

Nagarajan Vs. Rameshkumar

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Court : Chennai

Decided On : Dec-12-2016

Judge : T. Ravindran

Appeal No. : S. A. No. 449 of 2011 & M.P. No. 1 of 2011

Appellant : Nagarajan

Respondent : Rameshkumar

Judgement :

(Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.62 of 2007 on the file of the I Additional District Judge, Coimbatore, dated 19.08.2009 reversing the judgment and decree passed in O.S.No.424 of 2004 on the file of the I Additional Subordinate Judge, Coimbatore, dated 06.11.2006.)

1. The defendant in this second appeal has impugned the judgment and decree dated 19.08.2009 passed in A.S.No.62 of 2007 on the file of the First Additional District Court, Coimbatore, reversing the judgment and decree dated 06.11.2006 passed in O.S.No.424 of 2004 on the file of the First Additional Subordinate Court, Coimbatore.

2. The suit has been laid by the plaintiff for possession and damages.

3. It is admitted that the suit property has been purchased by the plaintiff on 04.12.2003 and the sale deed, pertaining to the same, has been marked as Ex.A1. Therefore, it could be seen that the plaintiff is the owner of the suit property. Further, as per the recitals found in Ex.A1, it could be seen that the plaintiff has purchased the vacant site from the erstwhile owner under Ex.A1. It is also admitted that the defendant was a tenant in respect of the suit property under its previous owner Ammani Ragunath and the copy of the lease deed has been marked as Ex.B1. A perusal Ex.B1 would go to show that what was leased to the defendant by the previous owner was only a vacant site and further, it could be seen that the defendant was inducted as a lessee in the vacant site for a period of 11 months and therefore, it could be seen that the defendant has to hand over the suit property on the expiry of lease period fixed in the lease agreement. Now, according to the plaintiff, inasmuch as Ex.B1 lease deed was executed on 21.01.2000 fixing 11 months period as the duration of the lease, it is contended that the lease got determined by efflux of time on 21.12.2000 and therefore, the defendant, thereafter, being only a trespasser in respect of the suit property, he is liable to hand over the possession of the suit property to the plaintiff and also, to pay damages and hence, the suit.

4. According to the defendant, even though the lease agreement was in respect of 11 months, it is contended that after the execution of the lease deed, he had put up a shed in the suit property at his own cost with the consent of lessor and therefore, it is stated that only the Tamil Nadu Buildings (Lease and Rent Control) Act,1960, would apply and further, the defendant is also entitled to the benefits of the City Tenants Protection Act and also, it is mainly contended that the suit is not maintainable as the plaintiff has not determined the lease by issuing the statutory notice and further, it is also stated that the suit is bad for non joinder of Ammani Ragunath, the previous owner of the suit property and therefore, the suit is liable to be dismissed.

5. However, as rightly found by the first appellate court and on a perusal of Ex.B1, lease deed, it is evident that what was leased to the defendant by the previous owner was only a vacant site. However, it is contended by the defendant that with the consent of the previous land owner, he had put up a shed in the suit property.

However, as regards the above case of the defendant, there is absolutely no material to hold that after the execution of Ex.B1, lease deed, the defendant, with the consent of the previous owner, had put up a shed in the suit property. Further, the case of the defendant is that even after the period stipulated in the lease deed is over, he had continued to remain the suit property as a tenant and paying rent in respect of the suit property and therefore, he is not to be evicted except on the determination of the lease by the issuance of the statutory notice and therefore, the suit sans determination of lease by the statutory notice is liable to be rejected. However, as rightly found by the first appellate court, the defendant has not placed any material to hold that after the expiry of the time stipulated in the lease agreement Ex.B1, he had been paying rent either to the previous land owner or the plaintiff, subsequent to purchase of the suit property by the plaintiff under Ex.A1. It is the specific case of the plaintiff that the defendant has not paid any rent to him in respect of the suit property nor he agreed to the same. As regards the case of the defendant that he had been paying the rent to the previous land owner, there is no material forthcoming to sustain the same. The defendant has not endeavoured to examine the previous land owner. Further, it is also not established by the defendant that the previous land owner had received the rent after the expiry of the time stipulated in Ex.B1 lease deed. That apart, as rightly found by the first appellate court, there is absolutely no pleading in the written statement that even after the determination of the lease by efflux of time, he had been paying rent to the previous landlord or the plaintiff. As rightly found by the first appellate court, the defendant has also failed to establish that he had put up a shed in the suit property with the consent of the previous land owner pursuant to Ex.B1 lease deed. Therefore, it could be seen that the defendant, without any proof or material, has been falsely pleading that he had put up a shed in the suit property with the consent of landlord, after Ex.B1 and also paying rent to the previous landlord, after the expiry of time limit stipulated in Ex.B1. As rightly found by the first appellate court, even the documents, pertaining to the suit property laid by the defendant in O.S.No.1096 of 2003, do not indicate that the defendant had put up a shed or any superstructure on the suit property with the consent of the landlord, after Ex.B1. Therefore, the plea of the defendant that he had put up a shed in the suit property and also obtained telephone connection etc., cannot be

