

registered as Document No.356 of 2009 at Erode Sub Registrar Office.

WEB COPY

The plaintiff accepted the said gift and carried out mutation of revenue records in her name and was enjoying the suit property by remitting the property tax to the Periasemur Municipality, Erode.

ii) The third defendant is a partner in the first defendant firm. The business of the firm was being run in the suit property and the plaintiff permitted the third defendant to carry on the business of the first defendant and licensed it. Thus, on and from 11.02.2009, the possession of the first defendant in the suit property is that of licensee.

iii) The second and third defendants were fighting a battle royal and the matter is pending in Court. The plaintiff had only licensed her husband/third defendant to remain in the suit property and carry on the business and in view of the change of circumstances, the plaintiff is constrained to file this suit for possession.

iv) Had the property been leased out, it would have fetched not less than Rs.15,000/- per month. No sum was paid to the plaintiff under any head. The second and third defendants are at logger heads and are not agreeing on any issue and the plaintiff's absolute interest has to be protected and safeguarded and thereby she had revoked the licence and



S.A.No.118 of 2021

WEB COPY

sought for the possession from the defendants during the first week of August 2010 and since the defendants did not heed to her request, she was constrained to file the suit seeking to direct the defendants herein to surrender the vacant possession of the suit property within a time frame and in the event of non compliance, put the plaintiff in possession of the same through assistance of Court and directing the defendants to pay damages for use and occupation of the suit property @ Rs.10,000/- per month from the date of filing of suit till date of delivery of Possession with cost of the litigation.

4. The second defendant contested the suit by filing a written statement contending as under:-

i) The third defendant is the nephew of the second defendant and he was an unemployed youth. He had no penny at all and he joined the firm of the second defendant as an employee. Originally, the second defendant alone did the business in dyes and chemicals under the name and style of “New T.M.R. & Co.”. It is a Proprietorship Concern. As the 3rd defendant was an unemployed person, he was given employment in “Pon Finance” for monthly wages. At that time, the New T.M.R & Co had



S.A.No.118 of 2021

WEB COPY

account with UCO Bank, Mettur Road, Erode and Indian Overseas Bank in Periyarnagar, Erode.

ii) The third defendant, being a close relative of the second defendant, was given employment only a monthly salary of Rs.1,500/- from the beginning and it has been raised to Rs.10,000/- in the month of November 2007. Except the salary, he had no other income from any other source. Apart from that, he has no property at all either to him or to his family except a $\frac{1}{2}$ acre of I.B.P.land.

iii) Whiles, the third defendant committed breach of trust and had issued several cheques of the above said banks, which were entrusted to him, without filling the name, date and amount and thereby, he had looted more than Rs.50,00,000/- behind the back of the second defendant. Without knowing the misappropriation of money by the third defendant, on 28.11.2007, this defendant made him a partner in his business and he also contributed Rs.1,00,000/- for him towards partnership capital.

iv) The second defendant came to know that the third defendant had looted the money only after the purchase of the suit property by him in his name. When this defendant questioned the source of income for



S.A.No.118 of 2021

WEB COPY purchasing the suit property and scrutinizing the account of the New T.M.R and Co., the second defendant came to know that from 1998 onwards he made order to the tune of more than Rs.50,00,000/- and the said fact only came to on 18.06.2009 and from that money alone he purchased the suit property for Rs.8,00,000/-.

v) The second defendant helped the third defendant and his family members. The parents of the third defendant are living in a house at Nallanthozhuvu, a village far away from the Erode and that house also had been mortgaged with bank. The third defendant's income tax returns would prove that he had no source to purchase the property. The first defendant namely “ Mars Dye Chem, Erode”, a partnership firm, which was a defunct one and the second defendant is not the partner of the same. Moreover, the partnership is only at will and already notice had been issued for dissolution and rendition of account and the arbitration proceedings are pending.

5. Based on the pleadings, the trial court framed the following



S.A.No.118 of 2021

issues:

WEB COPY

(i) Whether the plaintiff is entitled to recover possession of the suit property?

ii) Whether the plaintiff is entitled for damages?

iii) To what other relief?

6. On the side of the plaintiff, the plaintiff examined herself as P.W.1 and marked Exs.A1 and A2. On the side of the defendants, the second defendant was examined as D.W.1 and one Karthika was examined as D.W.2 and Exs.B.1 to B.13 were marked.

7. The learned Trial Judge, appreciating the evidence on both sides, decreed the suit for recovery of possession and for damages of Rs.10,000/- per month from the date of suit in favour of the plaintiff till the date of realization.

8. Aggrieved against the Judgment and decree of the trial court dated 26.10.2018, the second defendant had filed the Appeal Suit in A.S.No.171 of 2018 before the I Additional District Court. Erode. The



S.A.No.118 of 2021

Appellate Court had framed the following points for determination:

WEB COPY

(i) Whether the trial court is correct in concluding that the possession of suit property by the appellant and the second respondent could be treated as licence?

(ii) Whether the trial Court is correct in awarding the damages without any oral or documentary evidence adduced by the first respondent?

(iii) Whether the appeal can be allowed?

9. On re-appreciating the oral and documentary evidence, the appellate court had concurred with the findings of the Trial Court, aggrieved against which, the present Second Appeal has been filed by the second defendant.

