

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.315/2017 & CMP.No.7467/2017

Rasu

..

Appellant /defendant

Versus

Farida Beevi

..

Respondent/Plaintiff

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure to allow the appeal and set-aside the Judgment and Decree dated 11.11.2016 in A.S.No.09/2015 on the file of the Court of Subordinate Judge at Tiruvarur confirming the judgment and decree dated 17.06.2015 on the file of the court of District Munsif cum Judicial Magistrate at Nannilam.

For Appellants : Ms.T.Shyamala

JUDGMENT

The defendant who had lost before the Courts below, is the appellant herein.

2 The respondent / plaintiff filed the suit for recovery of possession and for cost and after contest it came to be decreed and the appeal filed by the defendant before the Lower Appellate Court also came to be dismissed and hence this Second Appeal.

3 The facts briefly narrated necessary for the disposal of this second appeal are as follows :-

[a] The respondent / plaintiff claims that she is the owner of the superstructure situated in Survey No.54/1, Poonthotam Village, Nanillam Taluk and the appellant / defendant, after the demise of her husband agreed to pay a rent at the rate of Rs.50 per month and it has to be payable on or before 5th of every English Calender month and running a shop and the Rental Agreement is an oral one. The respondent/ plaintiff would further aver that she requires the premises in occupation of the

defendant, for her own use and occupation of non-residential purpose and accordingly, she sent a notice under Ex.A1 dated 18.12.2004 for cancelling the lease and also calling upon to vacate and deliver the vacant possession for which the defendant sent a reply under Ex.A2 dated 22.12.2004 denying the averments. Since, the defendant did not come forward to vacate and deliver vacant possession of the premises, the plaintiff came forward to file the above said suit.

[B] The appellant / defendant filed the written statement and apart from denying the averments made in the plaint would content that since, he refused to pay the enhancement rent, the suit for recovery of possession has been filed with an oblige motive and he would further aver that the husband of the plaintiff had filed the suit in O.S.No.154 of 1989 for recovery of possession and it was dismissed and as such the present suit is barred Resjudicata.

[c] The defendant would further aver that the land on which the superstructure located is a Government Poramboke land and as such the plaintiff is not entitled to seek for recovery of possession and would further aver that the Government is the necessary party in the

proceedings and since, they have not been arrayed as a defendant, the suit is also barred for non-joinder and prays for dismissal of the suit.

4 The Trial Court on consideration of pleadings had framed the following issues :-

- Whether the plaintiff is entitled for recovery of possession as prayed for?
- Whether the plaintiff is entitled for future mesne profits as prayed for?
- To what other relief the plaintiff is entitled to?

5 During the course of Trial, the plaintiff examined herself as PW1 and marked Ex.A1 to A7 and the defendant examined himself as DW1 and marked B1 to B5.

6 The Trial Court on a consideration of pleadings and on appreciation of oral and documentary evidence, had decreed the suit as prayed for and further granted liberty to initiate separate proceedings under Order 20 Rule 12 CPC for determining the future mesne profit vide judgment and decree dated 17.10.2015. The defendant aggrieved by the

decree of the suit filed an appeal in A.S.No.9 of 2015 on the file of the Court of Subordinate Judge, Thiruvavur.

7 The Lower Appellate Court found that since, the appellant/defendant in the written statement has admitted the tenancy but has disputed the title of the plaintiff and also recorded the findings that the plaintiff is entitled to seek for recovery of possession and citing the said reason, has dismissed the appeal suit vide Judgment and decree dated 11.11.2016. The appellant/defendant aggrieved by the dismissal of the appeal suit by the Lower Appellate Court has filed the Second Appeal.

8 In the memorandum of grounds of second appeal, the following substantial questions of law are raised :-

- Whether the Courts below are correct in applying the principles of Tamil Nadu Buildings (Lease and Rent Control) Act in the present case, when the suit is laid down for recovery of possession based on the termination of tenancy notice under Sec.106 of T.P.Act?
- Whether the courts below are correct in deciding the case on the ground that the other building felt vacant and it is for the landlord to chose which building is required for her occupation as if the case is

filed before the Rent Controller?

- When the suit is filed for recovery of possession based on the termination of tenancy, whether the courts below are correct in proceedings with the case for eviction on the ground of owner's occupation?
- When the building is situated in a poramboke land, whether the respondent can claim title to the poramboke land?
- Whether the notice issued under Sec.106 of T.P.Act is valid in law?

9 The learned counsel appearing for the appellant/defendant would contend that the Notice of Termination issued under Ex.A1 was not in consonance under Section 106 of the Transfer of Property Act and therefore, prayer sought for by the respondent/plaintiff cannot be maintained. It is the further submission of the learned counsel appearing for the appellant/defendant that since, the appellant failed to succeed to the demand of enhancement of rent, the suit has been filed with an oblique motive and would further urge that the Courts below, without properly appreciating the oral and documentary evidences, had erroneously reached the conclusion to uphold the claim of the respondent/plaintiff and hence, prays for interference.

10 This Court has considered the rival submissions made by the appellant/defendant and perused the impugned judgment passed by the Courts below.

