
(1997) 10 MAD CK 0077

In the Madras High Court

Case No : S.A. No's. 1468 and 1469 of 1996

R. Subramaniya Udayar

APPELLANT

Vs

K.E. Maboo and Another

RESPONDENT

Date of Decision : 24-10-1997

Acts Referred:

Evidence Act, 1872 — Section 101, 102, 103, 134
Transfer of Property Act, 1882 — Section 106

Citation : (1997) 2 CTC 660 : (1998) 2 MLJ 169

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : K. Venkateswaran, for V. Nicholas, for the Appellant; R.T. Doraisamy, for the Respondent

Judgement

S. Jagadeesan, J.—By consent of both the counsel, the second appeals themselves are taken up for final disposal.

2. The short question involved in these second appeals is: Whether the suit is not maintainable on the ground of want of notice u/s 106 of the Transfer of Property Act.

3. The respondents herein are the plaintiffs in O.S.No. 269 of 1993 on the file of the District Munsif's Court, Sathiyamangalam. They filed the suit for recovery of possession against the appellant herein on the ground that the appellant is a tenant and in a panchayat convened among the parties, he has agreed to vacate and deliver vacant possession by 31.1.1993. Since, the appellant failed to handover possession on that day, the respondents herein filed the above said suit for recovery of possession.

4. The appellant contested the suit contending that the panchayat would create a new lease even though the panchayat Muchalika was entered into, wherein the appellant had agreed to vacate and handover possession by 31.1.1993, subsequently there was an oral lease between the parties, whereby the

respondents have extended the lease period for a period of further three years and as such the appellant is entitled to continue to be in possession till 31.1.1996.

5. The trial court after careful consideration of all the evidence let in by both the parties had categorically found that the appellant herein had admitted the undertaking given in the panchayat and the execution of the Muchalika, whereby he had agreed to vacate and handover vacant possession of the suit property. Hence, the appellant has to vacate and handover possession of the property to the respondent, in the absence of any lease as pleaded by him. The plea put forth by the appellant is only oral lease and on behalf of the appellant herein, the appellant alone was examined as D.W.I. In the absence of any corroborative evidence to establish the case of oral lease by the appellant, since the burden of proof lies on him to establish the same, the trial court disbelieved the pleas put forth by the appellant and decreed the suit. As against this, the appellant filed an appeal A.S.No. 72 of 1994 on the file of the Subordinate Judge, Gobichettipalayam. The lower appellate Court also after elaborate discussion of the evidence available on record has concurred with the conclusion arrived at by the trial court and dismissed the appeal. Aggrieved by the same, the present second appeal has been filed. Before this Court also, the counsel for the appellant has raised the same pleas as raised before the lower appellate court as well as the trial court. The finding with regard to the oral lease, being a question of fact, I do not find any reason to differ from the finding of the courts below that there was no oral lease agreement as pleaded by the appellant.

6. So far as the question of statutory notice u/s 106 of the Transfer of Property Act is concerned, such a notice is necessary only in case of subsistence of lease between the parties. In this case, admittedly, the lease period was over and thereafter the panchayat was convened and the appellant had executed the Muchalika and thereby agreed to vacate and deliver vacant possession by 31.1.1993. Since, the appellant had agreed to vacate and surrender possession on 1.2.1993 after the expiry of the lease on 31.1.1993, on the date of the filing of the suit i.e., 11.8.1993 there was no subsisting lease in favour of the appellant. In any event the appellant cannot be considered to be a tenant holding over, in view of the specific undertaking given by him. As the undertaking has been contravened, the appellant is deemed to be a trespasser and as such there is no necessity for the issue of the statutory notice u/s 106 of the Transfer of Property Act. In such circumstances, the non-issue of notice u/s 106 of the Transfer of Property Act will not vitiate the maintainability of the suit. The courts below also have held so and hence on this issue also the finding of the Courts below are confirmed. Consequently, the second appeal is dismissed.

7. The appellant in this appeal has also filed another S.A.No. 1469 of 1996, which arises out of the suit O.S.No. 443 of 1992 filed by him. He has filed the said suit seeking an order of injunction restraining the respondents from interfering with his possession without due process of law. The trial court dismissed the suit. As

against which the appellant has preferred an appeal in A.S.No. 73 of 1994. The lower appellate court has dismissed the appeal and confirmed the decree of the trial court. As against the dismissal order, the present S.A.No. 1469 of 1996 has been filed.

8. In view of the judgment in S.A.No. 1468 of 1996, this appeal has become infructuous, since the relief sought for in this appeal is only to the effect that the respondent should not disturb the appellant's possession without due process of law. Now that the respondents have filed the suit O.S.No. 269 of 1993 and obtained a decree for recovery of possession, nothing survives in this S.A.No. 1469 of 1996 and accordingly it is dismissed.

9. Mr. K. Venkateswaran, learned counsel for the appellant requested one year time for vacating the premises on the ground that it is a non-residential building and the appellant is carrying on his business for a number of years. Though Mr. R.T. Doraisamy, the learned counsel for the respondents opposed the same, still I am of the view that some time may be given to the appellant, considering the fact that the appeal of the year 1996 is taken up for final disposal. In the normal course, it may not be listed for final disposal for another seven to eight years. Hence, considering this fact, I am of the view that the appellant can be given one year time as requested by the learned counsel for the appellant, on condition that the appellant shall pay the rent from the month of October, 1997 at the rate of Rs. 1500 per month till he vacates the suit premises. The appellant has to vacate and deliver vacant possession to the respondent on or before 31.10.1988. No costs. Consequently, C.M.P.Nos. 14583 and 17382 of 1996 are dismissed.