



S.A.(MD) No.28 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 02.02.2024

JUDGMENT PRONOUNCED ON : 08.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

S.A.(MD) No.28 of 2014

and

M.P.(MD) No.1 of 2014

Murugan

... Appellant/Appellant/
Defendant

Vs.

Tmt.Mookkammal alias Mookki

... Respondent/Respondent/
Plaintiff

Prayer: Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 04.11.2011 made in A.S.No.3 of 2008 on the file of the Sub-ordinate Judge, Ambasamudhram, in confirming the judgment and decree dated 13.03.2007 made in O.S.No.82 of 2002 on the file of the District Munsif Court, Cheranmadevi.



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For Appellant : Mr.H.Arumugam
For Respondent : Mr.V.Meenakshi Sundaram

JUDGMENT

This second appeal is directed against the judgment and decree dated 4th November, 2011 in A.S.No.3 of 2008 passed by the learned Subordinate Judge, Ambasamudhram. The defendant in O.S.No.82 of 2002 filed the second appeal.

2. The parties herein are referred to as per their status in O.S.No. 82 of 2002, for the sake of convenience.

3. The plaintiff filed O.S.No.82 of 2002 on the file of the Court of District Munsif, Cheranmadevi, for eviction of the defendant from the suit schedule property, for recovery of an amount of Rs.8,250/- being arrears of rent and for future mesne profits.



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4. The learned trial Court, having held that there is no Landlord-tenant relationship between the plaintiff and defendant, decreed the suit partly for recovery of possession on the ground that the defendant was the tenant of the deceased husband of the plaintiff and therefore, the plaintiff is entitled for recovery of possession. Aggrieved by the said judgment and decree dated 13th March, 2007, the defendant filed A.S.No.3 of 2008 on the file of the Court of the learned Sub-Judge, Ambasamudhram, and the plaintiff also filed Cross Appeal No.3 of 2008 aggrieved by certain findings recorded by the learned trial Court and also seeking for recovery of arrears of rent. Both the appeal filed by the defendant and the cross appeal filed by the plaintiff were disposed of by a common judgment dated 4th November, 2011, whereby, the learned lower appellate Court decreed the suit in its entirety. Thereby, the appeal filed by the defendant was dismissed and the cross appeal filed by the plaintiff was allowed. The present second appeal is filed against the decree passed in A.S.No.3 of 2008. But, there is no second appeal filed against the judgment and decree passed in Cross Appeal No.3 of 2008.



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5. At the time of admission, a co-ordinate bench of this Court, while admitting the second appeal, adopted the substantial questions of law as framed in the grounds of appeal and admitted the second appeal. The substantial questions of law framed are as under:

“(i) Whether the courts below are right in holding that the respondent is entitled for recovery of possession without redemption of mortgage under Section 60 of the Transfer of Property Act?

(ii) Whether in view of execution of mortgage deed the relationship of lessor and lessee continues and whether the suit for ejectment is maintainable?

(iii) Whether the first appellate court is right in coming to the conclusion that the appellant is a tenant, when the same was not proved by the respondent through evidence under Section 102 of the Indian Evidence Act?

(iv) Whether in view of sale agreement, the relationship of lessor and lessee between the appellant and respondent continues? and

(v) Whether the suit is bad for non joinder of necessary parties, namely, the daughter of the



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respondent, who have 5/6 share in the suit property when no consent has been obtained from the said co-owners?”

6. The case of the plaintiff is that the defendant is the tenant of the suit schedule property on a monthly rent of Rs.200/- and he paid the said rent up to Tamil month Karthigai, 1999 and failed to pay the monthly rent with effect from the Tamil month Margazhi, 2000 and it is also claimed that originally the suit property belongs to her deceased husband and after his demise, the same was succeeded by the plaintiff and her five daughters. As the defendant committed default in payment of rent, the plaintiff claimed to have got issued a notice terminating the lease and requiring the defendant to vacate from the suit schedule property and to pay the arrears of rent. As the defendant failed to comply with the demand made in the said notice, the plaintiff filed the suit seeking the relief as noted above.

