

Solomon Vs. Balaji

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Court : Chennai

Decided On : Apr-18-2013

Judge : G.Rajasuria

Appellant : Solomon

Respondent : Balaji

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

18. 04.2013 Coram: THE HONOURABLE MR.JUSTICE G. RAJASURIA
S.A.No.411 of 2013 and M.P.No.1 of 2013 Solomon .. Appellant Vs.

1. Balaji 2. Sathyamurthy .. Respondents This Second Appeal is focussed as against the judgment and decree dated 15.10.2012 passed in A.S.No.10 of 2011 passed by the learned Subordinate Judge, Poonamallee, modifying the judgment and decree dated 05.04.2010 in O.S.No.616 of 2006 passed by the Additional District Munsif, Poonamallee. For Appellant : Mr.A.K.Kumaraswamy JUDGMENT
This Second appeal is focussed animadverting upon the judgment and decree dated 15.10.2012 passed in A.S.No.10 of 2011 by the learned Subordinate Judge, Poonamallee, modifying the judgment and decree dated 05.04.2010 in O.S.No.616 of 2006 passed by the Additional District Munsif, Poonamallee.

2. The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

3. Compendiously and concisely, the germane facts absolutely necessary for the disposal of this Second Appeal would run thus: The original plaintiff filed the suit as against the defendant for eviction on the ground that the defendant committed default in paying rent in respect of the shop premises and that termination notice as contained in Ex.A1 dated 17.02.2005 was given granting 15 days time and despite that, the defendant did not vacate the property. Hence the suit.

4. The defendant filed the written statement resisting the suit on various grounds to the effect that the rents were paid regularly and even after expiry of initial period of 11 months' lease, the tenant continued to pay the rent and that he has been in possession and occupation of the same. Pending litigation also he has been paying the rent. After issuance of Ex.A1 notice, the plaintiff refused to receive the rent for which the tenant took initiative to tender the rent and only at the instance of the plaintiff the rent could not be paid and the so called arrears were also deposited in the Court. Over and above that, a sum of Rs.50,000/- (Rupees fifty thousand only) is available with the plaintiff and he had not adjusted it towards rent. Accordingly, he prayed for the dismissal of the suit.

5. The trial Court framed the relevant issues.

6. Up went the trial, during which the original plaintiff/Sridharan examined himself as P.W.1 and Exs.A1 to A3 were marked; and the defendant/Solomon himself as D.W.1 and Exs.B1 to B4 were marked.

7. Ultimately the trial Court decreed the suit, as against which the appeal was filed for nothing but to be dismissed by the appellate court modifying the judgment and decree of the trial Court.

8. Challenging and impugning the judgments and decrees of both the fora, this Second Appeal has been focussed on various grounds and also suggesting the following substantial questions of law: "(1) Whether in law, the forfeiture of tenancy as the alleged willful default in payment of rent under Section 111(g) of Transfer of Property Act when the plaintiff refused to receive the rent and returned the money order sent as evidenced by Ex.B2? (2) Whether in law the plaintiff is entitled the relief on the basis of forfeiture of tenancy as contemplated under Section 114 of

Transfer of Property Act when there is no default in payment of rent and the plaintiff had an advance of Rs.50,000/- with him? (3) Whether in law, the judgments and decrees of the courts below are sustainable when they have been based on surmises and conjectures without appreciating the oral and documentary evidence on record in their proper perspective?" (extracted as such) 9. Heard the learned counsel for the appellant.

10. The learned counsel for the plaintiff placing reliance on the typed set of papers as well as the grounds set out in the memorandum of Second appeal would pyramid his arguments, which could succinctly and precisely be set out thus: (a) As per Section 111(g) of the Transfer of Property Act, unless forfeiture is proved by the plaintiff, the question of evicting the defendant would not arise. Over and above that, it was the plaintiff who flagrantly refused to receive the rent. In such a case, the defendant cannot be found fault with. The so called arrears were also deposited in Court. Section 114 of the Transfer of Property Act in no way would enure to the benefit of the plaintiff. (b) The Courts below failed to consider the fact that the plaintiff is having a sum of Rs.50,000/- (Rupees fifty thousand only) towards advance paid by the defendant to the plaintiff. As such, without any basis, both the Courts below ordered eviction, warranting interference in the Second Appeal.

11. At the outset, I would like to fumigate my mind with the recent decision of the Hon'ble Apex Court reported in 2012 (8) SCC 14.[Union of India v. Ibrahim Uddin and another].

12. A mere running of the eye over the above precedent would connote and denote, exemplify and demonstrate that unless there is any substantial question of law is involved, the question of upsetting the finding of the court below would not arise.

