

M. Munusamy Vs. Sri Vedantha Desikar Devasthanam and ors.

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SooperKanoon Citation : sooperkanoon.com/828786

Court : Chennai

Decided On : Aug-05-1997

Reported in : (1998)1MLJ309

Appellant : M. Munusamy

Respondent : Sri Vedantha Desikar Devasthanam and ors.

Judgement :

S.S. Subramani, J.

1. Third defendant in O.S. No. 5514 of 1991, on the file of City Civil Court, Madras, is the appellant.
2. Suit filed by the Sri Vedantha Desikar Devasthanam represented by its Trustees was one for recovery of possession of the schedule property from the defendant.
3. The material averments in the plaint may be summarised as follows:

It is alleged that the plaintiff temple is the owner of the schedule property and first defendant was the ten-ant in respect of the said premises on a monthly rent of Rs. 120 per mensem. He was not regular in paying the rent, and has not paid rent from February, 1989. Arrears of rent alone come to Rs,3,480 upto June, 1991. It is said that the first defendant has sub-let the premises to defendants 2 and 3 unauthorisedly without consent. It is further said that the first defendant has also

denied title of the plaintiff over the supers-structure by indulging in filing a suit in O.S. No. 8559 of 1988, on the file of City Civil Court, Madras. In that suit, the present plaintiff was also impleaded as a party, and the prayer was for possession against de-fendants 2 and 3. Since there is default in payment of rent and there is also unauthorised sub-lease and de-nial of title, plaintiff thought of terminating the ten-ancy and, therefore, a quit notice was issued on 6.6.1991. After receipt of notice, third defendant sent a reply raising false contentions. The suit was, therefore, filed for recovery of possession and also for recovery of arrears of rent. Plaintiff has reserved its right to take separate proceedings for recovery of damages for use and occupation from 1.7.1991 on-wards. It is further said that since the plaintiff is a Public Charitable Institution, it is exempted from the provisions of Rent Control Act as per G.O. No. 2000, dated 16.8.1976.

4. In the written statement filed by the first defendant, he took the contention that the original rent was Rs. 65, thereafter it was increased from time to time, and finally, it came to Rs. 120. It is further said that with permission of the plaintiff, constructions were put up in the property and, therefore, the constructions absolutely belong to him, and not to the plaintiff-Devasthanam. He has further said that he has obtained electric connection at his cost and is paying consumption charges. Since he has put up the super-structure, he is entitled to the protection under Section 9 of the Madras City Tenants Protection Act, and is entitled to purchase the property. He also prayed for dismissal of the suit.

5. Third defendant, appellant herein, in his written statement, contended that he is not admitting the allegations in the plaint in regard to relation between him and the first defendant. It is said that the second defendant is a direct nephew of the first defendant, and both of them were originally enjoying the property. They were also doing some business, and when the business ended in a loss, the same was taken over by third defendant, and he is paying monthly rent to them. He said that he is an authorised statutory ten-ant. According to him, when the right in regard to the superstructure is in dispute, the suit filed must be one for declaration of title, and since such a suit has not been filed, the present suit is not maintainable. It is further contended that the allegation that he cannot claim any independent right is false. According to him, he is a statutory tenant, entitled to the benefits of the Rent

Control Act. He prayed for dismissal of the suit as against him.

6. While narrating the above facts, I have made reference to the suit filed by first defendant as O.S. No. 8559 of 1988. That was a suit for recovery of possession from defendants 2 to 4 therein. The present plaintiff was also made as first defendant in that suit only for the purpose of entering a finding as to whether first defendant is entitled to the benefits of City Tenants Protection Act and whether the construction was made by him or not. The claim for recovery of possession was confined to defendants 2 to 4.

7. Both the suits were tried jointly, and the suit filed by first defendant was dismissed. Plaintiff in this case was given a decree allowing it to recover the property from defendants.

8. Against the judgment, third defendant alone preferred A.S. No. 125 of 1996, on the file of Principal City Civil Court, Madras. 1st defendant Sankaran filed a cross-appeal. First defendant did not prefer any appeal against the judgment in O.S. No. 8559 of 1988. The relief prayed for in the suit filed by the first defendant should also be considered while disposing of the Second Appeal, for which reference will be made later.

