

(2014) 12 MAD CK 0365

Madras High Court

Case No: C.S. No. 597 of 2009

Spencer and Company Ltd.

APPELLANT

Vs

Hindustan Petroleum
Corporation Ltd.

RESPONDENT

Date of Decision: Dec. 15, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2, 11

Hon'ble Judges: Pushpa Sathyanarayana, J

Bench: Single Bench

Judgement

Pushpa Sathyanarayana, J.

Suit for recovery of a sum of Rs. 85,80,566.40ps. with interest on Rs.84,53,760/- @ 18% per annum and for costs.

2. The case of the plaintiff, who claims to be the owner of the suit scheduled property, as narrated in the plaint is as follows:-

(a) The suit property was originally let out by the plaintiff to one Caltex India Limited, which was, later on, taken over by the Government of India. Subsequently, the defendant Company stood substituted in the place of Caltex Oil Refining India Ltd. and renewed the lease for the period from 01.01.1975 to 31.12.1979 and thereafter, the lease was not renewed. It is stated that as the defendant did not vacate even after the expiry of lease, the plaintiff filed C.S. No. 26 of 1981 on the file of this Court for the relief of recovery of possession and for damages for use and occupation of the property. The plaintiff had claimed Rs.1,05,000/- as damages for the period from 01.6.1980 till 30.9.1980 besides demanding a sum of Rs.26,250/- per month as future damages till the date of delivery of possession by the defendant. The suit C.S. No. 26 of 1981 was transferred to the City Civil Court and re-numbered as O.S. No. 14544 of 1996.

(b) In the said suit, the defendant filed an application in I.A. No. 16309 of 1997 under Section 9 of the City Tenants Protection Act and the said application was dismissed by the trial Court on 21.9.2000 as against which C.M.A. No. 188 of 2000 was filed and the same was also dismissed on 21.12.2000. C.R.P. preferred before this Court against the order in C.M.A. also ended against the defendant. After the said proceedings were over, the suit was taken up for trial and decree in favour of the plaintiff was passed on 16.3.2005 by the learned XII Assistant Judge, City Civil Court, directing the defendant to hand over possession on or before 16.6.2005 and also to pay a sum of Rs.1,05,000/- as damages. There was also a decree for payment of Rs.26,250/- per month towards future damages till the handing over of the possession.

(c) Aggrieved by the said judgment, the defendant had filed A.S. No. 550 of 2005 before the IV Additional Judge, City Civil Court, Chennai. Pending appeal, the defendant handed over possession to the plaintiff on 02.4.2007 and hence, the appeal was withdrawn on 11.4.2007. Till the date of withdrawal of the appeal, the defendant had not paid the decree amount and, therefore, the plaintiff issued a legal notice on 12.10.2007. The plaintiff quantified the amount to Rs.84,53,760/- which is the suit claim and also claimed an interest of 18% per annum.

3. The suit was resisted by the defendant by filing the written statement contending inter alia that the suit itself was not maintainable and it was barred by limitation. According to the defendant, the plaintiff cannot claim future damages at the rate of Rs.26,250/- per month from the date of plaint till the date of handing over possession. It was contended by the defendant that there was no assessment done regarding the future damages in C.S. No. 26 of 1981. Hence, the plaintiff cannot claim such amount and in any event, the suit is barred by limitation.

4. On the pleadings, this Court, on 14.12.2010, had framed the following issues for trial:-

- (i) Is the suit claim barred under Order 2 Rule 2 CPC?
- (ii) Is the suit claim barred by limitation?
- (iii) Is the suit claim for damages barred by Res Judicata?
- (iv) Is to what relief or relief if any, is the plaintiff entitled?

5. One M. Balasubramaniam, Managing Director of M/s. Mangal Tirth Estate Limited, the power agent of the plaintiff M/s. Spencer and Co. Ltd. was examined as P.W.1 and produced Exs. P.1 to P.10, the details of which are as follows:-

6. On the side of the defendant, though no witness was examined, Exs. D.1 and D.2 were marked and the details of the same are tabled as under:-

7. Heard Mr. R. Murari, learned Senior Counsel appearing for the plaintiff and Mr. O.R. Santhanakrishnan, learned counsel for the defendant and perused the records.

8. The suit is filed for recovery of a sum of Rs. 84,53,760/- with interest at 18% per annum from the date of plaint till the date of realisation based on the strength of the decree passed in O.S. No. 14544 of 1996 on the file of the City Civil Court, Chennai.

9. For better appreciation of the case, it would be relevant to refer to the details of the earlier suit. The earlier suit O.S. No. 14544 of 2006 was filed by the present plaintiff for recovery of possession and damages for use and occupation from 01.6.1980 to 30.9.1980 and for future damages at Rs.26,250/- per month till the date of delivery of possession. The said suit was decreed on 16.3.2005 and the terms of the decree read as follows:-

(Emphasis added)

Admittedly, an appeal was filed by the defendant in A.S. No. 550 of 2005 on the file of the IV Additional Judge, City Civil Court, Chennai along with C.M.P. No. 1676 of 2005 for stay of the operation of the judgment and decree dated 16.3.2005. Interim stay was granted on condition that the defendant pays a sum of Rs. 1,05,000/- as per Clause 2 of the said decree, to the credit of the suit. It is also admitted that the defendant had complied with the conditional order and the stay was made absolute on 20.3.2006. Clause 3 of the decree in O.S. No. 14544 of 1996, specifically directed the plaintiff to take separate proceedings for recovery of the future damages at the rate of Rs. 26,250/- per month. As stated above, the decree was stayed by the First Appellate Court. Hence, the plaintiff could not take the separate proceedings as indicated in clause 3 of the earlier decree.

