
(2008) 03 MAD CK 0191
In the Madras High Court
Case No : S.A. No. 73 of 2001

Seenikatti

APPELLANT

Vs

The Ramanathapuram Municipality

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Citation : (2008) 03 MAD CK 0191

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : V. Sitharanjandas, for the Appellant; So. Paramasivam, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G. Rajasuria, J.—This second appeal is by the plaintiff in the suit as against the concurrent findings of both the Courts below. The parties are referred to hereunder according to their litigative status before the trial Court.

2. The warp and woof of the case of the plaintiff as stood exposted from the plaint could be portrayed thus:

The plaintiff is a lessee under the defendant Municipality. While so, the defendant Municipality Officials without adhering to the provisions of law attempted to evict forcibly the plaintiff under one pretext or other. The plaintiff even though initially took on lease with effect from the year 1990, yet he was not put in possession of it. Thereupon, he was constrained to file the suit in O.S.No.153 of 1992 and obtained a decree and E.P was also filed. During the pendency of the E.P, the plaintiff was given in possession of the suit property during the month of July 1994. However, the defendant without any manner of right demanded rent for the period relating to which the plaintiff was not in occupation of the demised premises. As such, the apple of discord between the plaintiff and the defendant was relating to payment of arrears. While so, periodically the rent was increased and the plaintiff also paid it. However, the officials once locked the demised

premises wherein the plaintiff was running the hotel and thereupon, the plaintiff also paid some arrears and again, he was allowed to run the hotel. Apprehending that he would be dispossessed illegally, he filed the suit.

3. Per contra, denying and disputing, challenging and gainsaying the allegations/ averments, the defendant filed the refutatory written statement, the gist and kernel of it, would run thus:

The plaintiff has not paid the rent from the year 1990 till the year 1994. Subsequently, he also committed default. There was no high-handedness on the part of the Municipality in trying to evict the plaintiff.

4. The trial Court framed the relevant issues.

5. During trial, the plaintiff examined himself as P.W.1 and Exs.A.1 to A.5 were marked on the side of the plaintiff. D.W.1 was examined and Exs.B.1 to B.7 were marked on the side of the defendant.

6. Ultimately, the trial Court dismissed the suit.

7. Challenging the same, the appeal in A.S.No.104 of 1999 was filed before the Additional District and Sessions Judge cum Chief Judicial Magistrate, Ramanathapuram, which Court also confirmed the judgment and decree of the trial Court.

8. Being aggrieved by and dissatisfied with, the judgments and decrees of the Courts below, this second appeal has been filed on the following main grounds among others:

9. Both the Courts below fell into error in holding that the plaintiff was not entitled to possession whatever be the circumstances.

10. At the time of admitting this second appeal, my learned Predecessor framed the following substantial question of law:

Are not the authorities bound to follow the General law by approaching the civil Court to evict the tenants.

11. Heard the learned Counsel for the plaintiff. Despite printing the name of the defendant, no one appeared on behalf of the defendant.

12. The perusal of the judgment of the trial Court would clearly show that the trial Court was under the misconception as though the plaintiff should have himself asked for a prayer which could be granted by the Court and it refused to mould the relief and grant it. In paragraph No.7, at the last portion of the judgment, the trial Court remarked that had the plaintiff asked for injunction to the effect that he should not be evicted from the demised premises otherwise than in accordance with law, the trial Court would have granted it.

13. I am at a loss to understand as to why the trial Court should shackle itself in that manner. The civil Courts are at liberty to mould the relief and grant it. Here,

the prayer of the plaintiff is only to the effect that he should not be dispossessed illegally or forcibly except in accordance with law. The trial Court after coming to the conclusion that the plaintiff is in possession and his apprehension is genuine, it should have moulded the relief and granted injunction accordingly.

14. The first appellate Court has also not proceeded in the proper direction. The minds of both the Courts below were redolent with the idea that the plaintiff was a defaulter and such a person should not be given with any relief.

15. I would recollect the popular legal principle "He who and he who comes to equity must come with clean hands."

16. No doubt, this well settled principle should be borne in mind before granting injunction in favour of the plaintiff. The plaintiff, however, in this case, at one point of time were liable to pay arrears and thereupon, there was some attempt on the part of the defendant to lock the premises by the defendant.

17. Whatever be the circumstances, the law contemplates that the authorities concerned should adhere to the rule of law. No one should violate the law. Assuming that the plaintiff is a defaulter, in paying rent, nonetheless, the Municipality would not be justified in attempting to evict the plaintiff otherwise in accordance with law. It has got ample powers statutorily to recover the arrears and also evict the plaintiff legally.

18. Hence, in these circumstances, I am of the considered opinion that the relief could have been moulded and given by the Courts below. In the result, this second appeal is allowed with the above finding and the judgments and decrees of the Courts below are set aside and the original suit is decreed partly by granting the relief to the effect that the plaintiff shall not be evicted otherwise in accordance with law. I make it clear that the Municipal authorities are having the right to recover arrears and other dues and also evict the plaintiff legally and this injunction will not be an embargo relating to it. However, in the facts and circumstances of this case, there shall be no order as to costs.