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S.A.No. 809 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20 / 08 / 2024

JUDGMENT PRONOUNCED ON : 20 / 11 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.No. 809 of 2018

Emmanuel

... Appellant/Appellant/
Plaintiff

Versus

The Diocese of Vellore Society,
represented by its Secretary Mr.S.Arulappam

... Respondent/Respondent/
Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated January 30, 2015 passed in A.S.No.21 of 2014 on the file of Subordinate Court, Vellore, whereby the Judgment and Decree dated February 6, 2014 passed in O.S.No.431 of 2009 on the file of Principal District Munsif Court, Vellore was confirmed.

For Appellant : Mr.M.P.Jayaprakash

For Respondent : Mr.V.Manohar



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J U D G M E N T

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This Second Appeal is directed by the unsuccessful plaintiff, against the Judgment and Decree dated January 30, 2015 passed in A.S.No.21 of 2014 on the file of 'Subordinate Court, Vellore' ['First Appellate Court' for short], whereby the Judgment and Decree dated February 6, 2014 passed in O.S.No.431 of 2009 on the file of 'Principal District Munsif Court, Vellore' ['Trial Court' for short] was confirmed.

2. Hereinafter, for the sake of convenience, the parties will be denoted as per their array in the Original Suit.

PLAINTIFF'S CASE IN BRIEF:

3. In the Complaint it is averred that the Suit Property is a non-residential vacant premises belonging to the defendant – Society and the plaintiff is the tenant thereof vide unregistered Rental Agreement dated July 5, 1997. The plaintiff has been running his business in the Suit Property for about 13 years prior to the date of Complaint. As per the said Agreement, the plaintiff had paid a sum of Rs.50,000/- as advance. The rent was fixed at Rs.1,500/-. One of the conditions in the said Agreement is



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that the plaintiff may develop the Suit Property by carrying out certain specified constructions and the expenses incurred thereby must be refunded along with the advance amount of Rs.50,000/- at the time of vacation. Accordingly, the plaintiff spent around Rs.30,00,000/- for the development of the Suit Property. The said Agreement was replaced with a renewed Agreement dated August 1, 2002, increasing the rent amount from Rs.1,500/- to Rs.5,000/-. The plaintiff has been paying the rent without any default. Then, approached the then president of the defendant – Society expressing his intention to purchase the Suit Property. While the then president agreed, the new president who succeeded him, to the shock of the plaintiff, issued a notice with false claims calling upon the plaintiff to vacate the Suit Property. Having been running his business in the Suit Property for about 13 years, the plaintiff would suffer heavy financial losses if he is to vacate immediately. But the defendant is trying to unlawfully evict the plaintiff with the help of henchmen. Hence the Suit for injunction restraining the defendant, his men and agents from in any manner interfering with the plaintiff's possession and enjoyment of the Suit Property as tenant, until evicted by due process of law. Also for costs and other reliefs.



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DEFENDANT'S CASE IN BRIEF:

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4. The defendant file written statement, wherein it is averred that on August 1, 2002, the plaintiff and the defendant entered into a Lease Agreement in respect of the Suit Property on a monthly rent of Rs.5,000/- with an advance amount of Rs.50,000/-. The lease period was 5 years *i.e.*, until July 31, 2007. It was agreed that the plaintiff is not supposed to sub-let or put up any construction in the Suit Property without permission of the defendant. Upon expiry of the lease period, the plaintiff requested for extension of the lease period vide his letter dated February 3, 2007. Extension of 2 years was orally granted by the defendant. After the expiry of the extension period of 2 years *viz.*, July 31, 2009, the defendant issued notice to the plaintiff to vacate and handover possession. Despite notice, the plaintiff has been unlawfully squatting over the Suit Property without payment of rent from July 31, 2009 onwards. In these circumstances, the plaintiff has come up with this false Suit. Accordingly, it is prayed that the Suit shall be dismissed.

TRIAL COURT:

5. At Trial, on the side of the plaintiff, the plaintiff examined



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himself as P.W.1 and Ex-A.1 to Ex-A.12 were marked. On the side of the defendant, D.W.1 was examined and no document was marked.

6. Upon hearing both sides and considering the oral and documentary evidence, the Trial Court concluded that despite notice, the plaintiff is in unlawful possession of the Suit Property without paying rent after the expiry of the 2 years extension, and that he has violated the terms of the Lease Agreement by constructing superstructure in the Suit Property without permission. Hence, there is no *bona fides* in the plaintiff's case. Accordingly, it dismissed the Suit.

FIRST APPELLATE COURT:

7. Aggrieved by the dismissal, the plaintiff approached the First Appellate Court by way of an appeal under Section 96 of the Code of Civil Procedure, 1908. The First Appellate Court upon hearing both sides and analysing the oral and documentary evidence, concluded that the plaintiff filed the Suit only to evade the eviction proceedings initiated by the defendant lawfully. Hence, there is no question of denial of natural justice to the plaintiff. The plaintiff's contention that the defendant attempted to



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evict him illegally is not proved. Accordingly, it concurred with the findings of the Trial Court and dismissed the appeal.