10. While so, the defendant vacated the suit premises on 02.4.2007 and handed over possession to the defendant. After vacating the premises, the defendant had admittedly withdrawn the appeal on 11.4.2007. As such, the plaintiff herein gets the right to proceed further based on the decree granted earlier only from the date of disposal of the appeal A.S. No. 550 of 2005. After the disposal, the present suit has been filed by the plaintiff for the suit reliefs on 17.3.2008 claiming Rs. 26,250/- per month from 01.10.1980 to 02.4.2007. Since the plaintiff had claimed damages upto 30.9.1980 in the earlier suit, the claim has been made from 01.10.1980 in the present suit.

11. Mr. Murari, learned Senior Counsel appearing for the plaintiff contended that in view of the operation of the stay in the First Appeal, the plaintiff could not initiate action for recovery of the money immediately and hence, the present suit has been filed from the date of disposal of the First Appeal and within the period of limitation.

12. Assailing the said argument, learned counsel for the defendant contended that the suit claim is not maintainable as the plaintiff would at the most recover the alleged damages from the defendant only for the period of three years prior to the date of filing of the suit. The learned counsel also placed reliance on the Full Bench decision of this court in Gnanaprakasa Mudaliar and two others vs. B.

Anandathandavan and others [1999 (II) CTC 6]. The said case will have no applicability to the present set of facts because in the above case, the application for mesne profits was filed after six years from the date of delivery of possession pursuant to the final decree whereas in the case on hand, this is a second suit filed by the plaintiff for recovery of amount for use and occupation.

13. The said contention of the defendant that the suit is not maintainable, is not correct and the same cannot be accepted. At this juncture, it would be worthwhile adverting to the relief sought for in the earlier suit and the same is usefully re-produced below:-

"(a) for the relief of delivery of possession,

(b) for damage for use and occupation from 1.6.1980 to 30.9.1980 amounting to Rs.1,05,000/-

(c) directing the defendant to pay Rs.26,250/- p.m. as damages for use and occupation from the date of plaint (C.S. No. 26/1981) till date of delivery of possession,

(d) for costs of the suit."

14. From the above extracted portion, it is seen that in the earlier suit, the plaintiff has sought for the relief of delivery of possession and for damage for use and occupation from 01.6.1980 to 30.9.1980 amounting to Rs.1,05,000/- for which alone the Court fees was paid. Insofar as the other relief of future damages is concerned, which was claim of Rs.26,250/- per month from the date of plaint till the date of possession, the Court had passed a decree directing the plaintiff to institute a separate proceedings. Insofar as the said decree is concerned, it was objected to and pointed out by the learned counsel for the defendant that the Court fees was also not paid by the plaintiff. As the said relief granted in Clause 3 of the earlier decree relates to the future damages for which the plaintiff was directed to take proceedings, Court fees could not have been paid. The plaintiff also has taken out separate proceedings, viz., the present suit for the said relief granted. Therefore, the objection of the defendant in that regard cannot be sustained.

15. The only ground that was available to the defendant is the question of limitation. As discussed earlier, the cause of action for the present suit arose only on the date when the appeal in A.S. No. 550 of 2005 was disposed of, i.e., on 11.4.2007. The suit was filed on 17.3.2008 which is well within the period of limitation. Though the plaintiff had sought for the prayer of recovery of damages in the earlier suit from the date of plaint till the date of recovery of possession, which was directed to be recovered by instituting a separate proceedings, it is seen that the decree with regard to the said relief was stayed by the Appellate Court till 11.4.2007 and hence, the plaintiff could not have taken any action till then, i.e., the date of dismissal of the Appeal.

16. It is also to be pointed out that the plaintiff, after the disposal of the appeal, has filed the present suit within the period of limitation. The plaintiff had also categorically pleaded that he is entitled to damages from the defendant for the use and occupation at Rs.26,250/- per month from the date of earlier plaint till the date of delivery of possession. Therefore, the objection taken out by the defendant that the plaintiff cannot claim damages for more than three years prior to the date of the suit will not hold much water.

17. Furthermore, the defendant who had appealed against the earlier decree, had withdrawn the suit immediately after vacating and handing over possession of the property. The defendant lost sight of Clause 3 of the decree which had already quantified the rent per month and granted liberty to the plaintiff to file a separate suit. It is pertinent to note that the defendant had not objected to the quantum of damages arrived at in the earlier suit and allowed it to become final by withdrawing the appeal. Therefore, the claim of the plaintiff for damages from the date of earlier plaint till handing over possession is correct and the suit is within the time. As such, this Court is of the considered opinion that the plaintiff is entitled to the decree as prayed for.

18. In view of above facts and circumstances of the case, the issues regarding the applicability of Order 2 Rule 2 CPC and Section 11 CPC do not arise for consideration.

In the result, the plaintiff is entitled to the decree for a sum of Rs. 85,80,566.40ps.. Since the interest of 18% as claimed by the plaintiff is on a higher side, this Court fixes the same at 12% from the date of plaint till the date of realisation. However, in the circumstances of the case, there shall be no order as to costs.