

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/08/2002

CORAM

THE HON'BLE MR.JUSTICE A.K.RAJAN

SECOND APPEAL No.1212 of 2002

and

C.M.P.No.9975 of 2002

1. L.T. Rajan
2. L.T. Hariharan
3. L.T. Murthi
4. L.T. Babulal
5. L.T. Gangadharan
6. L.T. Nirmala Appellants

-Vs-

1. K. Ramasamy
2. K. Palpandian Respondents

Second Appeal against the judgement and decree of the III Additional Sub Judge, Madurai, dated 28.03.2002 made in A.S.No.157 of 2001 confirming the judgement and decree dated 28.06.2001 made in O.S.No.1522 of 1986 on the file of the Additional District Munsif, Madurai Town.

For Appellant : Mr. R. Subramanian

For Respondent : Mr.S. Subbiah

:JUDGEMENT

This Second Appeal has been filed against concurrent findings of the Courts below. The suit was filed by the appellants herein for delivery of possession and for compensation.

2. The case of the plaintiffs are as follows:-

Defendants 2 to 7 are the heirs of one Tulasiram, who was a tenant under one Jehangir in respect of a vacant site in Door No.13. Tulasiram put up a tiled construction and was residing in it. Since he committed default in paying rent, notice dated 09.09.1969 was given by Jehangir demanding to vacate the premises within December, 1969. Thereafter, he filed O.S.No.166/70 for recovery of arrears of rent as well as possession of the property. In that suit, the tenant Tulasiram filed O.P.No.25/70 for a direction to sell the

property to him. In that O.P., an order was passed on 13.10.1970 directing the tenant to deposit a sum of Rs.12,012/- in Court deposit in three quarterly instalments beginning from 05.05.1971, failing which the owner of the property, Jehangir, shall pay a sum of Rs.5,720/- as compensation for the superstructure put up by the tenant Tulasiram and take possession of the vacant site. The Trial Court also ordered that interest at 9% per month shall be payable from the date of the order till handing over possession of the vacant site. The tenant Dulasiram did not comply with that order. Therefore, his heirs are estopped from claiming any right under the Tamil Nadu City Tenants Protection Act. On 07.08.1973, the eastern portion of the property along with the superstructure was sold by a registered sale deed. On 14.09.1973, another eastern side of the vacant site was sold by Jehangir to the first plaintiff by a registered sale deed. The suit property is the western portion of the Door No.13. The suit property was sold by Jehangir to the first plaintiff by a registered sale deed dated 03.05.1974. In June, 1977, Dulasiram died and his heirs were in possession. After termination of tenancy on 31.12.1969, the defendants were not paying rent. The first plaintiff is the owner of the property, and the defendants have no right to continue in possession of the property. Therefore, the first plaintiff filed Small Causes No.262/79 on the file of the Sub Court, Madurai against the defendants for compensation and the Court passed an order that the defendants shall pay Rs.3.75 per month as compensation. The superstructure in existence now has no value. Yet, the first plaintiff is prepared to pay Rs.3,000/- as compensation. To the notice sent by the first plaintiff, the defendants sent reply notice giving false averments. Hence the suit for possession and for compensation. After the death of the plaintiffs' father, the suit property was managed by the first plaintiff. During the pendency of the suit, on 13.10.1993, the co-owners of the property partitioned the property. The suit property has been now allotted to the second plaintiff.

3. The defendants filed a written statement contending that the suit property along with the superstructure belongs to the defendants. They filed O.S.No.265 of 1976 on the file of the Sub Court, Madurai, and consequently, Second Appeal No.165 of 1988 is pending on the file of this Court. The plaintiffs have no right to file the suit. It is not correct to say that Jaganhir sold the property to the first plaintiff. Jahangir had no right to sell the vacant site to the first plaintiff. It has been decided by various Courts that the defendants are the tenants of the suit property. No notice has been served on the defendants under the Tamil Nadu City Tenants Protection Act. The defendants are prepared to pay a sum of Rs.5/- to 7/- per sq. ft. for the sale of the property to them. The superstructure is worth to Rs.75,000/-. When the Second Appeal is pending, a compromise was arrived at whereby the plaintiffs agreed to pay Rs.60,000/- for the superstructure. If the decree for possession is granted to the plaintiff, proper compensation should be given to the defendants.

4. On the part of the plaintiffs, the second plaintiff examined himself as P.W.1 and one John Josin was examined as P.W.2, and Exs.P.1 to P.30 documents were marked. On the part of the defendants, the third defendant was examined himself as D.W.1 and Exs.D.1 to D.29 documents were marked.

5. On these pleadings, the Trial Court framed as many as six issues

and three additional issues, and after considering both oral and documentary evidence, decreed the suit as prayed for.

