

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1081 of 2015

K.Palani

.. Appellant/Defendant

-Vs-

1. K.S.Vedammal
2. Ramani Ammal
3. Malliga

.. Respondents/Plaintiffs

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree in A.S.No.20 of 2012 dated 17.12.2013 on the file of the Subordinate Judge, Arni, confirming the decree and judgment passed in O.S.No.343 of 2007 dated 29.02.2012 on the file of the District Munsif, Arni.

For Appellant : Mr.P.Ganapathy

J U D G M E N T

The defendant in O.S.No.343 of 2007 on the file of the learned District Munsif, Arni is the appellant herein. The respondents are the plaintiffs in the suit. The said suit was filed for recovery of possession on termination of the lease. The trial court by decree and judgment dated 29.02.2012 decreed the suit as prayed for. As against the same, the appellant herein filed an appeal in A.S.No.20 of 2012 before the learned Subordinate Judge, Arni. By decree and judgment dated 07.12.2013, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. Challenging the same, the appellant is before this Court with this Second Appeal.

2. This Second Appeal has come up today for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.

3. The case of the plaintiffs in brief is as follows:

Admittedly, the appellant/defendant is the tenant of the suit property and the plaintiffs are the landlords. The defendant failed to pay the rent and he had committed default. A notice as required under Section 106 of the Transfer of Property Act terminating the lease was issued by the plaintiffs on 11.10.2001 and the same was received by the defendant on 12.10.2001. But the defendant did not respond to the said notice. Thereafter, the present suit was filed in the year 2007.

4. In the written statement filed by the defendant, it was contended that there was no arrears of rent. It was further contended that since there was a dispute in respect of title, he has not able to pay the rent. He also questioned the validity of the notice issued under Section 106 of the Transfer of Property Act. Thus, according to the defendant, the suit is liable to be dismissed.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiffs, the 3rd plaintiff was examined as P.W.1 and as many as 4 documents have been exhibited. Ex.A.3 is the termination notice dated 11.10.2001 and Ex.A.4 is the Postal Acknowledgment. On the side of the defendant, 3 witnesses were examined, but no document was marked. Having considered the oral and documentary evidence, the trial court decreed the suit as prayed for and the same was confirmed by the lower appellate court. That is how the defendant is before this Court with this Second Appeal.

6. The learned Counsel for the appellant would submit that there is a question of law involved in this Second Appeal. According to him, the suit is barred by limitation, because, according to him, the suit was not filed within 3 years from the date of the cause of action as provided in Article 113 of the Limitation Act. The learned Counsel would further submit that the termination of the lease is not valid because the appellant had not committed any default in payment of rent.

7. I have considered the above submissions.

8. The question as to whether the appellant had fallen in huge arrears in payment of rent is a question of fact which has been answered concurrently by the courts below in which I do not find any perversity. So far as the question of limitation is concerned, the argument of the learned Counsel for the appellant deserves to be rejected because the period of limitation as provided in Article 113 is not applicable and the period of limitation provided in Article 67 alone is applicable. Article

67 states that for a landlord to recover possession from the tenant, the period of limitation is 12 years from the date of termination of the lease. Here in this case, the lease was terminated as early as on 11.10.2001 and the termination notice was received by the appellant on 12.10.2001. Thus the suit filed in the year 2007 is very much within the period of limitation. Thus, I do not find any substantial question of law at all involved in this Second Appeal warranting admission and I find no merit in the Second Appeal.

9. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is hereby confirmed. No costs.

sd/-
Assistant Registrar (CO)

/TRUE COPY/

Sub-Assistant Registrar

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To

- 1.The Subordinate Judge, Arni.
- 2.The District Munsif, Arni.

+1 CC to MR.P.Ganapathy Advocate. SR.NO. 68635

S.A.No.1081 OF 2015

CO-MSM
JD 28/01/2016

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