

Shanmugam Vs. Hema

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Court : Chennai

Decided On : Jan-20-2011

Judge : G.Rajasuria, J.

Acts : Transfer of Property Act, (TP Act) - Section 106; Code of Civil Procedure (CPC) - Section 100

Appeal No. : S.A.No.609 of 2010 and M.P.No.1 of 2010

Appellant : Shanmugam

Respondent : Hema

Advocate for Def. : Mr.M.V.Venkataseshan, Adv.

Advocate for Pet/Ap. : Mr.S.Sounthar, Adv.

Judgement :

J U D G M E N T

1. This second appeal is focussed by the defendant, animadverting upon the judgement and decree dated 29.01.2010 passed by the learned Additional Subordinate Judge, Mayiladuthurai in A.S.No.2 of 2008 confirming the judgment and decree dated 28.11.2007 passed by the learned Principal District Munsif, Sirkali in O.S.No.245 of 2002.

2. The parties are referred to here under according to their litigative status and ranking before the trial Court.
3. Heard both sides.
4. The facts giving rise to the filing of this second appeal would run thus:
 - a) The plaintiff filed the suit O.S.No.245 of 2002 seeking the relief of eviction and for assessment of damages for use and occupation of the premises by the defendant.
 - b) Written statement was filed by the defendant resisting the suit.
 - c) Whereupon issues were framed. On the side of the plaintiff, the husband of the plaintiff- one Ravichandran examined himself as P.W 1 and Exs.A1 to A5 were marked. The defendant/Shanmugam examined himself as D.W.1 and Exs.B1 and B2 were marked.
 - d) Ultimately the trial court decreed the suit. Being aggrieved by and dissatisfied with the same, appeal was filed by the defendant for nothing but to be dismissed confirming the judgment and decree of the trial court.
5. Challenging and impugning the judgments of both the courts below, this second appeal has been focussed on various grounds inter alia to the effect that the plaintiff issued notice specifying wrong description of the property and accordingly, if viewed that termination notice cannot be taken as a valid one and it ought to have been taken as non-est in the eye of law, which they failed to do so.
6. The one other point urged in the second appeal is that both the courts below fell into error in not upholding the contention of the defendant that there was oral sale agreement emerged between the vendor of the plaintiff and the defendant herein.
7. Accordingly, suggesting the following substantial questions of law in the memorandum of appeal, this second appeal has been filed.
 - a. Whether the suit is liable to be dismissed for want of proper notice to quit under Section 106 of the TP Act
 - b. Whether the respondent/plaintiff is entitled to maintain the suit when there is no attornment of tenancy in her favour?
 - c. Whether the appellant could be treated

as a tenant after sale agreement between him and vendor of respondent? Whether the tenancy arrangement is not superseded by sale agreement between appellant and vendor of respondent Kumar? (extracted as such)

8. I would like to re-collect and call-up the following decisions of the Hon'ble Apex Court

(i) (2006) 5 Supreme Court Cases 545 HERO VINOTH (MINOR) VS. SESHAMMAL.

(ii) 2008(4) SCALE 300 KASHMIR SINGH VS. HARNAM SINGH AND ANOTHER,

which would exemplify and demonstrate that unless there is a substantial question of law is involved in the matter, the question of entertaining the second appeal would not arise. Hence, it has to be seen as to whether there is any scope for formulating substantial question of law within the meaning of Section 100 of the Code of Civil Procedure.

9. The learned counsel for the appellant/defendant would contend that the description of the property is vague as vagueness could be and no head or tail out of it could be made and in such a case, it should be treated as non-est in the eye of law.

10. Whereas the learned counsel for the respondent/plaintiff by way of torpedoing and pulverising the argument as put forth on the side of the appellant/defendant would contend that the door number of the premises is found spelt out in the notice and it is not the case of the defendant that he has been in occupation of some other premises other than the one over which the plaintiff is claiming right as owner and correspondingly as a landlord, who stepped into the shoes of his vendor.

11. At this juncture, I would like to recollect and call-up the following maxim -

"id certum est quod certum reddi potest -That is certain which can be made certain".

Here even though the boundaries may not have been properly specified yet the door number of the structure has been specified clearly and by that the defendant could have very well understood that the plaintiff sought for eviction only from the said structure concerned. As such, I am of the view that both the courts were right in construing that the termination notice was valid and it was not bad for want of proper description of the suit property.

12. Accordingly, no substantial question of law arises on that count.

13. Even though oral agreement to sell is possible as per law yet the onus of proof is on the person, who pleads such oral agreement. Here, the defendant, as per the findings of fact by both the courts below, has not adduced any clinching evidence in that regard.

14. It is a trite proposition of law that as against the findings of fact, there cannot be any second appeal. Hence, I am of the view that even that point urged before me would not pave way for formulating substantial question of law and ultimately, I am of the view that there is no question of law much less substantial question of law is involved in this matter.

15. Accordingly, the second appeal is liable to be dismissed and the same is dismissed.

16. At this juncture, the learned counsel for the appellant/defendant would make an extempore submission to the effect that the defendant is running a medical shop in the premises concerned and holus bolus, if he is evicted, he would not be in a position to find any other suitable accommodation.

17. I could see considerable force in the submission made by the learned counsel for the appellant/defendant and accordingly, six months' time is granted for vacating and handing over delivery of vacant possession of the premises concerned to the plaintiff/respondent, subject to the condition that the future damages for use and occupation should be paid by the appellant/defendant in favour of the respondent/plaintiff every month in pari materia with the rate of rent of Rs.600/- (Rupees six hundred only) and this is without prejudice to the trial

court's decree in ordering separate enquiry relating to quantification of the damages for use and occupation. An affidavit to that effect shall be filed by the appellant/defendant within 15 days from today.

18. With the above observation, this second appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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