

Muniammal, and ors. Vs. Chellammal.

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Court : Chennai

Decided On : Aug-18-2010

Judge : R.Subbiah, J.

Acts : Code of Civil Procedure (CPC) - Section 100

Appeal No. : Second Appeal No.1384 of 2005 and C.M.P.No.18273 of 2005

Appellant : Muniammal, and ors.

Respondent : Chellammal.

Advocate for Def. : Mr.B.Thanikachalam, Adv.

Advocate for Pet/Ap. : Mr.R.Gowthama Narayanan, Adv.

Judgement :

1. The unsuccessful defendants in both the courts below are the appellants.
2. This Second Appeal is directed against the decree and judgment dated 04.08.2005 in A.S.No.538 of 2004 passed by the learned V Additional Judge, City Civil Court, Madras, whereby the decree and judgment dated 03.02.2004 passed by the learned XVI Assistant Judge, City Civil Court, Madras, in O.S.No.759 of 1997 were confirmed.
3. The respondent herein is the plaintiff, who filed the suit in O.S.No.759 of 1997 on the file of the XVI Assistant Judge, City Civil Court, Madras, against the

appellants as defendants, for the following reliefs:

"(1) declaring that the defendants are the tenants under the plaintiff in respect of the suit property, more fully described in the Schedule hereunder;

(2) directing the defendants to pay Rs.360/- as arrears of rent for three years preceding to the presentation of the plaint together with interest at 18% per annum from the date of plaint till the date of realisation;

(2A) directing the defendants to vacate and deliver possession of the suit property under their occupation;

(3) directing the defendants to pay the future rents at the rate of Rs.10/- per month;

(4) directing the defendants to pay the costs of the suit."

4. The case of the plaintiff, as per the plaint averments, is as follows:-

The plaintiff is the landlady of the property measuring about 1-1/2 grounds comprised in old No.117, Konnur High Road, Madras-23,, now numbered as 30, 31 and 32, Devarajulu Naidu Street, Ayanavaram, Madras. One Jayaraman, the husband of the 1st defendant and the father of the other defendants became a tenant under the plaintiff as the landlady for the hut with brick walls and vacant land bearing door No.32, Devarajulu Mudali Street, Ayanavaram, on 26.01.1959 on a monthly rent of Rs.5/-, which was later increased to Rs.10/- per month. Thereafter, he failed to pay the rent in spite of repeated demands from March, 1984 and hence, the plaintiff filed a petition for eviction against the said Jayaraman in R.C.O.P.No.1183 of 1986. During the pendency of the proceedings, Jayaraman died intestate on 06.04.1988 and the defendants were brought on record as his legal representatives. Since the defendants had denied the title of the plaintiff, she withdrew the rent control proceedings on 26.11.1989 with liberty to file a fresh suit and has filed the present suit for the reliefs stated supra. It was the further case of the plaintiff that originally the property was a vacant land and was owned by one Munusamy Sha and he obtained a decree against the plaintiff. The said Munusamy Sha left Madras and his whereabouts were not known for

more than 14 years and he was presumed to be 'dead' in law. The suit filed by Munusamy Sha relates to less than an area of 12' x 15' only. Hence, the plaintiff let out the remaining portion with hut measuring not less than half ground to the deceased Jayaraman and he was also paying the rent as a tenant to the plaintiff and therefore, the defendants are estopped from questioning the title of the plaintiff.

5. The case of the plaintiff was resisted by the defendants by denying the relationship of the landlady and tenant between the plaintiff and the deceased Jayaraman and stated that the suit property was originally owned by one Munusamy Sha and the door number of the property was 117, Konnur High Road, Madras-23 and subsequently it was re-numbered as 30, 31 and 32. The plaintiff was also a tenant in respect of door No.30 and one Perumal Naidu was a tenant in respect of door No.31 and the said Jayaraman was the tenant in door No.32 under Munusamy Sha. Even in the year 1966, the said Munusamy Sha filed a suit against the plaintiff, Jayaraman as well as Perumal Naidu. But, subsequently, the said Munusamy Sha left Chennai and his whereabouts were not known for a number of years. Hence, by taking advantage of the absence of Munusamy Sha and after the death of Jayaraman, the present suit has been filed by the plaintiff claiming herself as the landlady. It is further stated that the defendants, in 1990, sold a portion of the schedule property under a registered sale deed to one Vasantha. Thus, they denied the title of the plaintiff to the suit property and also denied the relationship of the landlady and tenant.

