

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03-08-2016

Delivered on: 22-08-2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.399 of 2016

& CMP Nos.9173 and 11802 of 2016

S. Shanmugam Appellant/Defendant

Vs

Dr. (Mrs.)Snehalatha Elangovan ... Respondent/Plaintiff

Appeal suit filed under Section 96 and Order 41 Rule 1, CPC against the judgment and decree, dated 16-03-2016, passed in O.S.No.1074 of 2012 by the VII Additional City Civil Court, Chennai.

For Appellant : Mr. S. Venkatesh

For Respondent : Mr. S. Rajasekar

JUDGMENT

सत्यमेव जयते

(Judgment of the Court was delivered by A.SELVAM,J.)

This appeal suit has been directed against the judgment and decree dated 16-03-2016, passed in O.S.No.1074 of 2012 by the VII Additional City Civil Court, Chennai.

2. The respondent herein, as plaintiff, has initiated O.S.No.1074 of 2012 on the file of the Trial Court praying to pass a money decree in respect of arrears of rent with future interest wherein the present appellant has been shown as sole defendant.

3. The material averments made in the plaint are that the plaintiff is the absolute owner of the property mentioned in the plaint and the same is situate in Old No.60, New No.80, 28th Cross Street, Indira Nagar, Adyar, Chennai. The property mentioned in the plaint consists ground floor, first floor, second floor and third floor. The plaintiff has leased out ground floor, first floor and second floor to the defendant for a period of eleven months from 01-06-2008 to 30-04-2009. The monthly rent has been fixed at Rs.1,50,000/- (Rupees One lakh fifty thousand only). The defendant has paid security deposit of Rs.3,00,000/- (Rupees Three lakhs only). The defendant has run a Women's Hostel namely, Om Shree Sai Ram Working Women's Hostel. In the meanwhile, the defendant, his employees have created so many problems. The plaintiff has terminated the lease with effect from 30-04-2009 and the same has also been intimated to the defendant. The defendant has committed default in paying monthly rent from February 2009 and due to that the plaintiff, as petitioner has filed R.C.O.P.No.1345 of 2009 on the file of the XII Small Causes Court, Chennai, for eviction. During pendency of the same, the plaintiff, as petitioner has filed M.P.No.386 of 2009 under Sections 11(1) and (4) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 for arrears of rent and the same has been allowed on 23-12-2009 and thereby, directed the defendant to deposit arrears of rent and also directed to continue payments of rent at Rs.1,50,000/- (Rupees One lakh fifty thousand only) from January 2010. The defendant has failed to comply with the order passed in M.P.No.386 of 2009. On 12-01-2010, R.C.O.P.No.1345 of 2009 has been allowed and thereby, directed the defendant to vacate the property mentioned in the petition within a period of two months. The defendant, as appellant has preferred R.C.A.Nos.138 and 431 of 2010 and the same have also been dismissed on 15-09-2010. The defendant has deposited a sum of Rs.4,12,500/- (Rupees Four lakhs Twelve thousand Five hundred only) in R.C.O.P.No.1345 of 2009. The defendant has not chosen to challenge the eviction order passed by the Rent Controller and confirmed by the appellate authority, by way of filing Civil Revision Petition. The defendant has closed the hostel and inmates have vacated the same from 02-05-2010 to 05-06-2010. The defendant has locked the second floor and kept the key with him. The plaintiff has filed E.P.No.475 of 2010. The defendant has wantonly kept some articles in the premises. The defendant has filed C.S.No.806 of 2010 on the file of the High Court, Madras, praying to grant mandatory injunction so as to direct the plaintiff to return the articles wherein Application No.5998 of 2010 has been filed for appointment of an Advocate Commissioner and accordingly, an Advocate Commissioner has been appointed and he handed over all the articles on 26-11-2010 to the defendant. Now, the defendant is liable to pay a sum of Rs.18,98,662/- (Rupees Eighteen lakhs