SECOND APPEAL:

8. Aggrieved by the concurrent findings, the plaintiff preferred this Second Appeal and the same was admitted on December 14, 2018 on the following Substantial Questions of Law:

- “(1) When the commencement of possession of the plaintiff is by a Lease Deed whether the Courts below are correct in law in saying that the plaintiff is in illegal possession of the suit property?*
- (2) When the plaintiff has proved his possession and there are attempts by the defendant to take possession whether the Courts below are correct in law in dismissing the suit for injunction as prayed for?”*

ARGUMENTS:

9. Mr.M.P.Jayaprakash, learned Counsel for the appellant / plaintiff would argue that the defendant admitted the tenancy and the oral



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extension till July 31, 2009. The plaintiff did not violate the terms of the agreement. The plaintiff has invested a huge amount in the Suit Property towards its development. The Trial Court and the First Appellate Court failed to consider the above aspects.

9.1. Further, he would refer to the additional typed set of papers-I dated March 8, 2024 and agree that subsequent to the Judgment of the First Appellate Court, the plaintiff filed O.S.No.244 of 2016 before District Munsif Court, Vellore *inter alia* for the declaration that the Sale Deed executed by the defendant in favour of one G.Naveen is void and not binding on the plaintiff and also for the sale of the Suit Property to the plaintiff. The said Naveen had filed a Suit in O.S.No.8 of 2017 before the Principal District Court, Vellore, for recovery of possession of the Suit Property from the plaintiff and which was transferred to III Additional District Judge (FTC), Vellore, on March 27, 2018. Subsequently, O.S.No.244 of 2016 filed by the plaintiff was also transferred to the III Additional District Court, Vellore, and renumbered as O.S.No.57 of 2018 for joint trial and the plaintiff filed I.A.No.4 of 2023 under Section 9 of the Chennai City Tenants Protection Act, 1921 and the same was dismissed, against which the plaintiff preferred appeal before this Court in



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C.M.A.No.1873 of 2023. The same was disposed of with the following observations:

“9.This Court for the present leaves open the issue regarding the application of the City Tenants Protection Act to the facts of the case to claim the value of improvements alleged to have been made by him to the property. Given the nature of facts presented before the Court, and given the fact that the appellant cannot sustain or maintain his petition filed under Sec.9 of the City Tenancy Protection Act, this Court chooses to modify the order of the trial court and decides to appoint the Commissioner, for entirely different purpose. Supposing the trial court finds that the appellant is entitled to value of any improvements which he alleges to have made to the property in his occupation, then it might be necessary for the court to determine the value of improvements alleged to have been made by the appellant. Rather than undertaking the exercise at a later point of time and delay the final outcome of the suits, this Court considers it appropriate to complete the process now. It is, however, made clear that this order does not



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dispense the appellant from proving what he considers as improvements made in the property, and this has to be decided by the trial Court, nor can it be construed that this Court has decided any issue pertaining to the applicability of the City Tenants Protection Act. As stated earlier, this appeal is allowed only to shorten the duration of the litigation, since in the eventuality of the trial Court holding in favour of the appellants, rather than driving the parties to another length of time for obtaining the value of improvements.

10. The appeal is disposed of accordingly. The trial Court is required to appoint an advocate, where he is reasonably regular in appearing before the Court and has also some standing in the civil Bar as the Commissioner, whom to be assisted by a qualified engineer to note any such improvements which the appellant claims to have made. The appellant is now required to circulate a memo before the trial Court as to the exact aspects which he requires the Commissioner to take note of. The respondents are also at liberty to circulate any



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similar memo either before the Court or at any time during the visit of the Commissioner. Once appointed, the Commissioner is required to complete his exercise within a period of four weeks. In the meantime, the trial of the case is directed to continue. No costs. Consequently, connected miscellaneous petition is closed.”

9.2. Further would argue that joint trial is going on in the said Suits. The defendant shall not evict the plaintiff during the pendency of the said Suits. This Court may be pleased to grant injunction as prayed for until the said Suits are disposed of. Accordingly, he would pray that the Second Appeal shall be allowed.

10. Mr.V.Manohar, learned Counsel for the respondent / defendant would contend that the plaintiff has been in unlawful possession of the Suit Property without any payment of rent since July 31, 2009. Further, the plaintiff violated the terms and conditions of the lease agreement by illegally putting up some super structures. Despite due notice, the plaintiff refused to vacate and handover possession. Further, the plaintiff has no right whatsoever to squat over the Suit Property without payment of rent. Moreover, he cannot question the title of the landlord and



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cannot compel the landlord to execute a Sale Deed in his favour in respect of the Suit Property. The current title holder of the Suit Property filed a Suit for recovery of possession in O.S.No.8 of 2017 before the III Additional District Court (FTC), Vellore. Thus, the person claiming through the defendant has opted to evict the plaintiff by due process of law and hence, the Suit prayer has become infructuous. Accordingly, he would pray that the Second Appeal is liable to be dismissed and the concurrent findings of the Trial Court and the First Appellate Court shall be confirmed.

