

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.199 of 2016
and
C.M.P.No.4286 of 2016

S.Megala ... Appellant/Plaintiff

..Vs..

Jagadeeswaran ... Respondent/Defendant

Prayer: This Second Appeal has been filed under Section 100 of Code of Civil Procedure., praying to set aside the Judgment and Decree dated 29.06.2015 and made in A.S.No.9 of 2015 on the file of the Principal Subordinate Judge, Salem, reversing the Judgment and Decree dated 13.10.2014 and made in O.S.No.320 of 2013 on the file of III Additional District Munsif Court, Salem.

For Appellant : Mr.G.Arul Murugan
For Respondent : Mr.V.Chandrasekaran

JUDGMENT

This Second Appeal is filed under Section 100 of the Code of Civil Procedure as against the judgment and decree dated 29.06.2015 and made in A.S.No.9 of 2015 on the file of the Principal Subordinate Judge, Salem, reversing the Judgment and decree dated 13.10.2014 and made in O.S.No.320 of 2013 on the file of the III Additional District Munsif Court, Salem.

2. The appellant herein is the plaintiff whereas the respondent is the defendant in the suit O.S.No.320 of 2013. The appellant had filed the suit as against the respondent, seeking the relief of permanent injunction restraining him from in anyway interfering with the formers' peaceful possession and enjoyment of the suit property and not to evict her by force from the suit property excepting under due process of law. Despite the contest made by the respondent, the suit was decreed as prayed for with costs.

3. Challenging the judgment and decree dated 13.10.2014, the respondent being the defendant had preferred an appeal in A.S.No.9 of 2015 on the file of the Learned Subordinate Judge, Salem. After hearing both side, the appeal was allowed and

reversing the judgment and decree of the Trial Court which resulted in dismissal of the suit.

4. Having been aggrieved by the judgment of the First Appellate Court, dated 29.06.2015, the plaintiff stands before this Court with this Second Appeal.

5. Heard, Mr.G.Arulmurugan, learned counsel appearing for the appellant and Mr.V.Chandrasekaran, learned counsel appearing for the respondent.

6. The appellant/plaintiff is the tenant occupying the suit property bearing door No.344, Manipuram, Sooramangalam Main Road, Salem. The tenancy was commenced from the month of April 2006. The lease agreement was entered into with one P.Natesan Chettiar, who is none other than the father of the respondent/defendant on the following terms:-

- (i) The monthly rent was fixed at Rs.8,000/-
- (ii) Advance of Rs.1,00,000/- was paid to the defendant on 12.04.2006
- (iii) It was mutually agreed that the rent is to be increased once in 3 years.

7. The appellant/plaintiff was paying the rent at the rate of Rs.8,000/- upto April 2011. From, May 2011, onwards, the rent was increased to Rs.10,000/- and it continues till today. There is no arrears of rent as the appellant/plaintiff had paid rent upto February 2013. In the rental premises, the plaintiff has been running a dall mill in the name and style as "Iswarya Dall Mill". In the suit premises, the defendant had also constructed a tank for grinding dall. Till the death of the father of the respondent, the appellant had paid the rent regularly and never committed any default and even after, the death of the father of the respondent, the tenancy continued and the respondent has been collecting the rent from the appellant regularly.

8. When the matter stood, thus, the respondent had been insisting the appellant to pay the rent at the rate of Rs.20,000/- per month and besides this, he has also been insisting the appellant/plaintiff to pay a sum of Rs.5,00,000/- towards the advance. The respondent/defendant has no right to increase the rent and to enhance the advance amount as well. Indeed the rent can be increased only as agreed i.e., to be increased from 2014 and not prior to that.

9. Moreover, the respondent/defendant is entitled to increase the rent at 10% on the existing rent. The plaintiff/appellant has also invested more than Rs.9,00,000/- towards the machineries for the said Dall Mill. The appellant/plaintiff is also entitled to the benefit of tenancy protection. Since the appellant/plaintiff, apprehend that she

would be evicted from the suit property any time, she was constrained to file the suit, not to evict her from the suit property until by due process of law.

10. Admittedly, the rental premises was rented out to the appellant/plaintiff for the purpose of Toor dall manufacture in the Dall Mill on a monthly rent for a period of 11 months. The tenancy is only oral and it commenced from 01.06.2006. The interest free security amount of Rs.1,00,000/- was paid by the appellant/plaintiff. Subsequently, the rental period was renewed for a further period of 11 months from 01.05.2007 to 31.03.2008 and again the period was extended for another 11 months from 01.04.2008 to 28.02.2009. Thereafter, the monthly rent was enhanced to Rs.12,000/- for a period from 2008-2009 and the appellant had been paying this amount to the said P.Natesan Chettiar. Finally, the rental period of 11 months was extended from 01.01.2012 to 30.11.2012. At that time the rent was enhanced to Rs.15,000/- per month and the appellant had also been paying this amount for about 5 months. On 10.01.2012, the said P.Natesan Chettiar had expired leaving behind his legal representative, the respondent/defendant is the person who is the responsible for collecting the rents from the appellant/plaintiff. It is significant to note here that the tenancy period was expired on 13.11.2012. However, according to the respondent, the appellant had failed to pay the rent from 01.06.2012 onwards and thereby committed wilful default in payment of rent. Now, the appellant/plaintiff is liable to pay damages at the rate of Rs.40,000/- per month for the illegal occupation and usage of the rental premises.

