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S.A.No.298 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.298 of 2017
and
CMP.No.7077 of 2017

V.M.C.Sivashanmuganathan

... Appellant

Vs.

1.Dhanalakshmi
2.Murugaiyan
3.Jeevanantam
4.Rajkumar
5.Saminathan
6.Balu
7.Mohan
8.Rani

... Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 14.03.2016 in A.S.No.1 of 2013 on the file of the learned District Judge, Karaikal, confirming the judgment and decree dated 28.11.2011 in OS.No.21 of 2002 on the file of the learned Principal District Munsif, Karaikal.



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For Appellant : Mr.R.Sunil Kumar
For Respondents : Ms.A.Dipthi Munnoth
for Mr.K.V.Babu for R1 to R8

JUDGMENT

The unsuccessful plaintiff in the suit for recovery of possession is the appellant. He filed a suit seeking for recovery of possession based on landlord and tenant relationship. The suit was dismissed by the trial Court and aggrieved by the same, he filed an appeal, which was also dismissed by the first Appellate Court. Challenging the concurrent findings against him, the plaintiff has come up with this Second Appeal.

2. According to the appellant/plaintiff, the suit property was allotted to his share in a family partition dated 03.01.1970. The first defendant Dhamodharan Raja was inducted by him as a tenant of the suit property under oral lease arrangement. It was pleaded that the original rent was Rs.20/- per month and the same was subsequently enhanced to Rs.50/- per month. The first defendant failed to pay rent from January 2000 and hence, notice was issued to him on 12.10.2000 terminating the tenancy by 31st October 2000. He



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was called upon to vacate the premises and hand over the possession by 1st November 2000. In spite of service of notice, the first defendant in the suit failed to vacate the premises and hence, the appellant was constrained to file a suit for recovery of possession based on the jural relationship of landlord and tenant. Pending suit, the first defendant died and his legal representatives were recorded as defendants 2 to 9.

3. The legal representatives of the deceased first defendant filed a written statement denying the jural relationship of landlord and tenant between the appellant and the deceased first defendant. The respondents/defendants 2 to 9 also had taken a plea that the suit property was sold by the plaintiff to third party and hence, he had no title over the suit property on the date of filing of the suit.

4. Before the trial Court, the appellant was examined as PW1 and his power agent was examined as PW2. Five documents were marked on behalf of the appellant as Ex.A1 to Ex.A5. The third defendant and 8th defendant were examined as DW1 and DW2. Two other witnesses were examined as DW3 and DW4. On behalf of the respondents, 3 documents were



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marked as Ex.B1 to Ex.B3.

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5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant/plaintiff failed to establish oral tenancy as pleaded by him and consequently, dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.1 of 2013 on the file of the District Judge, Karaikal. The first Appellate Court also concurred with the findings of the trial Court. Hence, the appellant has come up with this Second Appeal.

6. At the time of admission, this Court formulated the following substantial questions of law:

“1. Whether the Courts below did not err in overlooking the presumption of valid execution attached to the partition deed of the year 1970 an ancient document as per Section 90 of Evidence Act and misdirected itself by dismissing the suit?

2. Whether the Courts below did not err in holding that the suit filed by giving four boundaries without measurement is fatal inspite of the finding of this Hon'ble Court and Supreme Court that boundaries will prevail over extent?”



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7. The learned counsel for the appellant submitted that the properties covered under Ex.B1 and Ex.B2 relied on by the respondents are not the suit properties and the properties covered by those documents are properties of his brother Sivabalan. Therefore, the findings rendered by the Courts below as if the appellant failed to prove his title is vitiated by the non-consideration of evidence available on record in proper prospective.

8. The appellant has filed the suit for recovery of possession based on the landlord and tenant relationship. The suit was not laid by the appellant based on his title. It is seen from the averment and also valuation adopted by the appellant in his plaint that the suit was laid only based on the landlord and tenant relationship. The appellant has not paid Court fee on the market value of the suit property while filing the suit and the plaint has been valued based on the annual rental value of the property. Hence, it can be safely concluded that suit has been laid for ejectment based on jural relationship of landlord-tenant.

9. In such circumstances, in the suit for recovery of possession



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based on the landlord and tenant relationship, the Court need not go to the question of title. Therefore, this Court need not consider the documents marked by the respondents as Ex.B1 and Ex.B2 and decide whether the suit property was sold by the appellant to the third party or not under the said documents. When the appellant laid the suit based on the jural relationship between the landlord and tenant he need not prove his title over the suit property. Therefore, this Court is not inclined to consider the submission of the learned counsel for the appellant that the findings rendered by the first Appellate Court as if he failed to prove his title is erroneous. Being a suit for ejectment based on the jural relationship of the landlord and the tenant the burden is on the appellant to prove the jural relationship of landlord and tenant.

10. In the case on hand, in order to prove the jural relationship, the appellant was examined as PW1 and his power agent was examined as PW2. The Courts below rejected the oral evidence of PW1 & PW2 as interested testimony. For the reasons best known to him, the appellant failed to examine any independent witness like neighbours to prove the alleged oral tenancy pleaded by him. The Courts below based on proper appreciation of



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evidence available on record came to the conclusion that the appellant failed to establish the jural relationship between the landlord and the tenant. In such circumstances, the suit for ejectment filed by the appellant based on the jural relationship is liable to be dismissed.

11. In view of the discussions made earlier, both the substantial questions of law framed at the time of admission are answered against the appellant and the Second Appeal stands dismissed. The dismissal of the present suit filed by the appellant will not prevent him from filing a fresh suit for recovery of possession based on his title.

12. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

23.11.2023

Index : Yes
Internet : Yes



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Neutral Citation Case : Yes
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S.SOUNTHAR, J.

dna

To

- 1.The District Court, Karaikal
- 2.The Principal District Munsif, Karaikal.

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