DISCUSSION:

11. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

12. The Suit was filed seeking the relief of injunction restraining the defendant, his men and agents from in any manner interfering with the plaintiff's possession and enjoyment of the Suit Property as tenant, until evicted by due process of law. The Trial Court as well as the First Appellate Court concurrently held that the plaintiff did not



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pay rent from July 31, 2009 onwards and has been unlawfully occupying the Suit Property. Further held that to evade the eviction proceedings initiated by the defendant, the present Suit has been filed. Further both the Courts held that the plaintiff's case is not a *bona fide* one.

13. Admittedly, the Suit Property is a vacant commercial land and not an agricultural land. The plaintiff filed photocopy of the alleged unregistered Rent Agreements dated July 5, 1997 and August 1, 2002. The same were marked as Ex-A.1 and Ex-A.7 respectively. Period of Ex-A.1 is 7 years and that of Ex-A.7 is 5 years. It has to be noted here that as per Section 107 of Transfer of Property Act, 1882 read with Section 17 (1) (d) of the Registration Act, 1908, a lease of immovable property exceeding one year can only be made by a registered instrument and further, it has to be executed by both, the lessor and lessee, which means it has to be signed by both. As stated supra, Ex-A.1 and Ex-A.7 are unregistered. Hence, Ex-A.1 and Ex-A.7, on the face of it, are invalid documents. The specific case of the defendant is that after the expiry of the period of Ex-A.7, an oral extension of 2 years was granted and the same expired on July 31, 2009. Even while assuming that Ex-A.1 and Ex-A.7 are valid, since the two-year oral extension from the date of expiry of the subsequent agreement (Ex-



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A.7), ended on July 31, 2009, the defendant is entitled to evict the plaintiff even without notice.

14. Further case of the defendant is that the plaintiff, despite notice, refused to vacate the Suit Property and failed to remit rent after July 31, 2009. The plaintiff has filed Ex-A.8 series which contains the alleged Rent Receipts. Perusal of Ex-A.8 series would show that the plaintiff paid rent amount of Rs.15,000/- in respect of Suit Property for the period from April 2003 to June 2004.

15. There is one Rent Receipt in Ex-A.8 series which appears to be the latest. It would show that the plaintiff has paid a sum of Rs.5,400/- for April 2004 to December 2004. As per the said Receipt, the plaintiff has paid rent at the rate of Rs.600/- per month, while the actual rent amount as per Ex-A.7 is Rs.5,000/- per month. Moreover, there is nothing to connect the said Receipt with the Suit Property. This Court does not find the evidence available on record sufficient to show that the plaintiff has been paying the agreed rent amount regularly. For the sake of argument, even while assuming that Ex-A.1 and Ex-A.7 are valid, the plaintiff's occupation of the Suit Property, though lawful in its inception,



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turned to be wrongful in continuance as the plaintiff failed to remit the agreed rent and remained in possession of the Suit Property without consent of the defendant even after notice. The defendant (Landlord) is entitled to recover the Suit Property from the plaintiff directly without initiating legal proceedings against the plaintiff. Substantial questions of law are answered accordingly. The Trial Court as well as the First Appellate Court concurrently recorded that the Suit filed by the plaintiff is not *bona fide*. In view of the facts and circumstances and the evidence available on record, this Court finds no reason to deviate with the findings recorded by the Trial Court and the First Appellate Court.

16. In view of the subsequent developments *viz.*, sale of the Suit Property to one G.Naveen and the plaintiff filing a Suit *inter alia* for declaration that the Sale in favour of said G.Naveen is null and void followed by the said G.Naveen filing a Suit for recovery of possession from the plaintiff, the Suit prayer in the present Suit has become infructuous. This is specifically because the current title holder of the Suit Property *viz.*, G.Naveen has initiated eviction proceedings through process of law against the plaintiff.



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17. When this Court checked the status of both the said Suits through the *eCourt* website, it was seen that joint trial is going on. In these circumstances, III Additional District Court (FTC), Vellore, shall decide the said Suits on merits as per law, untrammelled and uninfluenced by any observation made by this Court herein. It is clarified that the observations made by this Court are only for the purpose of deciding this Second Appeal.

CONCLUSION:

18. Resultantly, the Second Appeal stands dismissed with the above observations. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs.

20 / 11 / 2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
Speaking Order / Non-Speaking Order
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To

1. Principal District Court
Vellore.
2. III Additional District Court (FTC)
Vellore.
3. Principal Sub Court
Vellore.
4. Principal District Munsif Court
Vellore.
5. III Additional District Judge
Vellore.



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R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN

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