9. Lower Appellate Court, after hearing both sides, dismissed the appeal.

10. It is against the concurrent judgment, third defendant has preferred this Second Appeal. Since 1st respondent-Devasthanam has entered appearance by filing caveat, learned Counsel for the 1st respondent was also heard, and the entire appeal was heard.

11. Appellant has suggested the following as substantial questions of law in his appeal memorandum:

(1) Whether the findings of the Courts below are supported by material evidence?

(2) Whether the findings of the Courts below are vitiated by error of law on misreading of evidence?

(3) Whether the courts below failed to determine material issues of law?

(4) Whether the Courts below have misconstrued the evidence?

(5) Whether the Courts below have properly considered and construed the documentary evidence?

(6) Whether the findings of the Courts below are on surmise and conjecture?

(7) Whether a suit for possession without any prayer for declaration when the title is in dispute is maintainable?

(8) Whether exemption can be sought without producing any evidence to seek such exemption?

(9) Whether a trust can file a suit without a resolution by the Board?

(10) Whether a sub-tenant has the right of independent defence when there is collusion between the owner and the chief tenant?

(11) Whether Section 43 of the Tamil Nadu Court-fees and Suits Valuation Act can be invoked in the absence of proof of landlord and tenant relationship.

12. Since I am disposing of the entire appeal, I will consider the questions aforementioned as though they were raised by Court.

13. All the questions could be considered together. Appellant herein is the third defendant in the suit, and he has been impleaded only as a sub-lessee. According to the appellant, he claims some right under the second defendant. Second defendant is the nephew of the first defendant. It is the case of the appellant that both defendants 1 and 2, while doing business, sustained loss, and thereafter entrusted the business including the shed, to the third defendant on monthly rent, and he is paying the rent to the first defendant regularly. He also admits his status as a sub-lessee. First defendant is a lessor of third defendant. Plaintiff is the owner of the property, who leased the property to first defendant on a monthly rent of Rs. 120. The relationship between plaintiff and first defendant is also not in dispute.

14. Before instituting the suit, plaintiff issued notice terminating the tenancy. For three reasons, plaintiff has sought for recovery of possession. They are: (1) First

defendant has committed default in payment of rent. (2) He has denied the title of the plaintiff over the superstructure. (3) Unauthorised sub-letting. It is also averred in the plaint that the plaintiff is not governed by the Rent Control Act since it is a public temple and exempted by a separate Government order.

15. Before the institution of the suit, first defendant filed another suit for declaration that he is a tenant under the Madras City Tenants Protection Act. He also wanted eviction of defendants 2 to 4 therein. Third defendant herein is the third defendant in that suit also. Plaintiff herein was made a party only regarding the declaratory relief sought for. Both the suits were jointly tried. It was found that the first defendant is not entitled to any right in the property. His claim under the City Tenants Protection Act was also found against. It was also found in that case that the superstructure also belongs to plaintiff herein, and the construction, if any, made was only extension, for which also rent was being paid to plaintiff. Even in respect of the extension, that was made by first defendant on condition that the same will be considered as property of the plaintiff for which the first defendant is liable to pay rent. Judgment in O.S. No. 8559 of 1988 which denied reliefs to the first defendant has become final. By dismissal of the suit, it was declared that the superstructure belongs to the plaintiff-Devasthanam. The reliefs sought for in O.S. No. 8559 of 1988 are as under:

(a) for a declaration that the superstructure bearing No. 19 (Old No. 14/1) Alamelumangapuram, Mylapore, Madras-4 standing on the land belonging to the 1st defendant belongs to the plaintiff and the plaintiff is entitled to the protection under the Madras City Tenants Protection Act.

(b) directing the 2nd defendant to deliver vacant possession of the residential portion in his occupation and also direct the 2nd defendant and the 3rd and 4th defendants to deliver vacant possession of the Shed bearing Municipal Door No. 14/1, New No. 19, Alamelumangapuram, Mylapore, Madras-4.

(c) directing the 2nd defendant to pay a sum of Rs. 300 for the residential portion and Rs. 600 for the shed as damages for use and occupation for the months of June 1987 and July 1987.

(d) directing the 2nd defendant to pay Rs. 150 per month for residential portion and Rs. 300 per month for the shed as and towards future damages for use and occupation from the date of plaint till date of delivery of vacant possession:

(e) direct the defendants to pay the costs of the suit; and

(f) pass such further or other order as this Honourable Court may deem fit and proper in the circumstances of the case.