10. Learned counsel for the appellant would submit that the plaintiff is not entitled to the relief of recovery of possession and damages as the suit property itself was purchased by the third defendant under Ex.B10 dated 23.11.2006 from the money swindled by him from the first respondent business and by colluding with the plaintiff, he had settled the



S.A.No.118 of 2021

same by a self serving document viz., a gift settlement deed, Ex.A1 dated 11.2.2009 in favour of the plaintiff, who is none other than his wife in order to thwart the claim of the second defendant, however, the courts below have granted the relief prayed for by the plaintiff without appreciating the above facts. He would further submit that the courts below failed to ascertain as to how the plaintiff had arrived at the damages for use and occupation of the suit property to the tune of Rs.10,000/- per month and erred in allowing the same without there being any oral or documentary evidence. He would also submit that the courts below have erred in decreeing the suit by misconstruing the lease as licence particularly when the partners of the first defendant firm had created an interest which is irrevocable and the said right cannot be termed as a licence between the parties.

11. Learned counsel appearing for the first respondent/plaintiff would submit that the suit property absolutely belongs to the plaintiff on its being settled in her favour by her husband the third defendant by way of a gift settlement deed, Ex.A1 dated 11.2.2009 and thereafter, she had permitted the defendants to run their business, however, when they had



S.A.No.118 of 2021

WEB COPY

not paid any amount to the plaintiff, she had to revoke the licence granted by her to the third defendant and had come forward with the suit for recovery of possession and damages. He would further submit that the courts below have rightly appreciated the oral and documentary evidence, especially, the cross examination of D.Ws.1 and 2 and disbelieved the version of the second defendant and granted the relief sought for by the plaintiff. He would also submit that only after considering the fact that the suit property is situated in a prime locality, the courts below have appraised the damages to the tune of Rs.10,000/- per month though it could fetch a sum of Rs.15,000/- per month and thus, the courts below have rightly granted the relief sought for by the plaintiff and they do not require any interference by this court.

12. Having heard the learned counsel appearing for the parties and perused the materials available on record, this court finds that though a crispy order alone has been passed by the Trial Court touching the main aspects of the case, the first appellate court, on appreciating the entire oral and documentary evidence and especially, the oral evidence of D.Ws.1 and 2 in cross examination, through which, the plaintiff had



S.A.No.118 of 2021

WEB COPY

elicited her case, had disbelieved the version of the second defendant with regard to swindling of money alleged by him against the third defendant and creation of self-serving documents.

13. Further, the first appellate court, on appreciating the documents produced under Ex.B13 including the partnership deed, Ex.B4 dated 28.11.2007, found that defendants 2 and 3 had entered into the deed of partnership contending that the third defendant was running the business with effect from 13.7.2007 as a proprietorship concern and he had admitted the second defendant as a partner. Further, considering the recitals in the partnership deed with regard to the place of business viz., the suit property and in the absence of any proof with regard to the allegation of swindling of money by the third defendant, the appellate court had disbelieved the version of the second defendant and concluded that the suit property belonged to the third defendant alone and he had settled the same in favour of the plaintiff under Ex.A1 dated 11.2.2009 and thereby the plaintiff became the exclusive owner of the suit property.

14. The appellate court, having considered the scope of the case



S.A.No.118 of 2021

elaborately in the light of the provisions under Section 105 of the Transfer of Property Act and Section 52 of the Easements Act, 1882, found that in the absence of any lease agreement, the possession of the suit property by the first defendant firm would be treated only as a licence and further having found that the plaintiff had revoked such a licence, granted the relief of recovery of possession to the plaintiff, which does not warrant any interference.

15. It is also seen that the first appellate court has taken into consideration the prime locality of the suit property to concur with the finding of the Trial Court with regard to the damages fixed to the tune of Rs.10,000/- and thereby, this court is of the view that it also does not require any interference.

16. The learned counsel for the appellant would submit that the courts below erred in ignoring that no sufficient court fee was paid in terms of Section 22 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 while granting the relief of damages.



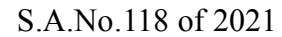
S.A.No.118 of 2021

WEB COPY

17. In this case, a perusal of records shows that the plaintiff had claimed damages for occupation only from the date of plaint and not for any arrears of damages. In such circumstances, this Court is of the opinion that the plaintiff has rightly paid the court fee and thereby, the relief of damages granted also needs no interference.

18. When all the grounds raised by the appellant have been dealt with and answered by the first appellate court, this court is of the view that there is no error or infirmity in the findings rendered by the courts below and no substantial question of law is involved to admit this second appeal in the light of the decision in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** wherein, the Apex Court has held as under:-

"23. Sub-section (1) of [Section 100](#) of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is



19. In view of the above, this court finds that no question of law, less substantial question of law arises for consideration, the Second al fails and the same is liable to be dismissed at the admission stage



S.A.No.118 of 2021

itself. Accordingly, the second appeal is dismissed by confirming the concurrent findings rendered by the Courts below. No costs. Consequently, the connected Miscellaneous Petition is closed.

22.09.2023

Vv/ssk.

To

1. The I Additional District Judge, Erode.
2. The II Additional Sub Judge, Erode.
3. The Section Officer, V.R.Section,
Madras High Court, Chennai-104



WEB COPY



S.A.No.118 of 2021

A.D.JAGADISH CHANDIRA,J.

Vv/ssk.

S.A.No.118 of 2021
and
C.M.P.2483 of 2021

22.09.2023