7. It is the case of the defendant that there is no relationship of Landlord-tenant between the plaintiff and the defendant and also claimed



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that the defendant had been in possession of the suit schedule property basing upon the mortgage deed said to have been executed by the plaintiff on 19.12.1990 and it was also further claimed that the plaintiff executed an agreement of sale in favour of the defendant for a total consideration of Rs.1,00,000/-. Thus, the defendant claimed possession of the suit property basing upon the said agreement of sale dated 08.11.1998 and mortgage deed dated 19.12.1990.

8. The trial Court, having considered the rival contentions, framed five issues, which are as under:

“1. Whether the plaintiff and the defendant do not have a relationship of Landlord-tenant?

2. Whether the plaintiff is entitled for the relief claimed for?

3. Whether the plaintiff is entitled to arrears?

4. Whether the plaintiff is entitled for mesne profit? and

5. What are the other remedies available to the plaintiff?”



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9. On behalf of the plaintiff, she herself got examined as P.W.1 and Ex.A.1 to Ex.A.3 were marked. On behalf of the defendant, he himself got examined as D.W.1 and two other witnesses were examined as D.W.2 and D.W.3. Ex.B.1 to Ex.B.10 were marked on behalf of the defendant.

10. The learned trial Court came to the conclusion that there is no Landlord-tenant relationship between the plaintiff and defendant, as the plaintiff failed to state as to on what date the tenancy commenced, nor filed any lease agreement to prove the relationship. However, taking into consideration the admission made by the defendant as D.W.1 that he was the tenant of the husband of the plaintiff and also having held that the defendant failed to prove the mortgage deed and the agreement of sale set up by him, granted relief of recovery of possession against the defendant and in favour of the plaintiff.

11. On the appeal and cross appeal filed by the defendant and the plaintiff, the learned lower appellate Court came to the conclusion that the defendant himself as D.W.1 admitted about the tenancy between the



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husband of the plaintiff and himself and also having concurred with the findings of the learned trial Court on the effect of mortgage deed and agreement of sale set up by the defendant, decreed the suit in its entirety.

12. It is not in dispute that the defendant as D.W.1 admitted about his tenancy in respect of the suit property during the life time of the husband of the plaintiff. It is also not in dispute that the plaintiff herein, along with her five daughters, succeeded to the suit property, on the demise of her husband. Once it is admitted that the plaintiff along with her five daughters succeeded to the suit property, she along with her five daughters becomes the Landlord *vis-a-vis* the defendant. Unless the defendant establishes that his status as tenant has been converted to that of mortgagee or the purchaser under mortgage deed or agreement of sale, the status of the defendant as tenant will continue as such, even after the demise of the husband of the plaintiff. A copy of the mortgage deed set up by the defendant was marked as Ex.B.1. The original mortgage deed was not brought on record. Admittedly, the mortgage deed, as such, does not speak of delivery of possession of the suit property to the mortgagee. In the absence of any such



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specific covenant in the mortgage deed or in the absence of any evidence was brought on record about delivery of possession of the suit property in favour of the defendant in the capacity of mortgagee, the status of the defendant as tenant would continue. As the original mortgage deed was not brought on record and Ex.B.1-mortgage deed was seriously disputed by the plaintiff, the learned trial Court as well as the learned lower appellate Court have rightly discarded the said document.