6. On the basis of the above said pleadings, the trial court has framed three issues and in order to prove the case of the plaintiff, she examined herself as P.W.1 besides examining one Bhavani as P.W.2 and marked Exs.A-1 to A-9 and on the side of the defendants, defendants 1 and 4 were examined as D.Ws.1 and 2 and Exs.B-1 to B-7 were marked. The trial court, on a consideration of the entire evidence on record both oral and documentary, has decreed the suit. As against the judgment of the trial court, the defendants filed an appeal in A.S.No.538 of 2004 on the file of V Additional Judge, City Civil Court, Madras, wherein the appeal was dismissed by confirming the judgment of the trial court. Aggrieved by the judgment of the appellate court, the defendants have filed the present second

appeal.

7. At the time of admission of the second appeal, this Court framed the following substantial questions of law for consideration:

(1) When the title is in dispute whether property tax records can be relied upon to prove the title ?

(2) Whether proceedings in respect of different property and different parties can be relied upon to make a finding in the present case?

(3) When a letter with thumb impression is disputed whether the letter has evidentiary value, when the thumb impression was not proved ?

8. Learned counsel for the appellants/defendants submitted that it is the specific case of the defendants that the property with door Nos.30, 31 and 32 belonged to one Munusamy Sha and the husband of the 1st appellant and the father of the other appellants was the tenant under Munusamy Sha in respect of door No.32, the respondent/plaintiff was the tenant in respect of door No.30 and one Perumal Naidu was the tenant in respect of door No.31. The said Munusamy Sha left Chennai and his whereabouts were not known and thereafter, all the three started living in their portions without any disturbance. The said Jayaraman had never become a tenant under the plaintiff at any point of time and before the trial court, only a letter dated 26.01.1959 was marked as Ex.A-1 as if the said Jayaraman agreed to pay the rent of Rs.5/- per month on or before 10th of every month, but Ex.A-1 contains only a thumb impression and the same was not proved to be that of Jayaraman. Per contra, on the side of the appellants, the order passed by the Small Causes Court, Chennai, in O.S.No.5932 of 1966, the suit filed by Munusamy Sha, as the owner of the property against the said Jayaraman was marked as Ex.B-1 and another order passed in O.S.No.1141 of 1970 filed by Munusamy Sha was marked as Ex.B-2. These two documents would conclusively prove that the said Jayaraman was only the tenant under Munusamy Sha. Moreover, except Ex.A-1, no other document was filed by the respondent to prove that the late Jayaraman was paying rent to her. But Exs.B-1 and B-2 were not considered by the courts below and they, by totally relying upon the property tax receipts marked

on the side of the respondent as well as the judgment delivered in another proceedings, namely, A.S.92 of 1996 i.e.the appeal filed by the respondent against the legal heirs of the tenant deceased Perumal Naidu, marked as Ex.A-5, have erroneously granted a decree in favour of the respondent.

9. Learned counsel for the appellants further submitted that before the trial court, they had filed an application to issue subpoena to the Revenue Officials of the Corporation of Chennai to enquire under what circumstances the property tax assessment was made in favour of the respondent, but the same was dismissed by the trial court on the ground that the tax receipts are not the evidence to prove title and under such circumstances, the appellants have not filed any appeal against the dismissal of the said application. On the contrary, the trial court, in spite of the said finding, by relying upon the property tax demand card, demand notice, intimation from the income tax department marked as Exs.A-7 to A-9, came to the conclusion that the property tax receipts will prove the title of the respondent, which is patently illegal. In support of his contentions, the learned counsel relied upon the decisions reported in AIR 1996 SC 2823 (SAWARNI ..vs..INDER KAUR),

AIR 1997 SC 2719 (BALWANT SINGH ..vs.. DAULAT SINGH),

AIR 1997 SC 2089 (BALESHWAR TEWARI ..vs..SHEO JATAN) and

2005(4) CTC 9 (MOHAMED ALI ..vs.. THE DISTRICT REVENUE OFFICER).

