



S.A.No.1005 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2024

PRONOUNCED ON : 22.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

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Sendamarai Ammal

1. Rukmani

2. Jothi Chockalingam

3. Santhanalakshmi

4. Vadivel Murugan

5. Sundari

6. Manivannan

...

Appellants

(cause title accepted vide order
dated 09.09.2009 made in M.P.No.2/2009
in S.A.Sr.No.4363/2009)

/Vs./

Dharmamurthy Rao Bahadur,
Calavala cunnan chetty's Charities,
represented by its Trustees

1. M/s. Gunnian chetty

2. Venkatachalam

3. Sethuraman

4. V.R.Bakthavatchalam



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5. Vummidi Sreehari

6. Nandagopal

7. Venkatesa Perumal

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree passed by the learned Additional District Judge, V Fast Track Court, Chennai in A.S.No.283 of 2007, dated 10.04.2008 confirming the decree and judgment passed by the V Assistant City Civil Judge, Chennai in O.S.No.5180 of 2001 dated 26.07.2005.

For Appellant : Mr. S. Venkatesan

For Respondents : Mr. B. Srinivasa Babu
(for R1 to R5 & R7)

: R6- died- given up

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 10.04.2008 passed in A.S.No.283 of 2007 on the file of Fast Track Court-V, Chennai, confirming the Judgment and Decree dated 26.07.2005 passed in O.S.No.5180 of 2001 on the file of V Assistant City Civil Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.



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3. The legal heirs of the defendant in O.S.No.5180 of 2001 on the file of the V Assistant Judge, City Civil Court, Chennai are the appellants in this Second Appeal. The suit was filed by the plaintiffs for directing the defendant to quit and deliver vacant possession of the entire property bearing Door No.1, Venkatachala Naicken Street, First Lane, Royapuram, Chennai 13.

4. The averments stated in the plaint are that the plaintiff Trust is a Public Religious and Charitable Trust exempted from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act in terms of G.O.Ms. No.2000 (Home) dated 16.8.1976. The defendant is a tenant occupying 1510 square feet of built up area and paying a monthly rent of Rs.800/- and using the same for residential purposes. Since the building is more than 80 years old, the plaintiffs Trust decided to demolish and reconstruct a new building to augment their income and legal notice dated 3.12.2000 was issued to the defendant to quit and deliver vacant possession. A notice under Section 106 of Transfer of Property Act was issued determining the tenancy with the expiry of 31.12.2000. The defendant sent a reply dated 22.12.2000 and 8.1.2001 stating that he is willing to purchase the house at price fixed by the Charities. The plaintiffs have made arrangements to submit a plan and as per the Municipal regulations the



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plaintiffs can put up easily ground floor and first floor nearly an extent of 1900 sq.feet. The expected cost of construction may be around Rs 8 lakhs. The rent fetching capacity will be a little over Rs.7,500/-. Hence the suit.

5. The respondents/defendants filed written statement denying the allegations and averments as contained in the plaint besides contended that the plaintiff has to prefer eviction petition before the Rent Controller. The building is in good condition since the defendant has carried out all the repairs periodically and is maintaining the building. The defendant has spent more than Rs.50,000/- for carrying out the repairs. The defendant's father and ancestors were living in the suit property. Initially the suit property consisted of only 900 sq.feet of built up area. The defendant only put up three rooms in the vacant area to an extent of 600 square feet at his own cost. No notice was issued under Section 106 of Transfer of Property Act. The termination of tenancy is neither legal nor justified. The plaintiff is not bonafide in filling the suit for ejectment. There are several other properties owned by the plaintiff which are more older than the suit property and the plaintiff has not filed any suit for ejectment against the tenants in those properties. In the year 1972, the plaintiff was intending to sell the suit property and the defendant also offered to purchase the property for a consideration and the defendant was assured that his offer would



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be considered by the then President of the Charities. The suit is vexatious and has been filed with an intention to evict the defendant from the suit premises and thus, pleaded to dismiss the suit.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

- 1. Whether the defendant has to deliver vacant possession of the suit property to the plaintiff?***
- 2. Whether this Court has no jurisdiction to try the suit ?***
- 3. Whether the plaintiffs have not paid necessary court fees?***
- 4. To what relief?***

7. Before the Trial Court, in support of the plaintiff's case, one Mahadevan, who is working as Office cum Legal Assistant in the plaintiff's Trust, has been examined as PW1 and 8 documents were marked as Ex.A.1 to Ex.A.8. On the side of the defendant, one Manivannan, who is the son of the defendant has been examined as DW1 and 18 documents were marked as Ex.B.1 to Ex.B.18.



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8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court decreed the suit as prayed for with a direction to the defendant to deliver vacant possession of the schedule premises to the plaintiff within three months from the date of decree.

9. Aggrieved over the same, the legal heirs of the deceased defendant have preferred the First Appeal in A.S.No.283 of 2007 before the Fast Track Court-V, Chennai. The First Appellate Court, after considering the entire materials, dismissed the appeal with costs thereby confirming the judgement and decree passed by the Trial Court. Now, challenging the same, the present Second Appeal has been filed by the appellant/legal heirs of the defendant.

10. The second appeal has been admitted on the following substantial question of law:

- 1. Whether the Trial Court committed error without framing the specific issue as provided under Order 14 Rule 1 CPC relating to the hardship between the appellant and the respondents in determining the issue of eviction ?***
- 2. Whether the First Appellate Court committed error***



without following Mandatory provision under Order 41 Rule 31 at the time of determination of the appeal ?

3. Whether the Courts below failed to consider the respondent is a public charitable trust in the absence of documentary evidence.

