
(2003) 02 MAD CK 0085

In the Madras High Court

Case No : Second Appeal No's. 1574 and 1575 of 1992

Palani Municipal Council

APPELLANT

Vs

C. Sadasivam and T.M. Basheer Ahamed

RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2003) 3 CivCC 326 : (2003) 1 LW 751 : (2003) 1 MLJ 760 : (2003) 3 RCR(Civil) 620 : (2003) 2 RCR(Rent) 253

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : P. Srinivas, for the Appellant; N. Thiagarajan, for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—Since the issues involved in both the second appeals are common, they are taken up together for final disposal.

2. The appellant in both the second appeals is Palani Municipal Council through its Commissioner. The respondents in both the appeals are the

tenants of the appellant in respect of the shops in Palani bus stand. They became lessees of the shops in the public auction held on 19.12.83 on

monthly rent. They entered into lease agreements with the appellant Council. The lease agreements entitled the respondents to be lessees till

31.3.86. Complaining non payment of rent by the respondents, the appellant filed two separate suits for recovery of rental arrears and those suits

were decreed. Subsequent to that, the appellant filed O.S.Nos.369 and 360 of 1989 claiming damages for unauthorised occupation of the shops

by the respondents for the periods from 1.4.86 to 31.8.86 and from April 1986 to March 1987 respectively. The trial Court after considering the

materials dismissed the suit in O.S. No. 369 of 1989 on the ground that the appellant ought to have made the claim even when it filed the earlier suit for recovery of arrears of rent from the respondent and the subsequent suit was therefore hit by Order 2 Rule 2(2) of C.P.C. The said finding was also confirmed by the lower appellate Court in A.S. No. 5 of 1991 on the ground that u/s 116 of the Transfer of Property Act, the respondent should be deemed to have holding over the property and therefore, the subsequent suit filed by the appellant on the same cause of action cannot be entertained. On the other hand, the trial Court after considering the materials decreed the suit in O.S. No. 360 of 1989 on the ground that the appellant was entitled to file the subsequent suit claiming damages since the cause of action for filing of the earlier suit and the subsequent suit was different and therefore, the same will not be hit by Order 2 Rule 2(2) of C.P.C. Challenging the said order, the respondent preferred appeal in A.S. No. 24 of 1991 before the lower appellate Court. The lower appellate Court reversed the finding of the trial Court on the ground that u/s 116 of the Transfer of Property Act, the respondent should be deemed to have holding over the property and therefore, the subsequent suit filed by the appellant on the same cause of action cannot be entertained. It is against the said judgments and decrees, the present second appeals have been filed.

3. The question as to whether the respondents are entitled to Section 116 of the Transfer of Property Act arises for consideration of this Court. u/s 116 of the Transfer of Property Act, for an entitlement of holding over, a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, agreeing to the purpose for which the property is leased, as specified u/s 106. In order to satisfy the said section, there must be a determination of lease and after the determination of lease, the lessee must be in possession of the shop and the owner of the shop should also receive the rent. Only in compliance of all the three conditions, the lessee should be deemed to have holding over of the shop in question. Facts of

this case reveal that by efflux of time, the lease expired on 31.3.86 and there was no express extension of renewal of lease. On and after 1.4.86,

the respondents who were the lessees are not entitled to continue as lessees of the shops. Secondly, it is not the case of the lessees/respondents

that after 31.3.86, the landlord namely the appellant had received the rent for the shops in question. The only condition that has been complied with

by the lessees is as to their occupation of the shops. In the absence of non compliance of the other two conditions, it cannot be considered that the

respondents/tenants are entitled to the provisions of Section 116 of the Transfer of Property Act. When once it is admitted that the

respondents/tenants continued to be in possession even after the expiry of lease period on 31.3.86 and in the absence of other two conditions

being complied, they should be considered as persons occupying the shops without any lease agreement and consequently, their possession shall

be deemed to be unauthorised. In such event, cause of action for claiming the amount from 1.4.86 shall be only by way of damages and not by

way of arrears of rent. Hence, the suits filed by the appellant on an earlier occasion which were decreed for recovery of arrears of rent are entirely

on different cause of action. In such circumstances, Order 2 Rule 2(2) of C.P.C. is not applicable, as Order 2 Rule 2(2) of C.P.C. is applicable

only where the plaintiff omits to sue in respect of, or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the

portion so omitted or relinquished.

4. Useful reference could be also made to the judgment of the Apex Court in ""Sidramappa Vs. Rajashetty and Others, : The said judgment has

been followed by a Division Bench of this Court in the judgment in ""C.RAMAKRISHNAN AND OTHERS v. CORPORATION OF MADRAS

AIR 1976 MAD 128, wherein the Division Bench while considering the scope of Order 2 Rule 2 has held that ""the subsequent suit based on a

different cause of action is totally independent from the cause of action on which the first suit was laid and in such circumstances, Order 2 Rule 2

will not be a bar for institution of the subsequent suit.

5. In view of the above finding, in my considered view, both the appeals should succeed. Accordingly, S.A. No. 1574 of 1992 is allowed setting

aside the judgments and decrees of both the Courts below and S.A. No. 1575 of

1992 is allowed confirming the judgment and decree of the trial Court. No costs.