Ninety Eight thousand Six hundred and Sixty two only) towards arrears of rent. Under the said circumstances, the present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the defendant it is averred that the plaintiff has leased out the property mentioned in the plaint on a monthly rent of Rs.1,50,000/- (Rupees One lakh fifty thousand only). The plaintiff has acted against the covenants of the rental agreement dated 01-06-2008. The plaintiff has purposely locked kitchens. The defendant has deposited a sum of Rs.4,12,500/- (Rupees Four lakhs Twelve thousand five hundred only) as per conditional order passed in R.C.A.Nos.138 and 431 of 2010. It is true that the defendant has closed the hostel and inmates have vacated the same from 02-05-2010 to 05-06-2010. It is false to aver that the defendant has locked the second floor and kept the key with him. The plaintiff has purposely cut off electric connection and water supply. The defendant has filed C.S.No.806 of 2010 praying to pass a decree in respect of mandatory injunction, wherein an application, A.No.5998 of 2010, has been filed to appoint an Advocate Commissioner and accordingly, an Advocate Commissioner has been appointed and he visited the property mentioned in the plaint on 26-11-2010, in the presence of both the parties and he has also taken inventory of articles. It is false to aver that the defendant is liable to pay the amount mentioned in the plaint and therefore, there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the rival pleadings raised on either side, the Trial Court has framed necessary issues and after analysing both the oral and documentary evidence has decreed the suit in part. Against the judgment and decree passed by the trial court, the present appeal suit has been filed at the instance of the defendant as appellant.

6. Before analysing the rival submissions made on either side, the Court has to narrate the following admitted facts. It is an admitted fact that the property mentioned in the plaint is the absolute property of the plaintiff and the same has been leased out to the defendant by virtue of rental agreement dated 01-06-2008 whereby the defendant has agreed to pay a monthly rent of Rs.1,50,000/- (Rupees One lakh fifty thousand only). It is also equally an admitted fact that during pendency of rental agreement dated 01-06-2008, various legal proceedings have emanated between the plaintiff and defendant. The defendant has closed the hostel and due to closure, inmates have vacated the hostel from 02-05-2010 to 05-06-2010. The present suit has been

instituted by way of saying that the defendant has locked the second floor and kept the keys with him and only on 26-11-2010, actual possession of the property mentioned in the plaint has been given to the plaintiff.

7. The Trial Court after considering the available evidence on record as mentioned supra, has decreed the suit in part.

8. The learned counsel appearing for the appellant/defendant has repeatedly contented to the effect that during subsistence of rental agreement, the plaintiff has disconnected service connection and water supply and the same has also been brought to the notice of the Court during pendency of Rent Control Proceedings and even during May 2010, the defendant has vacated the entire premises. Under the said circumstances, the defendant is not at all liable to pay arrears of rent to the plaintiff. But the trial Court without considering the nature of defence put forth on the side of the defendant has erroneously decreed the suit in part and therefore, the judgment and decree passed by the Trial Court are liable to be interfered with.

9. The learned counsel appearing for the respondent/plaintiff has contended that in the instant case, replete evidence is available for the purpose of proving that the plaintiff has not disconnected the amenities and further, in C.S.No.806 of 2010, an Advocate Commissioner has been appointed and he handed over the vacant possession of the property mentioned in the plaint to the plaintiff, only on 26-11-2010 and the Trial Court after considering the evidence available on the side of the plaintiff has rightly decreed the suit in part and therefore, the judgment and decree passed by the Trial Court do not warrant interference.

10. The main argument put forth on the side of the appellant/defendant is that the plaintiff has wantonly disconnected service connection and also water supply and the same has been brought to the knowledge of the Court during pendency of Rent Control Proceedings.

11. On the side of the appellant/defendant, C.M.P.No.11802 of 2016 has been filed wherein certain documents have been annexed.

12. Considering the nature of defence put forth on the side of the appellant/defendant, C.M.P.No.11802 of 2016 can be allowed and the documents mentioned therein can also be looked into. Therefore, C.M.P.No.11802 of 2016 is allowed and the documents filed along with the same are marked as Exs-D3 and D4.

13. The learned counsel appearing for the respondent/plaintiff has drawn the attention of the Court to the order passed in M.P.No.386 of 2009 in R.C.O.P.No.1145 of 2009 wherein Paragraph No.9, it is mentioned like thus:

"On the discussions supra, it is established the monthly rent is Rs.1,50,000/- and that the petitioner has not withdrawn any amenities and that the respondent is in arrears as per the calculation given by the petitioner. The respondent is in arrears of Rs.75,000/- for February 2009 and from May 2009 onwards. The respondent is in arrears of Rs.1,50,000/- per month for March and April 2009. Excess advance amount is Rs.1,50,000/- has to be given credit in favour of the respondent. Hence it is found that the respondent to pay the arrears upto date to continue to contest the case."