10. By inviting the attention of this Court to Ex.A-5, the judgment rendered in A.S.No.92 of 1996, the learned counsel submitted that the appellants are not the parties to the said proceedings. Under such circumstances, the finding of the courts below, by relying upon Ex.A-5, that there was a relationship of landlord and tenant between the respondent and the appellants is totally not correct. Under the stated circumstances, the judgments of the courts below have to be set aside by dismissing the suit filed by the respondent.

11. Per contra, the learned counsel for the respondent/plaintiff submitted that the property tax receipts marked as Exs.A-7 to A-9 and Ex.A-1 letter dated 26.01.1959

on the side of the respondent would show that she was the landlady and the deceased Jayaraman came as a tenant under her in respect of the suit property. Though the property was originally owned by Munusamy Sha, he left Madras and thereafter he did not return and his whereabouts were not known and hence, he was presumed to be dead in law. Thereafter, the property was assessed in the name of the respondent and she was collecting the rent. Hence, the appellants are now estopped from questioning the title of the plaintiff. Further, by relying upon the definition of the word 'landlord' in the Law Lexicon, the learned counsel submitted that the landlord need not be the owner of land and if the relationship of landlord and tenant exists, that is sufficient to declare the person as landlord. As per section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, the 'landlord' includes 'the person who is receiving and is entitled to receive the rent of the building'. When Ex.A-1 shows that the late Jarayaman came as the tenant under the respondent, that is sufficient to grant the relief of declaration that the respondent is the landlord. Moreover, in the other proceedings initiated by the respondent against Perumal Naidu, the another tenant in respect of Door No.31, the appellate court has held that there was a relationship of landlord and tenant between Perumal Naidu and the respondent and when a second appeal was preferred by the said Perumal Naidu against the same before the High Court, the same was dismissed for default. Therefore, the finding rendered in A.S.92 of 1996 would clearly apply to the facts of this case. Therefore, both the courts below have deeply gone into all aspects and found that there was a relationship of landlord and tenant and, hence, no interference is necessary.

12. By way of reply, the learned counsel for the appellants, by relying upon the judgment in AIR 1992 SC 1604 (JAGDISH SINGH ..vs.. NATTHU SINGH), submitted that if there is non-consideration of relevant documents, then the concurrent findings can be interfered with.

13. Heard the learned counsel for both sides and perused the materials available on record.

14. There is no controversy on both sides that the schedule property originally belonged to one Munusamy Sha and he left Chennai and his whereabouts were

not known. It is the case of the respondent/plaintiff that the husband of the 1st appellant and the father of the other appellants, viz., Jayaraman, came as a tenant on 26.01.1959 for a rent of Rs.5/- per month and in support of her claim, a letter written by Jayaraman was marked as Ex.A-1, which contained only a thumb impression, but the appellants denied the said letter stating that the said thumb impression was not proved by the respondent. On the side of the appellants, the judgment delivered in the suit in O.S.No.5932 of 1966 filed by Munusamy Sha against Jayaraman for recovery of arrears of rent, was marked as Ex.B-1 and another order passed in O.S.No.1141 of 1970 was marked as Ex.B-2. According to the appellants, Exs.B-1 and B-2 are the crucial documents to decide the issue involved in the case as to whether Jayaraman was the tenant under the respondent or Munusamy Sha?

15. A perusal of Exs.B-1 and B-2 would show that the said orders were passed on 30.10.1967 and 19.06.1971 respectively. If the contention of the respondent that Jayaraman, the husband of the 1st appellant and the father of other appellants, came as a tenant under the respondent in 1959 itself is true, there is no probability of filing the suits by Munusamy Sha against Jayaraman in the years 1966 and 1970 for recovery of the arrears of rent. But, the trial court as well as the appellate court have totally ignored Exs.B-1 and B-2. Moreover, the respondent herself had stated in the plaint that the said Munusamy Sha had filed a suit as against her and other tenant Perumal Naidu and she had contested the suit for herself and on behalf of the other tenants. This would strongly prove the case of the appellants that the Jayaraman was the tenant only under the said Munusamy Sha; but, the trial court as well as the appellate court by totally relying upon the property tax receipts and water tax receipts, have decreed the suit. In the instant case, the presumption drawn on the property tax receipts by the courts below, is not legally correct, particularly in the absence of any proof from the respondent to show that how she had derived title from Munusamy Sha when it is an admitted case that the property belonged to Munusamy Sha. Moreover, the assessment of property tax is not a proof for claiming title.