11. The respondent/defendant has also contended that it was brought to his notice that the appellant had illegally sub-let the rental premises to one Sukku@ Sugavanam for the past 3 years at the monthly rent of Rs.25,000/-. The plaintiff had committed default in payment of rent from 01.06.2012 to 30.11.2012 and therefore he is liable to pay, the arrears of Rs.90,000/- in addition to, Rs.40,000/- towards damages and therefore the respondent has urged to dismiss the suit.

12. The Trial Court based on the pleadings of the parties to the suit, had formulated two issues for the better adjudication of the suit. On evaluating the evidences, the learned Trial Court Judge had proceeded to decree the suit with cost of Rs.5,000/- payable by the respondent/defendant on or before 13.10.2014.

13. Challenging the judgment and decree of the Trial Court, the respondent/defendant had preferred an appeal in A.S.No.19 of 2015, which was allowed by the First Appellate Court with costs after setting aside the judgment of the Trial Court. Hence, this Second Appeal is filed by the appellant/plaintiff.

14. It may be relevant to note here that the suit itself is filed by the appellant/plaintiff, to restrain the respondent/defendant from in anyway interfering with her peaceful possession and enjoyment of the property and not to evict her by force excepting under due process of law.

15. Mr.V.Arul Murugan, learned counsel appearing for the appellant has brought to the notice of this Court that the respondent/defendant had initiated Rent Control Proceedings before the Rent Controller at Salem as against the appellant/plaintiff, so as to evict her on growing wilful default in payment of the rent before the rent. Now the rent control proceedings is pending and the appellant has also been facing that proceedings, and therefore, the learned counsel has submitted that since the suit was filed to restrain the respondent/defendant from evicting the appellant/plaintiff, except by due process of law, it is for him to take legal proceedings for evicting the appellant/plaintiff and until such time, he should not resort to any illegal action as the relationship of the tenant and landlord has been admitted by both sides.

16. Now the Rent Control Proceedings is pending on the file of the learned Rent Controller, Salem and the appellant has also been facing the proceedings. It is to be placed on record that the said Rent Control Proceedings has been initiated by the respondent/defendant as against the appellant/plaintiff on the ground of wilful default in payment of rent. Since this suit is filed for bare injunction to restrain the respondent/defendant from not evicting her, this Court finds that the judgment of the First Appellate Court reversing the judgment and decree of the Trial Court need not be interfered with as the appellant/plaintiff her to fact the Rent Control Proceedings.

17. Keeping in view of the above fact, this Court finds that no substantial questions of law are involved in this case to entertain in the Second Appeal. Hence, the Second Appeal is dismissed. However, there is no order as to costs.

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Assistant Registrar(J)

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Sub Assistant Registrar

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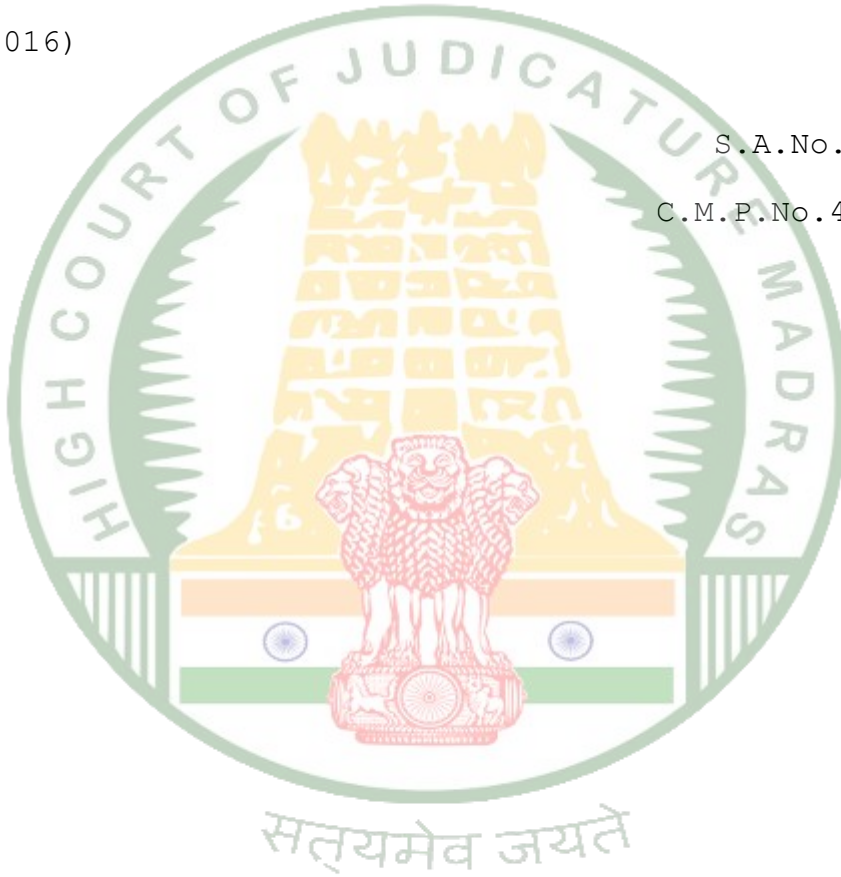
To

- 1.The Principal Subordinate Judge, Salem
- 2.The III Additional District Munsif Court, Salem.

+1cc to Mr.G. Arul Murugan, Advocate, S.R.No.24607
+1cc to Mr.V. Chandrasekaran, Advocate, S.R.No.25192

NM(CO)
EU(10/06/2016)

S.A.No.199 of 2016
and
C.M.P.No.4286 of 2016



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