16. While dismissing the suit, declaration sought for against the plaintiff was refused. Even though eviction was sought against the present appellant, that relief was also refused. By dismissal of the suit, appellant can contend that the decision therein is not *res judicata*. But, how far the said contention can give the appellant any relief in this second appeal is to be considered.

17. First defendant has not preferred any appeal against the dismissal of his suit. That means, first defendant cannot have any claim even in respect of the superstructure. In respect of the land and super-structure, the decision in O.S. No. 8559 of 1988 is binding both plaintiff and first defendant herein. Appellant is claiming a right only under the first defendant and, therefore, that judgment will have a binding effect on him also.

18. Apart from the same, I do not think, third defendant is entitled to file an appeal challenging the decree of eviction against the first defendant. When the first defendant is directed to vacate the premises, persons claiming under him also should leave the property. This is the legal consequence of an order of eviction passed against first defendant. It is settled law that no person can give a larger right than what he possesses, and, if the first defendant's right of lease has come to an end, third defendant who is only a sub-lessee, cannot claim a better right. His right is coterminus with the first defendant's right. That is why the appellant is claiming the benefits of the Rent Control Act. That also cannot be given to him since the property, namely, land and building belongs to a Temple which is exempted from Rent Control Act. 19. I have said that the third defendant who is in the position of a sub-lessee cannot file an appeal challenging the decree for eviction. My conclusion is fortified by the following decisions:- In *Rupchand v.*

Raghuvanshi : [1964]7SCR760 : (1964) 2 S.C.W.R. 95 a decree was passed ex parte against a tenant. The sub-lessee was not a party. The question was, whether a sub-lessee can challenge the ex parte decree on the ground that he was not made a party to the proceeding. He filed a separate suit to declare that the earlier decree obtained by the landlord was not binding on him. In that case, their Lordships said thus:

Where the landlord institutes a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and does not implead the sub-lessee as a party to the suit, the object of the landlord is to eject the sub-lessee from the land in execution of the decree and such an object is quite legitimate. The decree in such a suit would bind the sub-lessee. This may act harshly on the sub-lessee, but this is a position well understood by him when he took the sub-lease. The law allows this and so the omission cannot be said to be an improper act. The mere fact that the defendant agreed with the plaintiff that if a suit is brought he would not defend it, would not necessarily prove collusion. It is only if this agreement is done improperly in the sense that a dishonest purpose is intended to be achieved that they can be said to have colluded.

(Italics supplied)

This decision was followed by the Supreme Court in *Burmah Shell Oil Distributing v. Khaja Midhat Noor* : [1988]3SCR811 . In that case, owner of the land had executed a lease deed which permitted the head lessee to sub-lease the property also. Pursuant to that, the head lessee sub-let the property to *Burmah Shell Oil Distributing Company*, a Government of India Undertaking. Even after the expiry of the period, the sub-lessee continued to pay rent to the lessor. Later, the lessor issued a notice terminating the lease and also wanted the buildings to be removed. No notice was given separately to the sub-lessee. In that case, the owner made the sub-lessee also a party to the suit. The head lessee did not contest. The suit was decreed holding that there is a valid termination of lease. The sub-lessee was also directed to be dispossessed. On the above facts, the Supreme Court said:

It is quite clear that law does not require that the sub-lessee need be made a party, if there was a valid termination of the lease. In all cases where the landlord instituted a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and did not implead the sub-lessee as a party to the suit, the object of the landlord is to eject the sub-lessee from the land in execution of the decree and such an objection is quite legitimate. The decree in such a suit would bind the sub-lessee.

20. In *Jadavji Purshottam v. Navnitbhai* : [1988]1SCR76 : and *Carona Shoe Company Ltd., and another v. K.C. Bhaskaran Nair* : [1989]1SCR974 the question was, what is the position of a lessee under a mortgagee. Their Lordships said that once the mortgagee's right has come to an end, all persons claiming under the mortgagee are also bound to surrender vacant possession. Their Lordships said that as between the mortgagors and the persons in occupation, there is no privity of contract, and the mortgagee cannot give a larger right than what he possesses. In both these decisions, their Lordships considered the applicability of the Rent Control Act also. Even though the tenants are given certain statutory benefits under the Rent Control Act, their Lordships said that their mortgagees cannot get any benefit, and any release executed by the mortgagee will come to an end when the mortgage is extinguished.

