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S.A.No.175 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2024

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

S.A.No.175 of 2011

and

MP.No.1 of 2011

Tamil Nadu Industrial Investment
Corporation Ltd.,
Rep. By its
The Branch Manager,
Dharmapuri Branch.

... Appellant/ 3rd defendant.

Vs.

1.M/s.Kamadhenu Arts & Science
College,
Rep.by its Secretary,
Thiru G.R.Aravindh.

2.M/s.Kamadhenu Arts & Science college,
Rep. by its Principal
Thiru Maignana Murthy.

... Respondents 1 & 2 / plaintiffs 1 & 2

3.M/s.Kamadhenu Motel,
Proprietor
Smt.R.Subbu Lakshmi

4. G.S.Radhakrishnan

... Respondents 3 &4 /Defendants 1&2



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PRAYER: Second Appeal is filed under Section 100 of C.P.C against to set aside the Judgement and Decree dated 10.11.2009 made in A.S.No.15 of 2009 on the file of the Sub ordinate Judge, Dharmapuri confirming the judgement and decree dated 29.01.2009 made in O.S.No.233 of 2006 by the District Munsif Court, Dharmapuri.

For Appellant : Mr.K.V.Sundararajan
For Respondents : Mrs.V.Srimathi for R1 & R2
: No appearance- for R3
: Mr.P.Valiappan, Senior Counsel for
Mr.M.S.Gokulraj

JUDGEMENT

The appellant is the 3rd defendant and the respondents are the plaintiffs 1 & 2 and defendants 1 & 2. The respondents 1 & 2 /plaintiffs 1 & 2 have filed a suit against the defendants seeking the relief of permanent injunction and got a decree before the Trial Court. The appeal preferred by the 3rd defendant challenging the above judgment and decree of the trial Court has also got dismissed by confirming the judgment of the trial Court. Aggrieved over that, the 3rd defendant has preferred this Second appeal.



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**2.The short facts leading to the case of the plaintiffs as pleaded in the
plaint are as under:**

The suit properties belong to the 1st defendant. The 1st and 2nd defendants borrowed a loan from the 3rd defendant for running a motel in the name of 'M/s.Kamadhenu Motel'. The 1st and 2nd defendants informed the plaintiffs that the business had ended in loss and that they were not able to repay the loan availed from the 3rd defendant. Subsequently, the 3rd defendant took the possession of the suit property. The defendants 1 and 2 agreed to lease out the suit property to the plaintiffs and requested him to pay an advance amount of Rs.2,00,000/- in order to get the key from the 3rd defendant. The plaintiff has paid a sum of Rs.1,00,000/- on 31.03.2004 in cash to the 1st defendant, and he had given a cheque for an another sum of Rs.1,00,000/- in his favour. The defendants 1 and 2 obtained the key to the suit property and handed over the same to the plaintiffs.

2.1. An oral rental agreement was entered into between the plaintiffs and the defendants 1 & 2 on 31.03.2004 through which the monthly rent was agreed to be fixed at Rs.10,000/-. The plaintiffs have taken possession of the suit property and started to run the business. Subsequently, the 1st defendant



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had executed a rental agreement on 31.03.2005 in favor of the plaintiffs and the plaintiffs are in possession and enjoyment of the suit property as a tenant. At the request of the 3rd respondent/1st defendant, the plaintiffs paid Rs. 20,000/- to the 3rd defendant through six cheques, and the same was acknowledged by the 3rd defendant by the issuance of receipts. The 3rd defendant on 26.06.2006 issued a notice to the plaintiffs. The defendants joined together and tried to evict the plaintiffs illegally. The plaintiff's college has been using the suit property also for its pupils and hence, they have filed a suit against the defendants, not to disturb their possession over the suit property.