16. It is pertinent to state that, before the trial court, the appellants had taken out an application to issue subpoena to the officials of the Corporation of Chennai to

examine under what circumstances the assessment of property tax stands in the name of the respondent; but the said application was dismissed by the trial court on a finding that the property tax receipts are not the evidence of title. After having dismissed the application on a specific finding that the property tax receipts are not the evidence to prove title, the trial court had taken into consideration the property tax demand notices Exs.A-7 to A-9 and held that the respondent had proved title over the suit property and decreed the suit, which, in my considered opinion, is not correct. Further, both the courts below have relied upon the judgment rendered in A.S.92 of 1996 filed by the respondent against the legal heirs of the deceased Perumal Naidu, marked as Ex.A-5 and on a perusal of the said judgment, I find that the signature of the tenant Perumal Naidu found in the rental deeds Exs.A-2 and 10 was proved by comparing the same with the court documents. But, in the instant case, the thumb impression in Ex.A-1 was not proved. Moreover, in the present case, Exs.B-1 and B-2 marked on the side of the appellants would show that they were tenants under one Munusamy Sha; but such documents were not referred to in the judgment in the other case filed by the respondent against the other tenant Perumal Naidu. But, without looking into these aspects, the lower appellate court, by relying upon the said judgment marked as Ex.A-5, has erroneously come to the conclusion that there is a relationship of landlord and tenant between the respondent and the appellant. Moreover, the appellants herein were not parties to the said proceedings and under such circumstances, Ex.A-5 cannot be used against the appellants. At this stage, it is relevant to rely on the decisions relied on by the learned counsel for the appellants and in AIR 1996 SC 2823 (supra), it has been held as follows: "7.Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question..."

17. It has been held in AIR 1997 SC 2089 (supra) as follows:

"16. Entries in revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. So long as his possession and enjoyment is not interdicted by due process and course of law, he is least concerned with entries. It is common knowledge in rural India that a raiyat always

regards the lands he ploughs, as his dominion and generally obeys, with moral fiber the command of the intermediary so long as his possession is not disturbed. Therefore, creation of records is a camouflage to defeat just and legal right or claim and interest of the raiyat, the tiller of the soil on whom the act confers title to the land he tills". Following the principles laid down in the said decisions, I am of the opinion that the finding arrived at by the trial court by relying upon Exs.A-7 to A-9 and Ex.A-5-judgment in the appeal proceedings, which has been confirmed by the appellate court, is erroneous and the same is liable to be set aside and both the courts below have totally ignored Exs.B-1 and B-2, the important documents in this case. In this regard, it would be appropriate to rely on the decision reported in AIR 1992 SC 1064 (supra), wherein it has been held as follows: "8. As to the jurisdiction of the High Court to reappraise evidence in a second appeal it is to be observed that where the findings by the Court of facts is vitiated by non-consideration of relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper findings."

18. In the instant case, both the courts below have failed to look into the relevant documents Exs.B-1 and B-2 and have given much importance to the non-vital documents such as property tax receipt, demand notice, etc. Though a submission was made by the learned counsel for the respondent that mere receiving rent by a person is enough to declare the relationship of landlord and tenant, I find that except Ex.A-1, no documents were filed on the side of the respondent to show that the deceased Jayaraman was paying rent to her. Under such circumstances, I am of the opinion that the said submission cannot be accepted and when the title is in dispute, the property tax receipts cannot be relied upon to prove the title and the substantial questions of law are answered in favour of the appellants.. For the reasons stated above, the second appeal is allowed and the judgment and decree of the courts below are set aside. Consequently, the suit filed by the respondent herein is dismissed. No costs. Consequently, connected M.P.is closed.