11. The learned counsel appearing for the appellants/defendants contended that the Trial Court as well as the First Appellate Court failed to consider the fact that the Trustees, who represented on behalf of the Trust, were not examined themselves as witnesses. Both the Courts below failed to consider the hardship of the appellants caused due to the eviction from the premises since they already invested more than Rs.50,000/- towards improvement of the suit property and also failed to consider Ex.B.1 to ExB.6. He further contended that notice dated 03.12.2000 under Section Transfer of Property Act is not a valid one and notice expired on 31.12.2000 and the notice was received by the defendant on 19.12.2000. In view of the Section 106 (2) of Transfer of Property Act, the period mentioned in sub-section(1) shall commence from the date of receipt of notice. The defendant received the notice only on 19.12.2000. It falls short of the period specified under that Sub Section (1). Therefore, the eviction orders passed by the Trial Court as well as



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the First Appellate Court are erroneous and liable to be set aside . To support this argument, he relied upon the judgment of the Hon'ble Supreme Court reported in *AIR 1984 Page 130 (J.J.Pancholi /vs/ Sridharjee and others)*. He further contended that there is no bonafide on the part of the respondents/plaintiffs to evict the appellants and further, the learned counsel reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the second appeal.

12. The learned counsel appearing for the respondents supported the judgment of the Trial Court and the First Appellate Court and there is no error in the findings. Since there is no substantial question of law involved in this case, this Second Appeal is not maintainable and thus, pleaded to dismiss the appeal.

13. I have considered the matter in the light of the submissions made by the learned counsel on either side and perused the materials available on records carefully.

14. On perusal of evidence on records, it is seen that the plaintiff Dharmamurthy Rao Bahadur Calavala Cunnan Chetty's charity is represented by its Trustees. Admittedly, the legal heirs of the defendant/appellants are



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tenants in the plaint schedule property. The Charitable Trust is exempted from the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act in terms of G.O.Ms.No.2000 (Home) dated 16.08.1976. The tenants(appellants) are paying monthly rent of Rs.800/-. Since the buildings are old one, plaintiff Trust decided to demolish and reconstruct a new building for getting more income. Thus, the plaintiff Trust issued notice dated 03.12.2000 under Section 106 of Transfer of Property Act determining the tenancy with the expiry of 31.12.2000 and called upon the defendant to surrender possession on 01.01.2001.

15. The contention of the learned counsel for the appellant is that 15 days clear notice is not given and the requirement of Section 106 of Transfer of Property Act is not complied and therefore, the suit has to be dismissed. On perusal of records and evidence, it is seen that the termination notice was given on 03.12.2000 determining the tenancy with the expiry of 31.12.2000. Admittedly, the notice was received by the defendant on 19.12.2000. Though the period shall commence from the date of receipt of the notice, the short of the period falls in view of sub-section 3 of Section 106 of Transfer of Property Act. The notice would not be determined to be invalid because the suit is filed after the expiry of the period mentioned in that sub section , i.e., the suit is filed



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on 01.04.2001 and it was disposed on 26.07.2005. The amendment, by virtue of sub-section 3 of amending Act 2002, applies retrospectively and hence, it is applicable to all suits and proceedings at any stage. Therefore, the technical plea is no more available to the lessee. For better appreciation, it is extracted hereunder:

“ Sub-Section (3) is a new provision which has been inserted by the amending Act of 2002. It provides for a legal fiction that a notice under sub-s(1) would not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, if a suit or proceeding is filed after the expiry of the period mentioned in that sub-section. This sub-section is another attempt to eliminate technical pleas raised by the lessee to invalidate the notice and defeat the provisions of s.106. By this amendment, even though a notice might be for a period less than six months in a year to year tenancy or less than fifteen days in a month to month tenancy, yet it would be valid if the suit or proceeding is initiated after the expiry of the said six months and fifteen days, as the case may be.”

Therefore, the argument of the learned counsel for the appellant has no merit in this regard and hence, rejected. The decision placed by the learned counsel for the appellant is not helpful to his argument.



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17. On perusal of records, it is noticed that the First Appellate Court not framed any specific issue relating to the hardship of the appellants in determining the issue of eviction. Non framing of issue relating to hardship of the appellants/tenants is not erroneous in an eviction case by the landlord. The First Appellate Court had not committed any error at the time of determining the appeal. Further more, there is no circumstances warranting to draw adverse inference against the respondents under Section 114-A of the Indian Evidence Act for non-appearance of the Trustees to give evidence. On the side of the plaintiff, one Mahadevan was examined as P.W.1 and marked 8 documents as Ex.A.1 to Ex.A.8. Hence, the Findings of the Trial Court as well as the First Appellate Court are based on evidence on record and relevant matters are not omitted and there is no perverse findings warranting interference by this Court.

18. In the light of the abovesaid factors, it is found that the Courts below have on a proper appreciation of the materials placed on record, both oral and documentary evidence adduced by the respective parties and the principles of law governing the same, had correctly decided the suit and decreed the same



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and the substantial questions of law formulated in the second appeal are,
accordingly, answered against the appellants.

19. For the aforesaid reasons, the second appeal fails and accordingly, is dismissed. The defendants are directed to hand over vacant possession of the suit premises to the plaintiff within a period of three months from today. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No

Internet : Yes / No

22.07.2024

mrp

To

1.The Fast Track Court-V,
Chennai.

2.The V Assistant City Civil Court,
Chennai.

V.SIVAGNANAM, J.

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Pre-Delivery Judgment made
in S.A.No.1005 of 2009

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