



S.A.No. 120 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.02.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 120 of 2024

D.Anand Kumar

...Appellant

Vs.

Thomas Abraham

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.13 of 2023 dated 04.07.2023 on the file of the Sub Court, Ambattur confirming the Judgement and Decree dated 10.11.2022 in O.S.No.56 of 2020 on the file of the District Munsif Court, Ambattur.

For Appellant : Mr. S.L.Venkatesan

For Respondent : Mr. Ravi Bharathi.
For Caveator.



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J U D G M E N T

The plaintiff is the appellant before this Court challenging the Judgement and Decree in A.S.No.13 of 2023 by the Sub Judge, Ambattur, in and by which the learned Judge confirmed the Judgement and Decree in O.S.No.56 of 2020, on the file of the District Munsif, Ambattur. In order to appreciate the challenge to the Judgement and Decree in first appeal, it is necessary to set out the facts with the parties being referred to in the same rank as before the Trial Court.

2. The plaintiff had filed the above referred suit for an injunction restraining the defendant, his men, agents or any person claiming under him from interfering with his peaceful possession and enjoyment of the suit property. The plaintiff would submit that he is a tenant under the defendant in respect of the suit property, where he has been running two wheeler workshop since 10.03.2009. The



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plaintiff would submit that originally he had paid an advance of Rs.1,00,000/- and the monthly rent was fixed at a sum of Rs.2,200/- payable on the 5th of every calendar month.

3. It is the case of the plaintiff that he has been very regular in payment of monthly rents. On 05.01.2020, when he had tendered the rent for the month of December 2019, the defendant refused to receive the same and demanded an additional advance of Rs.5,00,000/- and claimed a monthly rent of Rs.8,000/- per month. The plaintiff did not accede to this demand and therefore the defendant directed the plaintiff to vacate and handover vacant possession of the property. While so, on 08.01.2020 at around 8 pm, the defendant along with his henchmen had trespassed into the property and threatened the plaintiff to vacate the premises. However, their attempt was successfully prevented with the help of neighbours. Therefore, on 09.01.2020, the plaintiff had lodged a Police complaint and he was advised to move the Civil Court. Therefore, the plaintiff has come forward with the



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suit.

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4. The defendant had filed a written statement inter alia admitting the fact that the plaintiff was a tenant under the defendant and that he had paid a sum of Rs.50,000/- towards advance and not Rs.1,00,000/- and the monthly rent was a sum of Rs.2400/- and the last rent paid was a sum of Rs.2,800/- for the months, July, August and September 2019.

5. The defendant would submit that the plaintiff had vacated the premises on 13.10.2019 after receiving advance and acknowledging it. Since the plaintiff had already vacated the premises, there was no question of either entering or trespassing into the suit property. The defendant would submit that there was no cause of action for filing the suit and the same appeared to be filed with malafide intention.



Therefore, the defendant sought for the dismissal of the suit.

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6. The Trial Court had framed the following issues:

“1. Whether the defendant interfering into the lawful possession and cause hindrance or in any other manner without due process of law?

2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

3. To what other relief the plaintiff is entitled to?”

7. The plaintiff examined himself as P.W.1 and marked Ex.A.1 to Ex.A.5 and the defendant examined himself as D.W.1 and marked Ex.B.1 to Ex.B.4 on his side.

8. The Trial Court after full contest had dismissed the suit. Aggrieved by the same, the appellant had filed A.S.No.13 of 2023 on the file of the Sub Court, Ambattur. The Lower Appellate Court on



perusing the records and the evidence concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved thus, the plaintiff is before this Court.

9. Today, the matter had come up for admission.

10. Heard the learned counsel for the appellant and perused the records.

11. To support his case that he is still in possession of the property, the plaintiff has filed five documents. The learned Sub Judge, Ambattur, has discussed the evidence as follows:

“Ex.A2 is the Identity card issued to the appellant by the Two-wheeler workshop owner's association. A cursory perusal of the same would reveal that it was issued during the year 2015 to 2016. Ex.A3 is the Aadhar



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card of the appellant which does not prove his continuous possession. Ex.A4 is the legal notice sent by the counsel for appellant to the respondent dated 26.10.2020. Ex.A4 is a post suit notice and cannot be relied to establish the continuous possession till filing of the suit as alleged by the appellant. The learned Counsel for the appellant placed great reliance, on Ex.A5 the money order postal receipts to show that he was continuously paying rents to the respondent but the same was returned as refused. But a mere perusal of Ex.A5 would reveal that there is no endorsement whether the said amount was paid to the respondent or whether the same was returned as refused. Therefore mere filing of postal receipts without any acknowledgment either of receipt or refusal will not clothe the appellant with the jural relationship of tenant.”

The above finding of the learned Judge appears to be spot on



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and I see no reason to differ with the above finding.

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12. The defendant has produced Ex.B.1 which is a rental agreement dated 01.03.2011 entered into between the plaintiff and the defendant, where there is an endorsement in page 2, made by the appellant where he has submitted that he has received the advance in full and has vacated the premises on 13.10.2019. In his cross examination, he has submitted as follows:

“13.10.2019 அன்று நான் கடையை காலி செய்துவிட்டு சாவியை பிரதிவாதியிடம் ஒப்படைத்து பி.வா.சா.ஆ.1ல் கையொப்பம் இட்டுள்ளேன் என்றால் அவர் வேறு ஒப்பந்தம் போட்டு தருவதாக கூறியதால்தான் நான் கையொப்பம் இட்டேன்.

Therefore, it is crystal clear that the endorsement in Ex.B.1 has been made only by the plaintiff and that he has handed over the property back to the defendant.

13. The plaintiff who has contended that he continues to be in occupation of the premises has not filed any document to show his



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occupation of the premises after 13.10.2019. Therefore, the findings of the Courts below is very much in order and in consonance with the evidence on record. Therefore, I see no reason to interfere with this well considered Judgement and Decree of the Courts below. Further, no Substantial Questions of law has been made out. Accordingly, the Second Appeal is dismissed. No costs.

26.02.2024

Index : Yes/No
Internet : Yes/No
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To

1.The Sub Court,
Ambattur.

2.The District Munsif Court,
Ambattur.



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P.T. ASHA, J,

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