

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.01.2016

CORAM :

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
Second Appeal No.1 of 2016
and
M.P.No.1 of 2016

T.R.Subramaniyan ... Appellant/Respondent/Defendant

-Vs-

A.Shanmuga Subramaniyan ... Respondent/Appellant/Plaintiff

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 02.04.2014 passed in A.S.No.32 of 2012 by the II Additional Subordinate Judge, Cuddalore, reversing the judgment and decree dated 27.01.2012 passed in O.S.No.560 of 2008 on the file of the Additional District Munsif, Cuddalore.

For Appellant : Mrs.R.Meenal

For Respondent : Mr.T.S.Baskaran

J U D G M E N T

The defendant in O.S.No.560 of 2008 on the file of the learned Additional District Munsif, Cuddalore is the appellant. The respondent herein is the plaintiff in the suit. The said suit was filed for recovery of possession of the suit property and also for a decree for a sum of Rs.54,000/- towards damages on account of use and occupation of the suit property by the defendant and for other reliefs. By decree and judgment dated 27.01.2012, the trial court dismissed the suit. As against the same, the respondent herein filed an appeal in A.S.No.32 of 2012 on the file of the learned II Additional Subordinate Judge, Cuddalore. By decree and judgment dated 02.04.2014, the lower appellate court allowed the appeal, set aside the decree and judgment of the trial court and decreed the suit as prayed for

with cost. Challenging the same, the appellant is before this Court with this Second Appeal.

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

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

The suit property was originally owned by one Malar Ammal. From Malar Ammal, one Krishnan and Suresh purchased the suit property by means of a registered sale deed dated 14.08.2003 from whom the plaintiff purchased the suit property by means of a registered Sale Deed dated 10.03.2004 for a valuable consideration. When Malar Ammal was the owner of the suit property, the defendant entered into an oral lease agreement with her and took possession of the suit property on the undertaking that he would pay Rs.1,000/- p.m. towards rent. After the property was purchased by the plaintiff, he demanded the defendant to vacate the suit property and to hand over vacant possession. But the defendant approached the plaintiff to create a fresh lease agreement between the plaintiff and the defendant. Accordingly, a fresh oral lease agreement was entered into between the plaintiff and the defendant by which the defendant agreed to pay a sum of Rs.1,500/- p.m. towards rent. He also paid the rent upto the month of March, 2005 and thereafter, he defaulted. The defaulted amount until the filing of the suit was worked out to Rs.54,000/-. The plaintiff also issued a notice under Section 106 of the Transfer of Property Act on 09.11.2006 terminating the lease and demanding the defendant to vacate and hand over the vacant possession of the property on the expiry of the statutory period. The said notice was received by the defendant on 13.11.2006. But he did not vacate the suit property. That is the reason why the plaintiff filed the present suit for recovery of possession and for recovery of Rs.54,000/- with interest.

4. The defendant in his written statement disputed the said claim. According to him, there was no oral agreement entered into between him and Malar Ammal, the original title holder. It is his further case that there was no such lease agreement between him and the plaintiff also. It is also his case that there was no arrears of rent to the plaintiff. It is his further case that in the life time of Malar Ammal, he took possession of the suit property on the permission given by Malar

Ammal. Thus, according to him, he is a permissive occupier. He has further stated that the purchase allegedly made by the plaintiff is not known to him. At any rate, he is not liable to pay any amount to the plaintiff towards arrears of rent as he was not a tenant at all and there was no such agreement with the plaintiff to pay Rs.1,500/- p.m. towards rent. It is his further claim that he is entitled to continue to be in possession of the suit property as permissive occupier. Yet another plea has also been taken stating that he has got title which he has secured by adverse possession. For all these reasons, 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 plaintiff, 3 witnesses were examined and as many as 8 documents have been exhibited and on the side of the defendant, two witnesses were examined and as many as 15 documents have been exhibited. Having considered all the above, the trial court dismissed the suit which was reversed by the lower appellate court. That is how the appellant is before this Court with this Second Appeal.

6. In this Second Appeal, the learned Counsel for the appellant would submit that the lower appellate court has failed to appreciate the evidence in their proper perspective and in a mechanical fashion, reversed the well considered judgment of the trial court. She would further submit that the plaintiff has got no right to demand for recovery of possession, however, she would submit that there is no arrears of rent as the defendant has paid the rent without default. All these facts have not been considered by the lower appellate court, the learned Counsel contended.