14. It is seen from the additional documents filed on the side of the appellant/defendant that with regard to alleged disconnection of amenities, those documents have become emerged. But the very same contention has been raised before the Rent Controller and the specific finding given by the Rent Controller is that the petitioner/plaintiff has not withdrawn amenities at any point of time. Further, as mentioned supra, the order passed in M.P.No.386 of 2009 has also been upheld in Rent Control Appeal. Therefore, it is quite clear that the plaintiff has not cut off the so-called amenities.

15. Now, the Court has to meticulously analyse as to when possession of the properties mentioned in the plaintiff has been given to the plaintiff.

16. The specific case of the appellant/defendant is that even during May 2010, the appellant/defendant has given possession of the building mentioned in the plaint to the respondent/plaintiff. The specific contention put forth on the side of the respondent/plaintiff is that after dismissal of Rent Control Appeals, the appellant/defendant as plaintiff has instituted C.S.No.806 of 2010 for the relief of mandatory injunction wherein at his instance an application has been filed in Application No.5998 of 2010 so as to get appointment of an Advocate Commissioner and accordingly, an Advocate Commissioner has been appointed and he handed over vacant possession of the property mentioned in the plaint only on 16-11-2010. Under the said circumstances, the present suit has been filed for the relief sought therein.

17. It is an admitted fact that after dismissal of Rent Control Appeal Proceedings, the appellant/defendant as plaintiff has instituted C.S.No.806 of 2010 wherein an Advocate Commissioner has been appointed and after inspection, he has filed his report and the same has been marked as Ex-A26, wherein it has been clearly stated that all movables found therein have been handed over to the plaintiff therein and further, it is seen from the records that legal possession has been given only on 26-11-2010. Therefore, it is clear that the respondent/plaintiff has taken possession on 26-11-2010. Under the said circumstances, the contentions put forth on the side of the appellant/ defendant cannot be accepted.

18. At this juncture, an abortive attempt has been made by the learned counsel for the appellant/defendant to the effect that for the purpose of relying upon Ex-A26, the concerned Advocate Commissioner has to be examined and since, he has not been examined Ex-A26 cannot be relied upon.

19. As adverted to earlier, C.S.No.806 of 2010 has been filed by the present appellant/defendant as plaintiff, whereas the present respondent/plaintiff has been shown as sole defendant. Considering the fact that in C.S.No.806 of 2010, an Advocate Commissioner has been appointed and also considering the fact that in C.S.No.806 of 2010, the present parties are the parties, this Court is of the view that for relying upon Ex-A26, the Advocate Commissioner who filed the same need not be examined. Therefore, the contention put forth on the side of the appellant/defendant with regard to Ex-A26 is sans merit.

20. On the side of the respondent/plaintiff with regard to arrears of rent, a calculation has been submitted and the same has also been incorporated in the judgment rendered by the Trial Court. In the said calculation, it has been clearly stated that from February 2009, arrears of monthly rent has become due and it comes upto November 2010. As stated earlier, legal possession has been given only 26-11-2010. Considering the afore said factual aspects, this Court is of the view that the method of calculation done by the Trial Court is perfectly correct. Further, the Trial Court after deducting the amount paid as well as deposited has given a specific finding to the effect that the appellant/defendant is liable to pay a sum of Rs.18,98,662/- (Rupees Eighteen lakhs Ninety Eight thousand Six hundred and Sixty two only). Therefore, viewing from any angle, the contentions put forth on the side of the appellant/defendant cannot be accepted and altogether, the present Appeal Suit deserves to be dismissed.

In fine, this appeal suit is dismissed with costs. The judgment and decree dated 16-03-2016, passed in O.S.No.1074 of 2012 by the VII Additional City Civil Court, Chennai are confirmed. Consequently, C.M.P.No.11802 of 2016 is allowed and C.M.P.No.9173 of 2016 is dismissed.

Additional Documents marked on the side of the appellants/defendants:

- D3 12-04-2010 Affidavit petition filed by the
15-04-2010 appellant/defendant in M.P.No.170 of 2010 in
28-04-2010 R.C.O.P.No.624 of 2010 and the docket order
passed by Learned XX Small Causes Judge at
Chennai
- D4 28-05-2010 Telegram issued by the appellant/defendant to the
plaintiff/respondent

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The VII Addl.City Civil Court,
Chennai.

+1cc to M/S.Venkatesh, Advocate Sr.47675
+1cc to M/S.S.Rajasekar, Advocate Sr.47927

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