3. The gist of written statement filed by defendants 1 and 2:

It is true that the suit property belongs to the 1st defendant. The defendants 1 and 2 received the amount as alleged by the plaintiffs and paid it to the 3rd defendant. The 1st defendant has let out the suit property on lease to the plaintiffs and to that effect a lease deed has been executed on 31.03.2004. Though the plaintiffs are enjoying the suit property as tenants, the defendants 1 and 2 are not trying to evict the plaintiff from the suit property and hence there is no cause of action against the defendants 1 and 2.



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4. The contention raised by 3rd defendant in his written statement:

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5. On the basis of the above pleadings, the learned trial judge has framed the following issues:

"1. Whether the plaintiff is entitled to permanent injunction as prayed for?

2. To what relief, if any?"



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6. During the course of the trial, on the side of the plaintiff, one witness has been examined as PW.1 and Ex.A1 to Ex.A5 were marked. On the side of the 3rd defendant, senior assistant of 3rd defendant corporation, Dharmapuri Branch has been examined as D.W.1 and no documents was marked.

7. After the conclusion of the trial and on considering the evidence available on record, the Trial Court has decreed the suit and the appeal preferred by the 3rd defendant challenging the above judgement and decree of the Trial Court has also got dismissed by confirming the judgement of the trial Court. Now, the 3rd defendant has filed this Second Appeal by raising the following substantial questions of law:

"1. Whether the action taken under Section 29 of The State Financial Corporation Act is due process of law and if so whether the Courts below are right in decreeing the Suit?

2. Whether the Courts below was right in relying upon Ex.A-4, which is unregistered document.

*3. Whether the courts below have rightly applied the principles laid down in Supreme Court **2004 CTC 761 in Krishnan***



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S.Rao. Vs. Haryana State Industrial Corporation?"

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8. The learned counsel for the appellant submitted that in the name of tenancy, the plaintiffs, who are the sons of the 1st defendant borrower, have managed to be in possession of the suit property for years together by defrauding the interest of the appellant. Knowing pretty well that the 1st defendant has to repay the loan amount for the loan availed by him, the suit property has been offered as security and for which an equitable mortgage has also been executed. The 1st defendant has executed a false lease agreement in favour of the plaintiffs. The lease is being renewed from time to time just in order to prevent the appellant from taking recourse to Sec. 29 of the State Financial Corporation Act.

8.1. The Courts below have relied on the judgment of the Hon'ble Supreme Court held in **Smt. Gorabai and Ors Vs. Ummed Singh (dead) by Lrs. and Ors.** reported in **2004 SAR (Civ) 441**, that the benefit can be given only to the genuine tenancy and not to a fraudulent tenancy. The courts below have showed undue sympathy to the plaintiffs to act in collusion with the first defendant, who is the defaulter, and hence the judgement of the appellate Court is liable to be set aside.



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9. The learned counsel for the 1st and 2nd respondents submitted that they have a valid tenancy as against the landlord, who is the 1st defendant. So long as the landlord lawfully evicts the tenants from the suit property, they are entitled to continue their possession in the suit property.

10. The learned counsel for the 3rd respondent/1st defendant submitted that the respondents 1 and 2 / plaintiffs 1 and 2 are paying the rent without any default to him, and hence their lawful possession over the suit property should be protected. The Courts below have chosen to decree the suit only on the basis of the judgement of the Hon'ble Supreme Court held in ***Krishnan Singh Rana Vs. Haryana State Industrial Development*** reported in ***2000 (IV) CTC 767***.

11. The relationship between the respondents 1 & 2/plaintiffs 1 & 2 with the 3rd respondent/1st defendant is a material one for considering the genuineness of the tenancy. The 1st and 2nd respondents/1st and 2nd plaintiffs are the sons of the 3rd respondent/1st defendant. No doubt the suit property belongs to the 1st defendant. He did not deny the fact that he had availed loan from the 3rd defendant corporation and that he had defaulted in repaying the same. In fact, the plaintiffs' acceptance of the tenancy over the suit property is



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subject to their knowledge about the loan borrowed by the 3rd respondent/1st defendant from the appellant/3rd defendant. The above fact was known to the respondents 1 & 2 / plaintiffs 1 & 2 also even at the time when they have been inducted into the tenancy. So the plaintiffs' acceptance of the tenancy over the suit property is subject to their knowledge about the loan borrowed by the 3rd respondent/1st defendant from the appellant/3rd defendant.

