

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2016

CORAM :

THE HONOURABLE Mr. JUSTICE N.KIRUBAKARAN

SA.No.909 of 2012

S.Sundararajan

... Appellant/Appellant/
Defendant

Vs.

1.Mrs.R.Mohana

2.Mrs.Chithira

... Respondents/Respondents/
Plaintiffs

Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree dated 27.09.2010 made in AS.No.27 of 2010 on the file of the Sub Court, Panruti confirming the judgment and decree dated 07.04.2010 made in OS.No.271 of 2008 on the file of the District Munsif, Panruti.

For Appellant : Mr.S.Umapathy

For Respondents : Mrs.R.Meenal

The second appeal has been preferred by the tenant/defendant. Aggrieved over the concurrent judgment and decree passed against the defendant for recovery of arrears of rent in respect of the appellant occupation in the respondents premises.

2.The appellant is the tenant under the respondents. Since there was default in the payment of rent from February 2006 to September 2008 for 32 months, the suit for recovery of money for Rs.40,000/- along with interest was filed. The said suit was decreed and the appeal got dismissed against the said judgment the present second appeal has been filed by the unsuccessful defendant.

3.The Second Appeal is admitted on the following Substantial questions of law :

(1)Whether the lower appellate Court has rendered a perverse finding on mere surmise without therebeing positive evidence that the advance amount of Rs.50,000/- admittedly paid by the appellant/defendant was adjusted towards the arrears of rent for the period prior to February 2006 and only after such adjustment a sum of Rs.12,700/- was paid?

(2)Whether the lower appellate Court has committed an error in assuming that the plaintiffs can lead evidence regarding adjustment of the advance amount towards arrears of rent without therebeing any plea made in the plaint or in an additional plea filed in the form of reply statement?

4.A perusal of the judgment and decree would show that the appellant himself admitted in his evidence that he paid the rent only upto January 2006 and thereafter he failed to make the payment and based on the admission only the decree has been passed.

5.The appellant himself admitted that the amount was paid only upto January 2006 and thereafter there was no payment made. Hence, the judgment and decree passed by the trial Court as confirmed by the appellate Court cannot be interfered with.

6.In the result, the second appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Court, Panruti
2. The District Munsif, Panruti.

Copy To : The Section Officer,
V.R.Section,
High Court, Madras 104.

+1cc to Mr.R.Meenal, Advocate, S.R.No.27515

S.A.No.909 of 2012

RSK(CO)
CA(02/09/2016)