11 The appellant/defendant in his written statement has admitted the tenancy and the primordial point urged by the learned counsel appearing for the appellant as to the challenging the validity of the notice under Ex.A1 on the ground that it is not in consonance under Section 106 of the Transfer of Properties Act, but no such plea has been raised in the written statement and no issue has been framed by the Trial Court. The said point was also not urged before the Lower Appellate Court. For the first time in this Second Appeal, the said point is urged on behalf of the appellant. Therefore, this Court is of the considered view that the submission with regard to the validity of the Notice under Ex.A1, lacks merits and substance. In so far as the plea made by the appellant/defendant as to the availability of alternate accommodation and that the requirement of the respondent/plaintiff is not bonafide, this court is of the view that such an issue can be gone into only in a proceedings

instituted under the provisions of Tamil Nadu Building (Lease and Rent Control) Act 1960, and not in a suit for recovery of possession.

12 The Courts below, on proper appreciation of oral and documentary evidences, had rightly reached the conclusion to grant the relief in favour of the plaintiff for recovery of possession and also for mesne profits. This Court on an independent application of mind to the materials, is of the considered view that there are no error or perversity attached to the said findings and finds no merit in the Second Appeal.

13 Learned counsel appearing for the appellant prays for some time to vacate and deliver vacant possession of the suit premises and also undertakes to file an Affidavit of Undertaking.

14 In the result, Second Appeal is dismissed confirming the judgment and decree dated 11.11.2017 in AS.No.09/2015 passed by the Court of Subordinate Judge, Thiruvavur in confirming the judgment and decree dated 17.06.2015 in OS.No.15/2005 on the file of the Court of District Munsif, Nannilam. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

15 In the light of the prayer sought for by the learned counsel appearing for the appellant/defendant, this Court inclined to grant three months time to file necessary Affidavit of Undertaking and shall be filed by the appellant/defendant who undertakes to vacate and deliver vacant and peaceful possession of the suit premises to the respondent/plaintiff and till such time appellant/defendant shall pay the rent and also not to damage or alter the premises in possession.

16 Call on 14.07.2017 for filing Affidavit of Undertaking. Learned counsel appearing for the appellant is also permitted to serve notice as to the grant of time for vacating the premises, to the respondent.

29.06.2017

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To

- 1.The Sub Judge,
Thiruvavarur.
- 2.The District Munsif,
Nannilam.

Copy to:

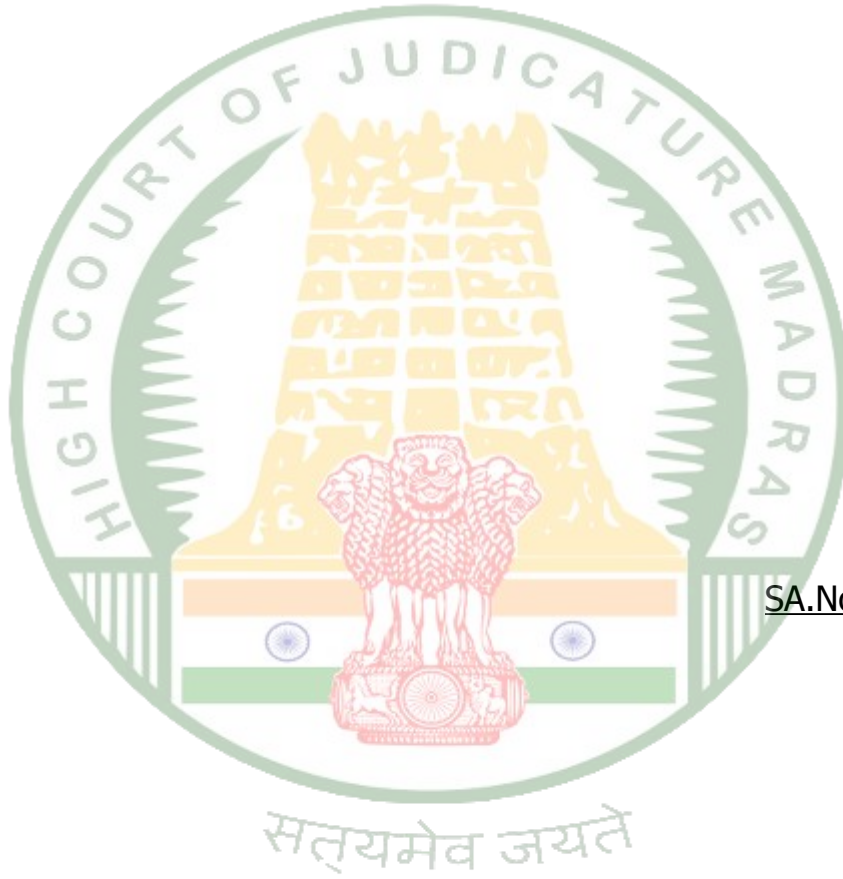
- 1.The Section Officer
VR Section, High Court,
Madras.
- 2.The Posting Clerk,
Judicial Department.



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M.SATHYANARAYANAN.,J

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