13. Keeping the dictum as found embedded in the precedent in mind, I would like to see as to whether any substantial question of law is involved in this Second Appeal.

14. Indubitably and indisputably, the suit premises is situated in an area where the Tamil Nadu Buildings (Lease and Rent Control) Act is not applicable. In such a case, only the Transfer of Property Act is applicable and it has to be seen as to whether a valid termination notice under Section 106 of the Transfer of Property Act was given by the landlord as against the tenant.

15. From the perusal of the records it is clear that Ex.A1 - the termination notice was issued by the plaintiff to the defendant on 17.02.2005 granting 15 days' time to vacate the property. As per the plaint averments as well as the findings of the Courts below, 15 days notice expired by 04.03.2006. Ex.A3-the reply notice dated 01.03.2006 given by the defendant and Ex.B3- the notice sent by the defendant, would reveal that the contention of the defendant was to the effect that there were no arrears of rent and that it was the plaintiff who refused to receive the rent and that he did not specify the Bank for depositing the rent etc.

16. Now the core question arises as to whether in a suit of this nature the plaintiff is bound to prove apart from proving the valid termination notice, any other fact which he averred for cogency sake in the plaint.

17. Here I would like to analyse the application of Section 106 of the Transfer of Property Act in this factual matrix and find out as to whether Ex.A1 could be taken as a valid termination notice or not. As has been pointed above, 15 days' time was granted in the termination notice which got expired by 04.03.2006. However the plaint itself was presented only on 20.11.2006, so to say long after the expiry of statutory period contemplated under Section 106 of the Transfer of Property Act. The amended section 106 of the Transfer of Property Act would clearly display and convey that even if there is any defect in specifying the time for vacating the premises and, if the suit is filed long after statutory period then the defect in the notice would get cured. Here, absolutely there is nothing to find fault with the validity of the termination notice contemplated under Section 106 of the Transfer of Property Act. In such a case, the core question arises as to whether Sections 111 (g) and 114 of the Transfer of Property Act could be pressed into service by the defendant.

18. I would like to refer to Section 111 (g) of the Transfer of Property Act: "111. Determination of lease.-- A lease of immovable property determines-- (a) (b) (c) (d) (e) (f) (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself, or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease." 19. Section 111(g) of the Transfer of Property Act contemplates three types of instances, whereby, the landlord could claim forfeiture as against the tenant and such situations are contemplated within the contractual period of tenancy. If during the subsistence of the contractual period of tenancy if any of the contingencies contemplated under Section 111 (g) of the Act occurs, then the question of forfeiture would arise. But here admittedly it is the case of the plaintiff that the initial period of lease was for 11 months. Thereafter, by holding over, the tenant was continuing in the premises. As such, it is pellucidly and palpably clear that the holding over was from month to month. Section 106 of the Act contemplates that 15 days-notice should be given for terminating the tenancy. In this case, to the risk of repetition and pleonasm, but without being tautologous, I would like to point out that the valid termination notice was given. In such a case, the question of pressing into service Section 111 (g) of the Act in my considered opinion is a well nigh impossibility. Similarly on the same grounds Section 114 of the Transfer of Property also cannot be pressed into service.

20. In para 11 of the appellate Court's judgment, the following could be extracted: "The plaintiff is entitled for a sum of Rs.4,590/- ($90 \times 51 = 4590$) as past mesne profit for the period from 05.03.2006 to 24.04.2006. The plaintiff is entitled to future mesne profit at Rs.90/- per day from 25.04.2006, till the delivery of vacant possession of suit property. The defendant paid a sum of Rs.50,000/- as an advance under Ex.B1, even though there is denial by the plaintiff but Ex.B1 proves the payment of Rs.50,000/- as an advance. The plaintiff also paid amount towards arrears of rent before the trial Court as well before the appellate court. The advance amount and the amount paid by defendant after filing of the suit are all to

be given credit to the amount payable by defendant. Thus this point is answered."

21. As such, the first appellate Court legally passed the order directing adjustments of the advance as against the arrears also. In such a case, I could see no perversity or illegality in the judgments of both the Courts below.

22. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23. On hearing the judgment, the learned counsel for the appellant would pray for three months' time to vacate the premises. I am of the view that two months' time could be granted to vacate the premises subject to filing an affidavit by the appellant/defendant within a week undertaking to vacate the premises as otherwise, such granting of time in his favour would not enure to his benefit. gms
To 1. The learned Subordinate Judge, Poonamallee.

2. The Additional District Munsif, Poonamallee

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