

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.11.2015

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THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.986 of 2015 and  
M.P.No.1 of 2015

Dr.D.Kanakasabapathy

...Appellant/Appellant/Defendant

Vs.

Dr.R.Thanapal

..Respondent/Respondent/Plaintiff

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the judgment and decree dated 19.01.2015 passed in A.S.No.54 of 2014 by the learned III Additional Judge, City Civil Court, Chennai Confirming the Judgment and decree dated 05.09.2013 passed in O.S.No.5022 of 2009 by the learned XIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.R.Subramanian

JUDGMENT

The defendant in O.S.No.5022 of 2009 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai is the appellant herein. The respondent is the plaintiff in the suit. The said suit was filed for recovery of a sum of Rs.99,900/- from the defendant with interest @ 12% per annum. By decree and judgment dated 05.09.2013, the trial Court decreed the suit as prayed for. As against the same, the defendant filed an appeal in A.S.No.54 of 2014 on the file of the learned III Additional Judge, City Civil Court, Chennai. By decree and judgment dated 19.01.2015, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the defendant 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 also perused the records carefully.

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

The plaintiff and the defendant are the Doctors by profession. They entered into a joint venture to run a private hospital. The building in question was hired for monthly rent. They started the business in the year 1980. In the year 1993, there arose some misunderstanding between the parties and thereafter, according to the plaintiff, the hospital was to be run by the plaintiff between 9.00 am and 5.00 pm and by the defendant between 5.00 pm and 9.00 am. Accordingly, the hospital was run. It was also agreed between the parties that each should pay Rs.900/- as monthly rent for the building. Thus, making it at Rs.1,800/- per month towards rent. The plaintiff paid his share of rent i.e., Rs.900/- regularly. But, the defendant did not pay it. At one stage, the landlord refused to receive the half of the rent i.e., Rs.900/- from the plaintiff. Thereafter, the landlord filed an eviction petition in R.C.O.P.No. 2855 of 1997. The Rent Control Court allowed the said petition in favour of the landlord. As against the same, the plaintiff filed an appeal in R.C.A.No.288 of 2000. In that, M.P.No.362 of 2000 was filed to deposit the arrears of rent. That was allowed and a part of the rent i.e., Rs.16,200/- was also deposited by the plaintiff. But, the defendant did not pay his share of arrears of rent. Thus, the plaintiff filed the said suit for recovery of a sum of Rs.99,900/- from the defendant. The defendant filed a written statement stating that after the misunderstanding arose between the parties, at the end of year 1997, the partnership between the parties was dissolved and thereafter, the hospital was solely run by the defendant. Since, the defendant was directly paid the rent to the landlord, for the period between 1997 and 2006, the defendant is not liable to pay arrears of rent for the said period to the plaintiff.

4.Based on the above materials, the trial Court framed appropriate issues. Before the trial Court, on the side of the plaintiff, he was examined as P.W.1 and as many as 71 documents were exhibited. On the side of the defendant, he was examined as D.W.1 and as many as 16 documents were exhibited. Having considered all the above, the trial Court decreed the suit, which was confirmed by the First Appellate Court. That is how the appellant/defendant is before this Court with this second appeal.

5.The learned counsel for the appellant would submit that after the year 1997, there was no partnership between the parties and the hospital was run solely by the defendant. Therefore, for the period between 1997 and 2006, the defendant regularly paid rent to the landlord and therefore, if any amount has been paid during the rent control proceedings by the

plaintiff, the defendant is not liable to pay the said amount to the plaintiff.

6. In my considered view, this is basically a pure question of fact. The Courts below have considered both oral as well as documentary evidence and have come to the conclusion that the rent for the period between 1997 and 2006 was paid only by the plaintiff and therefore, the defendant is liable to pay half of the same to the landlord. The said finding of the Courts below cannot be stated to be perverse. Apart from that, there is no substantial question of law involved at all warranting admission of this second appeal. Thus, I do not find any merit in this second appeal.

7. In the result, the second appeal fails and accordingly, the same is dismissed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

jbm  
To

1. The III Additional Judge,  
City Civil Court, Chennai.

2. The XIII Assistant Judge,  
City Civil Court,  
Chennai.

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Second Appeal No.986 of 2015

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