accepted in the absence of acceptable, reliable and convincing evidence. It appears that the defendant has instituted a suit against the previous landlord and also, father of the plaintiff not to evict him from the suit property except under due process of law. The said suit had ended in a compromise and accordingly, it could be seen that the present suit has been laid by the plaintiff to seek possession of the suit property through the process of the court, after his purchase of the suit property under Ex.A1. Therefore, it could be seen that the documents pertaining to O.S.No.1096 of 2003 filed in the present suit are not helpful to buttress the defendant's case.

6. As found earlier, the lease deed is executed for a specific period. Therefore, it could be seen that the lease of the suit property determines by efflux of time limited thereby as provided under Section 111(a) of the Transfer of Property Act. Further, it could be seen that in such circumstances, there is no need for the landlord to determine the lease by issuing the statutory notice. Therefore, it could be seen that as per Section 108(q) of the Transfer of Property Act, on the determination of the lease, the lessee is bound to put the lessor into possession of the property leased. Inasmuch as the defendant has failed to hand over the possession of the suit property to the plaintiff, the owner, the plaintiff has been constrained to lay the present suit.

7. However, it is contended by the defendant's counsel that inasmuch the defendant had put up a shed in the suit property with the consent of the lessor and also been paying rent even after expiry of the lease period fixed in Ex.B1 lease agreement, the plaintiff is not entitled to seek possession of the suit property without determining the lease by issuing the statutory notice and in this connection, he placed reliance upon the decision reported in CDJ 2011 MHC 4279 (Sasikala v.Wilson D.Doss). As rightly argued by the plaintiff's counsel, the above decision would be of no help to sustain the defendant case. In the case covered in the decision relied upon by the defendant's counsel, the lease is not for fixed period, further, in that case, the defendant therein has established the payment of rent and in such circumstances, it was held that the landlord/plaintiff ought to have issued the notice under Section 106 of the Transfer of property Act before laying the suit for recovery of possession. However, as far as this case is concerned, as

found earlier, the defendant has failed to establish that he has been paying the rent either to the previous owner or the plaintiff after the lease period. Further, the defendant has also failed to establish that he put up a shed in the suit property. Therefore, it could be seen that as rightly found by the first appellate court, the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 would not be applicable to the present case. Further, the defendant has also not established and also not claimed in the present second appeal that he is entitled to the benefits of the City Tenants Protection Act and it has also not been made out that he had put up any shed or superstructure in the suit property.

8. Further, as per the decisions relied upon by the plaintiff's counsel, reported in AIR 1984 karnataka 214 (m/s sudarshan trading company limited, bangalore vs. mrs I.D'Souza) and AIR 1975 Supreme Court 1111(1) (Dattonpant Gopalvarao Devakate V. Vithalrao Marutirao), it could be seen that no notice is necessary, if a lease of immovable property determines under Clause (a) of Section 111 by efflux of time limited thereby. As rightly argued by the plaintiff's counsel, at the most, the defendant can only be termed as a tenant at sufferance. Accordingly, it could be seen that the defendant who could be termed as the tenant at sufferance has no estate or interest in the lease hold property. Though the defendant's induction into the suit property as a tenant was lawful at the time of its inception but since his continuous possession in the property after the expiry of the lease period is found to be wrongful, it could be seen that the defendant cannot claim that he should be evicted from the suit property only after the determination of the lease by issuing the statutory notice particularly when it is found that the lease has already got determined by the efflux of time limit under Ex.B1 lease agreement.

9. In the light of the above facts, it could be seen that the defendant has not made out a valid defence to resist the claim of possession and damages sought for by the plaintiff.

At the end, no substantial question of law is involved in this second appeal. Resultantly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.