7. I have considered the above submissions.

8. At the outset, I should say that there is no question of law much less a substantial question of law involved in the Second Appeal warranting admission of the same. All the above grounds raised by the learned Counsel for the appellant are all only on facts. Even on facts, I do not find any perversity in the judgment of the lower appellate court. So far as the title of the plaintiff is concerned, the sale deed executed by Malar Ammal has been duly proved. There is no denial of fact that Malar Ammal was the original owner of the suit property. It is also admitted by the defendant that he is in possession of the

suit property. Now the question is as to whether the defendant has been in possession of the suit property as a permissive occupier as permitted by Malar Ammal or he is only a tenant as claimed by the plaintiff. Assuming that the defendant is only a permissible occupier, such permission cannot be ever lasting. Hence in this case, the notice issued by the plaintiff can be construed as a notice revoking the permission. But the lower appellate court has held that the defendant is not a permissive occupier and he is only a tenant. To prove the tenancy also, there is no documentary evidence because the tenancy is only oral. If it is construed as a lease, then, the notice issued by the plaintiff terminating the lease under Section 106 of the Transfer of Property Act is valid and therefore, after the stipulated period, the defendant cannot continue to be in possession. Having considered all the above, the trial court has held that there has been a proper termination of the lease and therefore, the defendant is liable to vacate and hand over vacant possession of the suit property properly. Similarly, on facts, the lower appellate court has found that the defendant has fallen in arrears of rent to the tune of Rs.54,000/- in which I do not find any infirmity. Thus, in this Second Appeal, neither I find any substantial question of law nor I find any other merit.

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. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

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सत्यमेव जयते
Sub Assistant Registrar

tsi

To

1.The Additional District Munsif,
Cuddalore.

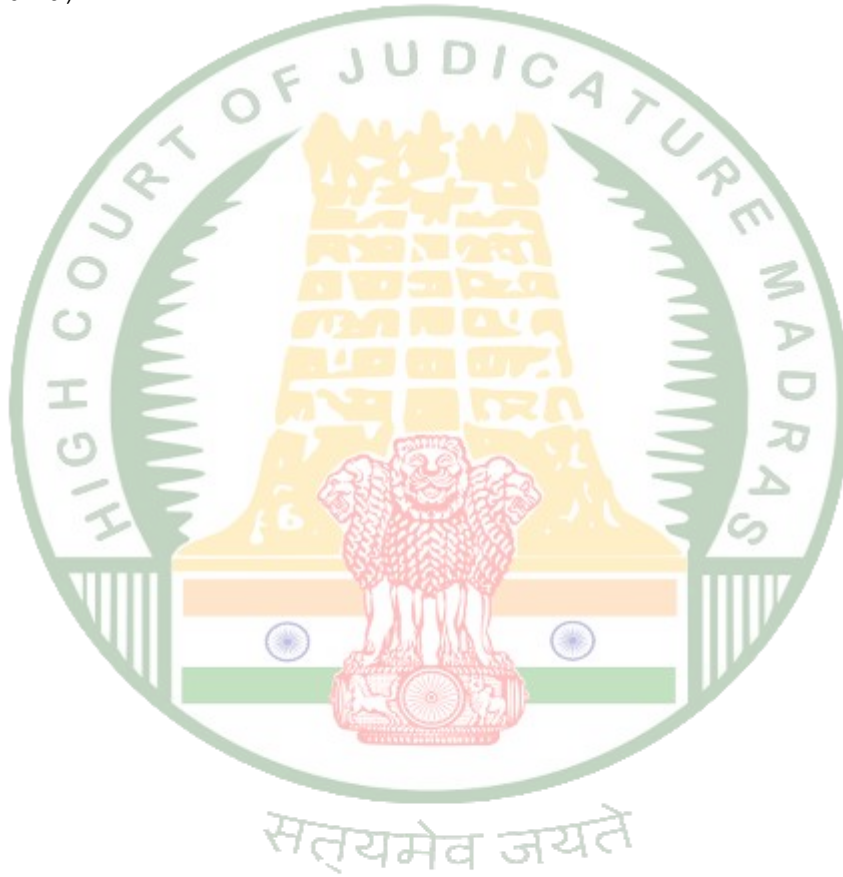
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2.The II Additional Subordinate Judge,
Cuddalore.

+1cc to Mrs.R.Meenal, Advocate, S.R.No.1819
+1cc to Mr.T.S.Baskaran, Advocate, S.R.No.1671

S.A.No.1 OF 2016

SVI (CO)
CA (28/01/2016)



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