12. Interestingly, the plaintiffs claim that the 3rd defendant knows about the tenancy between the plaintiffs and the 1st defendant, and hence he cannot initiate action under Section 29 of the State Financial Corporation Act but should seek recourse under due process to evict the plaintiffs 1 & 2 from the suit property. So far as the appellant/3rd defendant is concerned, he has given a loan to the 1st defendant by accepting the suit property it is a security by way of a mortgage. It does not a matter for the 3rd defendant to receive repayment to the loan from anyone other than the borrower, but to the loan account of the concerned borrower.

13. The 3rd defendant is not a party to whatever tenancy agreement that have been entered into between the plaintiffs and the 1st defendant. The plaintiffs have the knowledge about the subsisting mortgage over the suit



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property in favour of the 3rd defendant in view of the loan availed by the 1st defendant from the 3rd defendant and hence they only place themselves at the risk.

14. The courts below ought to have appreciated the intention of the parties from their actions. Apart from the close relationship between the plaintiffs and the 1st defendant, the fact remains that the 1st defendant, who is a defaulter, finds it convenient to renew the tenancy without any difficulty from year to year.

15. The suit was filed in the year 2009 and the suit was pending before the Trial Court until the year 2009. The judgement of the Supreme Court can come to the rescue of those tenants who come with the risk of accepting a tenancy over a property that has already been mortgaged to the corporation but without knowing the same. Since the tenants might be innocent about the existing mortgage over the suit property and the rights of the corporation, they cannot be immediately evicted from the suit property without adopting due process of law. Knowing pretty well that there is a loan availed by the 1st defendant by offering the suit property as security to the corporation and continue to prolong the tenancy, the parties cannot plead that they have come



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into contact with the property out of innocence.

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16. In all probabilities, the trial court ought to have appreciated the matter, considering the larger interest of the 3rd defendant, who had given the public money as loan to the persons like the 1st defendant. But the 1st defendant had adopted dilatory tactics of circumventing the process that can be taken under Sec.29 of the Act by the appellant by creating a so-called tenancy with his own sons, who are the plaintiffs 1 and 2. As the acts of the parties to the tenancy make their intention of defrauding the appellant, the first appellate court is not correct in giving the benefits of the judgement of the supreme court held in *Krishnan Singh Rana Vs. Haryana State Industrial Development* reported in 2000 (IV) CTC 767 to the plaintiffs. So **the substantial questions of law Nos.1 and 3 are answered in favour of the appellants.**

17. The question about whether the tenancy is registered or unregistered did not arise because the tenancy itself is seen as a fraudulent one, just to defraud the interest of the appellant/3rd defendant. As these essential facts were not taken into consideration and the Courts below had simply relied on the principles applicable to genuine tenancy and granted the relief of injunction, I feel it is liable to be reversed.



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18. In the result, this Second Appeal is **allowed**. The judgement and decree dated 10.11.2009 made in A.S.No.15 of 2009 on the file of the Subordinate Judge, Dharmapuri is set aside and suit in O.S. No. 233 of 2006 on the file of the District Munsif Court, Dharmapuri, is dismissed. No costs. Consequently, the connected miscellaneous petition in M.P.No 1/2015 is closed.

28.11.2024

jrs

Index : Yes/No

Speaking/ Non-Speaking

Internet: Yes/No

Neutral: Yes/No



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To

1. The Sub Judge, Dharmapuri
2. The District Munsif Court, Dharmapuri.
3. The Section Officer, V.R.Section,
High Court, Madras.



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R.N.MANJULA, J.

jrs

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