13. Then coming to the agreement of sale, marked as Ex.B.2 is concerned, the learned lower appellate Court had considered the said document in threadbare and came to the conclusion that the said agreement of sale was signed by some third party Mari on the first and second pages and the alleged signatures of the plaintiff and others were seen only in the witness column. As the signature of the plaintiff was not found as the executant of the said agreement of sale, the learned lower appellate Court came to the conclusion that Ex.B.2 document does not carry any weight to deny the relief in favour of the plaintiff. Further, Ex.B.1 and Ex.B.2 mortgage deed and the agreement of sale are dated 19.12.1990 and



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08.11.1998 respectively. Admittedly, the defendant has not taken any further steps for enforcing his rights under the said documents till date. The claim made by the defendant basing upon Ex.B.2 agreement of sale by issuing a notice dated 26.01.2002 marked as Ex.B.3 was denied by the plaintiff as early as on 13.02.2002 by issuing Ex.B.4-reply notice. In spite of the same, the defendant has not initiated any proceedings against the plaintiff to enforce his rights under Ex.B.2 till date. Hence, the said agreement of sale is also barred by limitation long back and the same cannot be enforced at this length of time. So also Ex.B.1-mortgage deed. Further, the learned lower appellate Court also having thoroughly examined Ex.B.2-agreement of sale, came to the conclusion that there is a vast difference in the suit schedule property and the property, which was the subject matter of the agreement of sale. None of these factual findings recorded by the learned lower appellate Court are disputed. Thus, the learned lower appellate Court, having disbelieved the mortgage deed as well as the agreement of sale, discarded the defence set up by the defendant and allowed the suit filed by the plaintiff in its entirety.



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14. All the substantial questions of law framed, while admitting the second appeal, are on the premise that the mortgage deed and the agreement of sale are valid and binding on the plaintiff. But, that is not the case on hand. Further, there is nothing that is brought to the notice of this Court to deviate from the factual findings that are recorded by the learned lower appellate Court with regard to the defence set up by the defendant by placing reliance on Ex.B.1 and Ex.B.2 documents. In the absence of any such serious contentions raised, the question of considering the substantial questions of law framed, while admitting the second appeal, does not arise. The substantial questions of law framed by the appellant as adopted by this Court, while admitting the second appeal, are in fact do not have a factual foundation and therefore, the so called substantial questions of law, basing on Ex.B.1 and Ex.B.2, as framed, do not arise for consideration at all in this second appeal. Insofar as the right of the plaintiff to file the suit for eviction without the other co-sharer being parties is concerned, it is now well settled that any co-owner or co-sharer is entitled to file suit for eviction. The substantial question of law framed in this regard also needs no consideration.



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15. In the considered view of this Court, there is nothing to find fault with the factual findings that are recorded by the learned lower appellate Court including the findings of the learned trial Court as confirmed by the learned lower appellate Court. Even otherwise, if there is any error committed by the learned lower appellate Court, in the appreciation of evidence, the same cannot be the matter for interference in an appeal filed under Section 100 of Code of Civil Procedure, unless such findings are perverse or based on no evidence. In the case on hand, neither of the situations are existing nor even alleged. In the circumstances, this Court does not find any substantial question of law that arise for consideration in this second appeal.

16. Further, as already noted above, the plaintiff filed Cross Appeal No.3 of 2008 aggrieved by the judgment and decree passed in O.S.No.82 of 2002 and the said cross appeal was allowed by the learned trial Court by common judgment and decree dated 04.11.2011 along with A.S.No.3 of 2008 filed by the defendant. For the reasons best known, no second appeal is filed against the decree passed in Cross Appeal No.3 of



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2008, dated 04.11.2011. Thus, the decree, that was passed in Cross Appeal No.3 of 2008, has become final. For that reason also, this second appeal cannot be entertained.

17. Accordingly, this Second Appeal is dismissed confirming the judgment and decree passed by the learned Sub-ordinate Judge, Ambasamudhram, dated 04.11.2011 in A.S.No.3 of 2008 with costs of Rs.10,000/- (Rupees Ten Thousand only). Consequently, connected miscellaneous petition, if any, shall stand closed.

08.02.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR

To

- 1.The Sub-ordinate Judge,
Ambasamudhram.
- 2.The District Munsif,
Cheranmadevi.



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MUMMINENI SUDHEER KUMAR, J.

ABR

Pre-delivery Judgment made in
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