



S.A.No.884 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.03.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.884 of 2017
& C.M.P.No.22199 of 2017

1. V.Ethirajulu.
2. Jothi.

...Plaintiffs/Respondents/Appellants

/versus/

P.Venkatesan

... Defendant/Appellant/Respondent

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree made in A.S.No.120 of 2016 dated 12.04.2017 on the file of the VI Additional Judge, City Civil Court, Chennai by partly reversing the judgment and decree made in O.S.No.3842 of 2013 dated 29.01.2016 on the file of the XVI Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.R.Balasubramanian

For Respondent : Mr.M.Mubarak Ahmed
for M/s.Ahmed Associates

J U D G M E N T

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The unsuccessful tenants who were the plaintiffs in O.S.No.3842 of 2013 are the appellants. The tenants, claiming lease hold rights under agreement dated 21.11.1998 with the respondent herein, namely, landlord approached the Court on the ground that the landlord is trying to interfering with his possession and when the plaintiffs have admittedly put up a mechanic shed and same was also acknowledged under the lease between the plaintiffs and the defendant. The defendant had no right to interfere with the plaintiffs' possession and therefore, the suit was filed for declaration to declare that the plaintiffs were the owner of the mechanic shed with a prayer for permanent injunction not to disturb the peaceful possession enjoyment of the plaintiffs.

2. The trial Court decreed the suit as prayed for. However, on appeal by the defendant, lessor, the appeal was partly allowed and the relief of declaration was set aside and the relief of permanent injunction was granted by the First Appellate Court.



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3. Aggrieved by the reversal findings rendered by the First Appellate

Court, the plaintiffs are before this Court.

4. On 09.01.2018, the above Second appeal was admitted on the following substantial questions of law:-

a) Whether the learned Judge is right in dismissing the suit with regard to the appellants' title to the superstructure, when admittedly, as recited in Ex.A-1 lease deed, with the permission of the respondent, the superstructure has been constructed by the appellants in the leasehold land?

b) Whether the learned Judge is right in not advertng to the fact that under Ex.A-1 Lease Deed, only the suit land alone has been leased out to the appellants?

c) Whether the learned Judge is right in not observing the recital found in Ex.A-1 Lease Deed, under Clause 10, monthly rent has been fixed for the leasehold land?

d) Whether the learned Judge is right in ignoring the recital found in Ex.A-1 Lease Deed dated 21.11.1998 that at the time of vacating the suit land, the appellants are entitled to remove the mechanic shed put up in the leasehold land?



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5. I have heard Mr.R.Balasubramanian, Learned Counsel for the appellants and Mr.M.Mubarak Ahmed, Learned Counsel for the respondent. I have also gone through the records including the pleadings and the judgment of the Courts below.

6. Mr.R.Balasubramanian, Learned Counsel for the appellants would submit that he places reliance on Ex.A.1 lease deed between the plaintiffs and the defendant, where the defendant had categorically admitted that the property leased out was only a vacant land and permission was also granted to the plaintiffs to put up a mechanic shed, with a rider that as and when the plaintiffs vacates, they shall remove the superstructure, namely, the mechanic shed put up by them and vacate and move to go away. The Learned Counsel for the appellants would therefore challenge the findings of the First Appellate Court, denying the relief of declaration when Ex.A.1 was admitted by the defendant himself.

7. Per contra, Mr.M.Mubarak Ahmed, Learned Counsel for the defendant/landlord would submit that there is no infirmity in the order of the First Appellate Court and rightly, the First Appellate Court has denied the relief of



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declaration and protected the right of the plaintiffs by granting relief of permanent injunction. He would also bring to my notice that fair rent proceedings as well as eviction proceedings have already been initiated against the plaintiffs before the Small Causes Court and same are pending.

8. I have considered the rival contentions put forth by the Learned Counsel on either side.

9. It is an admitted case that the plaintiffs were inducted as tenants under Ex.A.1 lease agreement dated 21.11.1998. Both the parties admit to execution of the said lease agreement. In the lease agreement, there is a specific clause that the property is a vacate land and the plaintiffs'/tenants shall be entitled to put up a mechanic shed for their avocation purposes. It is also covenanted in the said agreement that as and when the plaintiffs/tenants vacate, they shall remove the superstructure and no claim would be made thereon.

10. The sum and substance of the prayer for declaration and permanent injunction is only based on said Ex.A.1 lease agreement. The trial Court



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rightly found that the plaintiffs were entitled to relief as prayed for and decreed the suit. However, the First Appellate Court placing reliance on some of the clauses in Ex.A.1 lease agreement, taking note of the assessments made in the name of the defendant/landlord, held that the relief of declaration cannot be granted to the plaintiffs as prayed for. Admittedly, the defendant is the owner of the property, namely, the land that was originally leased out to the plaintiff. Under Ex.A.1- lease agreement, the plaintiffs were permitted to put up a superstructure at their costs. No doubt, the superstructure has been assessed in the name of the defendant. However, the defendant is estopped from claiming ownership rights over the mechanic shed put up by the plaintiffs in the light of the specific averments in Ex.A.1 lease agreement which are also reiterated in the written statement filed by the defendant. However, at the same time, it is to be clarified that the plaintiffs are only tenants who have put up the superstructure at their costs. Having covenanted and specifically agreed to remove the superstructure as and when they vacates, the plaintiffs cannot claim any permanent rights of ownership over the superstructure and under the guise of the same, continue to stay in the suit property, despite eviction proceedings initiated by the defendant, landlord. However, in the present case, the eviction proceedings are pending before the Small Causes Court along



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with a Fair Rent Petition also filed by the defendant/landlord and therefore, subject to the outcome of the said proceedings, the plaintiffs have to be necessarily declared as the owner of the superstructure, namely, the mechanic shed alone, put up over the suit land which belongs to the defendant/landlord. The First Appellate Court has ignored the admitted case of the defendant in denying the relief of declaration and restricted the relief only to permanent injunction alone. In view of the same, the judgment and decree of the First Appellate Court requires interference and the substantial questions of law answered in favour of the appellants.

11. Accordingly, the *Second Appeal is Allowed* and the judgment and decree of the First Appellate Court is set aside and the judgment and decree of the trial Court is restored to file. It is however made clear that the declaration and permanent injunction granted to the plaintiffs/tenant in the suit shall be subject to the eviction proceedings initiated by the defendant/landlord. No costs. Consequently, connected Miscellaneous Petition is closed.

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Copy to:-

1. The VI Additional Judge, City Civil Court, Chennai.
2. The XVI Assistant Judge, City Civil Court, Chennai.

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