21. In *Narayan and Anr. v. Smt. Kalam Bai* a learned Judge of that Court held thus:

The sub-tenants, unless there is a privity of contract between them and the landlord, have no *locus standi* to challenge the decree of eviction passed against the tenant-in-chief. A decree passed *ex parte* against the tenant-in-chief is as effective and valid and binds as that passed in a contested suit. The sub-tenants are bound by such decree of eviction passed against a tenant-in-chief. They, therefore, cannot resist or obstruct the execution of the decree. If the resistance or obstruction is offered by them, it can be said without any hitch that such resistance or obstruction was made without any just cause by them.

22. In *Varghese Ittoop v. District Judge* (1991) 2 K.L.T. 394 the question that came for consideration was, whether a sub-tenant is liable to vacate under the Rent

Control Act when sub-tenancy was not a matter in issue. That was a case coming under the Kerala Buildings (Lease and Rent Control) Act. In that case, it was held thus:

Under the Kerala Buildings (Lease and Rent Control) Act, the sub-tenant is excluded from the definition of tenant. The order passed against the tenant is binding on the sub-tenant. The position of the sub-tenant who came into possession of the premises without the consent of the landlord is akin to that of a tenant inducted by mortgagee. Merely because he is made a formal party to the proceedings for eviction it does not clothe him with the right to challenge the order of eviction passed in favour of the landlord against the principal tenant. The sub-tenant cannot be construed as a person aggrieved against such an order. Different considerations may arise if the question of sub-lease itself is a matter of adjudication and the eviction is sought under Section 11(4)(2) i.e., unauthorised sub-lease. Respondents 4 to 7 have no case that the landlord permitted them to occupy the building. Under that circumstance they were not entitled to challenge the order of eviction passed and the revision filed by them was not maintainable.

23. In view of the binding precedents aforementioned, I do not think that the appellant is entitled to be heard, or even prefer this Second Appeal.

24. Before this Court, an argument was taken by learned Counsel for appellant that his lessor (first defendant) has colluded with plaintiff, and in pursuance of this collusion, a decree came to be passed against him, and his very livelihood is affected. It was further contended that the collusion is patent by the fact that the first defendant did not file an appeal against the judgment in the suit in which he failed, though in that suit he claimed absolute ownership over the buildings. According to the appellant, it is only to deprive him (appellant) all his statutory rights at the behest of the first defendant, plaintiff has filed this suit.

25. The question of collusion is raised for the first time in Second Appeal, which requires necessary pleading and proof. Even before the lower Appellate Court, this plea was not put forward, nor was there any arguments regarding collusion.

26. Even assuming that this argument can be permitted, I do not think the appellant will be entitled to any relief. Collusion, in judicial proceedings, is a secret arrangement between two persons, that one should institute a suit against the other in order to obtain decision from a judicial tribunal for same sinister purpose. In this case, a public temple is seeking recovery of its own property. That intention can never be said to be a dishonest intention. Further there is also no necessity for any such collusion. Rent Control Act exempts public temples from the purview of that Act. Again, provisions of City Tenants Protection Act also does not apply to public temples. In this case, evidence was let in by plaintiff to show that the property belongs to the Temple. It is also, admittedly, in the name of the Temple. Again, the appellant is also a party both the suits. If he had any fear of collusion, nothing prevented him from adducing evidence. It is not a decision taken behind his back. He was given full opportunity to adduce all his evidence, and the decision was also legal.

27. That apart, the decision in O.S. No. 8559 of 1988 is res judicata so far as plaintiff and first defendant are concerned. Naturally, the appellant who is claiming under the first defendant will also be bound by that decision. In that view of the matter, I do not think the appellant is entitled to any relief in this second appeal.

28. Regarding the questions of law raised, in view of the findings above mentioned, I do not think the appellant is entitled to urge any of the questions of law suggested by him in the Appeal Memorandum, before this Court. In fact, at the time of arguments, the only question urged was, regarding the collusion between the owner and chief tenant. Even though a ground has been taken that material evidence has not been considered or a material question of law was not decided, learned Counsel for the appellant did not urge the same at the time of arguments.

29. In the result, I hold that the Second Appeal itself is not maintainable, and the same is dismissed with costs. C.M.P. No. 9400 of 1997 for stay is also dismissed consequently.