6. Against the judgement and decree of the trial Court, the defendants filed appeal in A.S.No.157 of 2001 before the III Additional Sub Judge, Madurai, who, after considering the evidence available on record, confirmed the judgement and decree of the trial Court and dismissed the appeal, against which, the present Second Appeal has been filed.

7. The appellants have filed this appeal on the grounds that the learned Sub Judge erred in law in not advertng to the fact that the earlier suit in O.S.No.166 of 1970 stood dismissed in view of the noncompliance with the decree by predecessor in title of the respondents and therefore, the tenancy continues and hence, the suit filed without statutory notice was not maintainable, and that the learned Subordinate Judge erred in not determining the compensation payable for the superstructure under Section 3 of the Tamil Nadu City Tenants Protection Act, and unless the compensation for superstructure is determined, the decree for possession cannot be granted.

8. The appellants have also raised the following substantial questions of law:-

- "1. Whether the judgement of the lower Appellate Court is vitiated due to the non-compliance with the mandatory provisions of Order 41 Rule 31 C.P.C.?
2. Whether the lower Appellate Court was right in not considering the question of compensation as required under Sections 3 and 4 of the Tamil Nadu City Tenants Protection Act.?
3. Whether the suit is maintainable in view of the dismissal of the earlier suit in O.S.No.166 of 1970?
4. Whether the lower Appellate Court was right in rejecting the plea of the appellants regarding grant of patta under Act 30/63?"

9. Originally the property was owned by one Jehangir and the vacant site was rented out to one Tulasiram. The tenant has put up a superstructure and continued to be enjoying the property. For committing default in payment of rent, a suit in O.S.No.166 of 1970 was filed for recovery of arrears of rent as well as for recovery of possession. In that suit, the tenant Tulasiram (under whom the defendants are now claiming) filed O.P.No.25 of 1970 claiming to exercise the right under the Tamil Nadu City Tenants Protection Act. After elaborate enquiry, the Court passed an order directing the tenant to pay a sum of Rs.12,012/- in three quarterly instalments commencing from 05.05.1971, in Court deposit and to get the sale deed executed in his name, failing which Jehangir, plaintiff in that suit, was to pay a sum of Rs.5,720/- as compensation for superstructure. Therefore, admittedly, the tenant of the vacant site has exercised the right conferred under Section 9 of the Tamil Nadu City Tenants Protection Act as early as 1970. The Court also passed the order on merits accepting the contention of the tenant and granted him the option to purchase the property and fixed the value of the property as Rs.12,012/-. The Court also granted permission to pay the amount in three instalments. But, the tenant failed to comply with the conditional order passed by the Court. The Court also in the same petition passed an order that

on the failure of the tenant to comply with the above direction, the plaintiff in that suit, namely, the original land owner, was to pay compensation to the tenant. Therefore, the issue whether the tenant can exercise the power conferred under Section 9 of the Tamil Nadu City Tenants Protection Act, has already been decided and therefore, the same issue cannot be once again agitated before the Court. The order of the Court in that case was that the tenant shall pay the value of the vacant site, namely, Rs.12,012/- in three instalments within a particular date, failing which, he will be entitled only for compensation fixed by the Court. Since the tenant failed to pay the amount as directed by the Court, the appellants have lost the right conferred under the Tamil Nadu City Tenants Protection Act.

10. The only option for the appellants/tenants now is to get the compensation fixed by the Court. The Court has also ordered that interest at 9% per month shall be payable on the amount of compensation. Therefore, the issue has already been decided between the parties that the tenant shall get the compensation of Rs.5,720/- together with interest till the date of payment. Therefore, the appellants herein, who are claiming the rights actually through the defendant in the earlier suit in O.S.No.166 of 1970, cannot have more right than the tenant himself. Therefore, they are entitled to get the compensation amount together with interest at 9% per month from the date of the order. Both the Courts below have rightly held that the land owner is entitled to recover possession and hence, the judgement and decree of both the Courts cannot be stated to be invalid or against law. Since the present suit was only for recovery of possession, both the Courts below have rightly decreed the suit. As the appellants/tenants have a right to claim compensation as already ordered, they can execute the decree to get the amount. There is no question of law much less substantial question of law arisen in this appeal. Hence, this Second Appeal is dismissed. Consequently, C.M.P.No.9975 of 2002 is also dismissed. No costs.

30.08.2002

Index:Yes

Internet:Yes

To

1. The III Additional Sub Judge, Madurai.
 2. The additional District Munsif, Madurai.
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A.K. RAJAN, J.

S.A.No.1212 of 2002

and

C.M.P.No.9975 of 2002